IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JOHN KRAFT,	)	
Plaintiff,	)	
v.	)	Case No. 22 CH 11352
	)	Hon. Caroline K Moreland
VILLAGE OF DOLTON,	)	Judge Presiding, Rm. 2302
	)	Cal. 10
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Pursuant to 140 ILCS 140/11(i) and (j), Plaintiff John Kraft ("Kraft") filed a Motion for Civil Penalties and Petition for Attorney's Fees and Costs (the "Motion") against Defendant Village of Dolton ("Dolton").

I. Background

This action was brought pursuant to the Illinois Freedom of Information Act ("FOIA"). In October 2022, Kraft submitted four FOIA requests to Dolton relating to Dolton's use of taxpayer funds (the "Requests"), but never received responses to those Requests. (First Amended Complaint [hereinafter AC] ¶¶17–32.)

On February 7, 2024, Kraft filed a Complaint (the "Initial Complaint") alleging that Dolton's nonresponse to the Requests violated FOIA. The Initial Complaint sought production of records responsive to the Requests and civil penalties. The Court dismissed the Initial Complaint on November 17, 2023. Kraft filed its eight-count First Amended Complaint (the "Amended Complaint") on January 12, 2024. Counts I through IV of the Amended Complaint were for "Failure to Produce Demanded Records"; and Counts V through VIII were for "Willful and Intentional Violation of FOIA." (*See generally* AC.) On February 21, 2024, Kraft voluntarily withdrew Counts V through VIII in response to Dolton's Partial Motion to Dismiss the Amended Complaint. (Feb. 21, 2024, Order.)

Dolton began to produce responsive records in March of 2024 and has since produced all records sought by the Requests. Kraft filed the present Motion on April 4, 2024. The Motion seeks attorney's fees for the work done by Kraft's attorneys, Edward Weinhaus ("Weinhaus") and Adam Florek ("Florek")(collectively, the "Attorneys"); costs; and civil penalties.

II. Standard of Review

"If a person seeking the right to inspect or receive a copy of a public record prevails in a proceeding under this Section, the court shall award such person reasonable attorney's fees and costs." 140 ILCS 140/11(i). Courts have broad discretion in awarding attorney's fees. *Gambino v. Blvd. Mortg. Corp.*, 398 Ill. App. 3d 21, 66 (1st Dist. 2009). The party seeking attorney's fees must provide evidence sufficient to enable the court to render a decision as to the reasonableness

of the fees sought. *Id.* This evidence should include "facts and computations upon which the charges are predicated." *Id.*

"If the court determines that a public body willfully and intentionally failed to comply with [FOIA], or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty of not less than $2,500 nor more than $5,000 for each occurrence." § 11(j). Although the amount of civil penalties is discretionary, the imposition of civil penalties is not. *Rock River Times v. Rockford Pub. Sch. Dist. 205*, 2012 IL App (2d) 110879, ¶49.

III. Analysis

A. Attorney's Fees

Kraft seeks attorney's fees under Section 11(i) of FOIA, arguing that he has shown that he was the prevailing party, that his attorney's fees are reasonable, and that his costs are reasonable. (Mot. 5–8.)

1. Prevailing Party

Kraft argues that he is the prevailing party in this case. (Mot. 5–6.) Dolton does not dispute this argument. (*See generally* Resp.) "To prevail under section 11(i) of FOIA, [a] plaintiff need not be the recipient of court-ordered relief. However, the following requirements must be met: (1) plaintiff filed a lawsuit against a public entity, (2) the entity produced the requested documents, (3) the lawsuit caused the documents' production, and (4) the lawsuit was reasonably necessary to obtain those documents." *Kieken v. City of Joliet*, 2023 IL App (3d) 220392, ¶22. The relevant inquiry to the third requirement is "whether . . . a causal nexus exists between the action and the agency's surrender of the information." *Uptown People's L. Ctr. v. Ill. Dep't of Corrs.*, 2014 IL App (1st) 130161, ¶15.

Kraft filed this lawsuit against Dolton, a public entity—satisfying the first requirement. Dolton's non-response to Kraft's requests prior to the initiation of the lawsuit and production of responsive documents in the course of the lawsuit show that the lawsuit both caused and was reasonably necessary to obtain the production of the responsive documents—satisfying the second, third, and fourth requirements. Having carried his burden on all four requirements, Kraft has shown that he prevailed under section 11(i) of FOIA. *See Kieken*, 2023 IL App (3d) at ¶22.

2. Reasonableness of Attorney's Fees

Kraft argues that the attorney's fees he seeks are reasonable. (Mot. 6–8.) Dolton disagrees, arguing that Kraft has failed to prove the reasonableness of the (1) attorneys' hourly rates; (2) attorneys' dual appearance at status calls; and (3) inclusion of time billed pertaining to Dolton's motion to dismiss. (Resp. 1–4.)

HOURLY RATES

Dolton argues that Kraft has failed to show that the Attorneys' hourly rates are reasonable. (Resp. 1–2.) Specifically, Dolton argues that the Attorneys' use of the Laffey Matrix and their failure to include statements regarding the prevailing local rates for comparable attorneys render the Attorneys' affidavits insufficient. (Resp. 1–2.)

"In a contingent, statutory fee-shifting case . . . a reasonable hourly rate is 'the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Demitro v. Gen. Motors Acceptance Corp.*, 388 Ill. App. 3d 15, 23 (1st Dist. 2009). An attorney's "actual hourly rate . . . is presumptive evidence of the appropriate market rate." *Jones v. Lockhard*, 2011 IL App (3d) 100535, ¶46.

Here, Florek states in his affidavit that his standard hourly rate is $777 per hour. (Mot. Ex. 1 [hereinafter Florek Aff.] ¶9.) The fees sought reflect that he is seeking an hourly rate of $777 per hour for his work on this case. (*Id.* Ex. A; Mot. 12.) Weinhaus states in his affidavit that he charges between $500 and $750 per hour in "non-contingency contexts." (Mot. Ex. 2 [hereinafter Weinhaus Aff.] ¶33.) He is seeking $538 per hour for his work on this case before June of 2024, and $581 per hour from June 2024 on. (*Id.* Ex. A.) The Attorneys state that they used the Laffey Matrix to set their typical rates. (Florek Aff. ¶9; Weinhaus Aff. ¶29.)

The First District has noted that it is not improper for a circuit court to disregard the Laffey Matrix in its determination of the reasonableness of an attorney's rate. It reasoned that the Laffey Matrix—designed for use in Washington D.C.—was "inapposite" in cases litigated in Illinois courts. *Kieken*, 2023 IL App (3d) at ¶29. However, the Attorneys stated their typical rates, explaining that they arrived at those rates using the Laffey Matrix. (Florek Aff. ¶9; Weinhaus Aff. ¶¶12–13, 29.) These statements reflect the Attorneys' "actual hourly rates." *Kieken* does not provide that an attorney's use of the Laffey Matrix weighs against the reasonableness of their hourly rate. *See id*. An attorney's actual hourly rate is presumptive evidence of the appropriate market rate. *Jones*, 2011 IL App (3d) at ¶46. Florek is seeking his standard hourly rate ($777) and Weinhaus is seeking amounts at the lower end of his rates in this context ($538-$581). Dolton has not provided evidence that rebuts the presumption of reasonableness. As such, Kraft has shown that the Attorneys' hourly rates are reasonable.

Dual Appearance

Dolton argues that Kraft has failed to prove the reasonableness of both Attorneys attending status calls. Dolton asks the Court to eliminate the hours billed by Weinhaus for his appearance on status calls also attended by Florek from consideration. (Resp. 2–3.) "From an award of attorney's fees, [a c]ourt may deduct time that it believes is unnecessary, duplicative, or redundant." *Ryan M. v. Bd. of Educ.*, 731 F. Supp. 3d 776, 793 (N.D. Ill. 2010). Here, the Court does not believe that the attorneys' dual attendance at status calls was unnecessary, duplicative, or redundant. Weinhaus states in his affidavit that he is the lead counsel on this case and that Florek was brought on because he had expertise in litigating multiple ongoing cases. (Weinhaus Aff. ¶21.) The Attorneys' distinct roles support the reasonableness of both attending status calls.

Motion to Dismiss

Dolton asks the Court not to award Kraft attorney's fees for the hours the Attorneys spent responding to Dolton's motion to dismiss the Initial Complaint, drafting the First Amended Complaint (the "Amended Complaint"), or responding to Dolton's motion to dismiss the Amended Complaint. (Resp. 3–4.)

Courts disapprove of an award for time spent on unsuccessful claims that are unrelated to successful claims. *Robinson v. Point One Toyota*, 2017 IL App (1st) 152114, ¶37. To this end, a court may reduce an award to eliminate requests related to unrelated, unsuccessful claims. *Id.* at ¶¶36–37. However, courts may award attorneys fees for related, unsuccessful claims. *Id.* "[T]he starting point for separating an *un*related, unsuccessful claim from a related, unsuccessful claim is to determine whether a particular unsuccessful claim shares a 'common core of facts' with the successful claim or is based on a 'related legal theory.'" *Id.* at ¶37. In other words, an unsuccessful claim is unrelated to a successful claim if it seeks relief "intended to remedy a course of conduct entirely distinct and separate" from that of the successful claim. *Id.*

Here, both the Initial Complaint and Amended Complaint address Dolton's nonresponse to the Requests and are based on FOIA. (*See generally* IC, AC.) They share a common core of facts and are based on related legal theories. They are not intended to remedy distinct and separate courses of conduct. As such, the Initial Complaint is a related, unsuccessful claim and the Court need not segregate and disregard the Attorneys' entries relating to Dolton's motion to dismiss the Initial Complaint. *See Robinson*, 2017 IL App (1st) at ¶¶36–37. Likewise, the voluntarily withdrawn counts of the Amended Complaint share a common core of facts with the remaining counts. (AC ¶¶58–77.) It is reasonable to award Kraft fees for the time the Attorneys spent responding to the motions to dismiss and drafting the Amended Complaint.

Conclusion on Attorney's Fees

The Court finds that Kraft has provided sufficient evidence in support of the reasonableness of the Attorneys' hourly rates and the hours the Attorneys billed in this matter. Kraft's Petition for Attorney's Fees is properly granted.

B. Costs

Kraft seeks $257.22 in litigation costs. (Mot. 8.) Weinhaus' firm advanced this amount for the Appearance Fee. (Weinhaus Aff. ¶31.) Dolton does not dispute the reasonableness of this amount. (*See generally* Resp.) Kraft's Petition for Costs is properly granted.

C. Civil Penalties

Kraft asks the Court to impose civil penalties on Dolton, arguing that Dolton's FOIA violations were "intentional, willful, and without justification." (Mot. 9.)

FOIA obligates public bodies to respond to requests to inspection within five days of receipt. The response time may be extended under certain circumstances, but that extension must be explained in writing. 5 ILCS 150/3(d)–(f). "If the court determines that a public body willfully and intentionally failed to comply with [FOIA], or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty of not less than $2,500 nor more than $5,000 for each occurrence." § 11(j). FOIA instructs courts to consider the public body's budget and previous violations when assessing the amount of the civil penalty. *Id.* Although the amount of civil penalties is discretionary, the imposition of civil penalties is not. *Rock River Times*, 2012 IL App (2d) at ¶49.

It is undisputed that Dolton failed to timely respond to Kraft's Requests. Here, Kraft argues that this was a willful, intentional violation of FOIA, done in bad faith. (Mot. 9–10.) Dolton does not dispute this argument, instead arguing that the Court should not award civil penalties because Dolton's failure to respond "was based on the actions of a few problematic officials" and that Dolton's taxpayers "have suffered enough." (Resp. 4.)

The Court finds that Dolton's nonresponse to the Requests was willful and intentional. This finding is strengthened by Dolton's pattern of intentionally ignoring FOIA requests. Having found that Dolton's nonresponse was willful and intentional, the Court is obligated to impose civil penalties. *Rock River Times*, 2012 IL App (2d) at ¶49. Although Dolton has a history of FOIA violations, the Court finds that Dolton's financial situation outweighs that history. (Resp. Ex. A.) As such, the Court will impose the minimum penalty of $2,500 for each of the four ignored Requests. *See* § 11(j).

Dolton urges the Court to award civil penalties, not to Kraft, but to a third-party public body that promotes government transparency. However, the only authority that addresses the award of civil penalties in a FOIA case brought by a private party affirms the award of civil penalties to the requesting party. Accordingly, civil penalties are to be paid to Kraft.

IV. Conclusion

- Kraft's Petition for Attorney's Fees is GRANTED—Kraft is awarded $40,375.40 in attorney's fees.
- Kraft's Petition for Costs is GRANTED—Kraft is awarded $257.22 in costs.
- Kraft's Motion for Civil Penalties is GRANTED—Kraft is awarded $10,000 in civil penalties.
- This is a final and appealable order.

Dated

Judge Caroline Kate Moreland No. 2033