

905-296

**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

105 West Vandalia Street  
Mark Twain Plaza III, Suite 100  
Edwardsville, IL 62025  
Telephone 618.656.4646  
Facsimile 309.420.0402  
PRIMARY E-MAIL: [edwecf@heyloyster.com](mailto:edwecf@heyloyster.com)  
SECONDARY E-MAIL #1: [khill@heyloyster.com](mailto:khill@heyloyster.com)

**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.  
Adam Florek  
LegalSolved, LLC FOIASolved Division  
11500 Olive Blvd., Suite 133  
St. Louis, MO 63141-7126  
[Eaweinhaus@gmail.com](mailto:Eaweinhaus@gmail.com)  
[aflorek@florekllc.com](mailto:aflorek@florekllc.com)  
**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

HEYL, ROYSTER, VOELKER & ALLEN, P.C.  
Suite 100, Mark Twain Plaza III  
105 West Vandalia  
Edwardsville, Illinois 62025-0467  
Telephone 618.656.4646  
Facsimile 309.420.0402  
PRIMARY E-MAIL: [edwecf@heyloyster.com](mailto:edwecf@heyloyster.com)  
SECONDARY E-MAIL #1: [khill@heyloyster.com](mailto:khill@heyloyster.com)

## Shelby County Clerk - Jessica Fox

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**From:** Shelby County Clerk - Jessica Fox  
**Sent:** Thursday, May 30, 2024 9:12 AM  
**To:** 'Cody Brands'  
**Cc:** Shelby County District 3 - Tad Mayhall; 'Austin Pritchard'; 'Shelby County States Attorney - Ruth Woolery'  
**Subject:** RE: Foia request  
**Attachments:** Flooded Roadway Ordinance.PDF

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

The County Clerk is not the FOIA officer for the Shelby County Dive Team. I have copied the PSC Chair, the Dive Team Commander, and the State's Attorney on this response.

1. I have attached Ordinance 16-01-"O". This office has no other documents responsive to your request.
2. This office has no records responsive to your request.
3. This office has no records responsive to your request. The PO Box listed on the checks attached to your FOIA is for the Treasurer's office, so that department would have received those checks directly.

You have the right to have the denial of any portion of your request reviewed by the Public Access Counselor (PAC) at the office of the Attorney General pursuant to 5 ILCS 140/9.5(a). You can file your request for Review with the PAC by writing to: Public Access Counselor, Office of the Attorney General, 500 South 2<sup>nd</sup> Street, Springfield, IL 62706, FAX: 217-782-1396; email: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us). If you choose to file a Request for Review with the PAC you must do so within 60 calendar days of the date of the denial letter. (5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request to review with the PAC. You also have the right to seek judicial review of your denial by filing a lawsuit in the State Circuit Court pursuant to 5 ILCS 140/11.

## Jessica Fox

Shelby County Clerk/Recorder  
301 E. Main St. PO Box 230  
Shelbyville, IL 62565  
217-774-4421

[shcoclerk@shelbycounty-il.gov](mailto:shcoclerk@shelbycounty-il.gov)

**From:** Cody Brands <codybrands43@gmail.com>  
**Sent:** Wednesday, May 29, 2024 11:52 PM  
**To:** Shelby County Clerk - Jessica Fox <shcoclerk@shelbycounty-il.gov>  
**Subject:** Foia request

Caution! This message was sent from outside your organization.

[Allow sender](#) | [Block sender](#)

Good evening, I am requesting the following from the Shelby County Dive team.

1. The authority for Dive team to bill individuals.
2. All invoices and communications from Dive team and the insurance company in file I have attached.

3. All communications and reports of individuals on the file I have attached with Dive team.

Thanks Cody Brands

## Shelby County Treasurer - Erica Firnhaber

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**From:** Shelby County Treasurer - Erica Firnhaber  
**Sent:** Thursday, July 11, 2024 12:38 PM  
**To:** "Cody Brands" <codybrands43@gmail.com>  
**Subject:** RE: Foia Request

Cody,

I have no records responsive to your request.

Thank you,

***Erica Firnhaber***  
*Shelby County Treasurer*  
*P.O. Box 326*  
*Shelbyville, IL 62565*  
*217-774-3841*

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**From:** Cody Brands <codybrands43@gmail.com>  
**Sent:** Thursday, July 11, 2024 12:38 PM  
**To:** Shelby County Treasurer - Erica Firnhaber <shcotre@shelbycounty-il.gov>; shelbydive@shelbycounty-il.com  
**Subject:** Foia Request

Caution! This message was sent from outside your organization.

[Allow sender](#) | [Block sender](#)

I am requesting at information on the fundraiser for the Dive Team.

1. Proof the money was given to Shelby County Treasurer
2. The amount and when it was given to Treasurer

Thanks Cody