

**IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT
SHELBY COUNTY, ILLINOIS**

CODY BRANDS,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2024-CH-6
)	
SHELBY COUNTY, ILLINOIS and)	
SHELBY COUNTY DIVE TEAM)	
)	
Defendants.)	

MOTION TO DISMISS

NOW COME Defendants, SHELBY COUNTY, ILLINOIS and SHELBY COUNTY DIVE TEAM, by and through their attorneys, HEYL, ROYSTER, VOELKER & ALLEN, P.C., and pursuant to 735 ILCS 5/2-619(a)(9), hereby move this Court to dismiss the Complaint, and in support thereof state as follows:

INTRODUCTION

1. On or about December 23, 2024, Plaintiff filed herein a multi-count Complaint against Shelby County and the Shelby County Dive Team alleging various violations of the Freedom of Information Act (“FOIA”).
2. Specifically, Plaintiff alleges that on May 29, 2024, July 11, 2024, August 16, 2024, September 3, 2024, and November 7, 2024, Plaintiff sent FOIA requests to the Shelby County Clerk, Shelby County Treasurer, and Shelby County Dive Team seeking various documents related to the operations of the Shelby County Dive Team.
3. FOIA provides for the inspection and copying of public records in the custody or possession of a public body. *See* 5 ILCS 140/3.

4. Section 2-619 provides for dismissal where an affirmative matter avoids the legal effect of or defeats the claim. 735 ILCS 5/2-619(a)(9).

5. Plaintiff's Complaint should be dismissed pursuant to Section 2-619 because (1) Defendant Shelby County Dive Team is not a "public body" as defined by FOIA; (2) even if Defendant Shelby County Dive Team was a "public body" subject to FOIA, the FOIA requests at issue were sent to an invalid email address and never received by any member of the Shelby County Dive Team; and (3) all requests sent to entities other than the Shelby County Dive Team were answered and all responsive documents were produced.

I. SHELBY COUNTY DIVE TEAM IS NOT A PUBLIC BODY UNDER FOIA

6. The Freedom of Information Act defines a public body as "all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to subcommittees thereof." 5 ILCS 140/2.

7. In determining whether an entity is a "subsidiary public body" under the Freedom of Information Act (FOIA), a court must consider: (1) whether the entity has a legal existence independent of government resolution; (2) the nature of the functions performed by the entity; and (3) the degree of government control exerted. *Better Government Ass'n v. Illinois High School Ass'n*, 2016 IL App (1st) 151356.

8. The Shelby County Dive Team is a volunteer organization under the supervision of the Shelby County Public Safety Committee. While established by Resolution of the Shelby County Board, the only control the Shelby County Board exerts over the operations of the Shelby County Dive Team is the appointment of a commander by the Shelby County Board Chair. The

Board has no say in how members of the organization are hired or how the Team responds to requests for assistance. This level of control is insufficient to declare the volunteer organization a “public body” under the standard outlined above.

II. SUBJECT REQUESTS WERE NEVER RECEIVED OR WERE ANSWERED AS REQUIRED

9. Even if this Court were to find that the Shelby County Dive Team is a public body subject to the requirements of FOIA, Plaintiff’s Complaint still fails as none of the requests submitted to the Shelby County Dive Team were received by the anyone associated with the Shelby County Dive Team as they were sent to an invalid email address.

10. In support of his claims against Defendants, Plaintiff has attached six (6) emails to his Complaint identified as Exhibits A through D.

11. The email attached as Exhibit A was addressed to the Shelby County Clerk at shcoclerk@shelbycounty-il.gov and was sent on May 29, 2024. This request was answered by the Shelby County Clerk on May 30, 2024. *See* Response attached hereto as Exhibit 1.

12. The first email attached as Exhibit B dated July 11, 2024, does not indicate who the intended recipient of the email was and therefore Defendants cannot affirmatively state whether this email was ever received by anyone.

13. The second email attached as Exhibit B dated August 16, 2024, was sent to an email address of: shelbydive@shelbycounty-il.com. This email account does not exist. The correct email address for the Shelby County Dive Team is shelbydive@shelbycounty-il.gov. *Emphasis added.*

14. The first email attached as Exhibit C dated July 11, 2024 was sent to the Shelby County Treasurer at shcotre@shelbycounty-il.gov and an email address of:

shelbydive@shelbycounty-il.com. Again, this email account does not exist. The correct email address for the Shelby County Dive Team is shelbydive@shelbycounty-il.gov. *Emphasis added.*

15. On July 11, 2024, the Shelby County Treasurer responded to the July 11, 2024 request. *See* Response attached Exhibit 2.

16. This request was resent on August 16, 2024, however, it was again emailed to an email address that does not exist. *See* Exhibit C to Plaintiff's Complaint.

17. The email attached as Exhibit D dated November 7, 2024, was again sent to the email address of shelbydive@shelbycounty-il.com that does not exist. Plaintiff did attempt to send the November 7, 2024 email directly to the Dive Team Commander, Austin Pritchard, however, Mr. Pritchard had previously been advised to only use the official dive team email, and therefore never received said request.

18. Additionally, Paragraphs 32 and 33 of Plaintiff's Complaint allege an additional request sent on September 3, 2024 and "attached hereto as Exhibit D." Said email is not attached to Plaintiff's Complaint, however, Plaintiff's concede in Paragraph 34 that this request was answered by the Shelby County Clerk.

WHEREFORE, Defendants, SHELBY COUNTY, ILLINOIS and SHELBY COUNTY DIVE TEAM, respectfully request this Court enter an Order dismissing Plaintiff's Complaint with prejudice.

SHELBY COUNTY ILLINOIS and
SHELBY COUNTY DIVE TEAM,
Defendants,

BY: /s/ Keith B. Hill
HEYL, ROYSTER, VOELKER & ALLEN, P.C.
Keith B. Hill, #6277660

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CERTIFICATE OF FILING AND PROOF OF SERVICE

I certify that on February 21, 2025 at or before 5:00 p.m., I electronically filed and transmitted the foregoing **Motion to Dismiss** with the Clerk of the Court for the Fourth Judicial Circuit, Shelby County, using the Odyssey eFileIL system.

I further certify that the individual named below was served by transmitting a copy from my e-mail address to all primary and secondary e-mail addresses of record designated by that individual on **February 21, 2025**.

Edward "Coach" Weinhaus, Esq.
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Attorneys for Plaintiff

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure [735 ILCS 5/1-109], I certify that the statements set forth in this **Certificate of Filing and Proof of Service** are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

/s/ Stephanie Kraus

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