

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

2016 DEC -9 PM 1:53

CIRCUIT COURT OF COOK COUNTY
CHICAGO, ILLINOIS

CHICAGO TRIBUNE COMPANY LLC,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF CHICAGO POLICE DEPARTMENT,)
)
 Defendant.)

Case No. 2016CH15960 - C. J. FK
CALENDAR/ROOM 08
TIME 00:00
Pet Specific Perform

COMPLAINT

Plaintiff Chicago Tribune Company (“Tribune”) brings this Complaint pursuant to the Illinois Freedom of Information Act against Defendant City of Chicago Police Department (“CPD”) for CPD’s willful failure to disclose public records as required by law.

NATURE OF THE ACTION

1. This is a complaint under the Illinois Freedom of Information Act (“FOIA”), 5 ILCS §140/1 *et seq.* In violation of FOIA, CPD has failed to produce public records requested by Tribune relating to complaints against police officers, disciplinary actions taken in response, and related grievances filed by CPD officers, long after disciplinary inquiries have concluded.

2. The importance of these public records is beyond meaningful dispute and requires no elucidation. The Appellate Court has repeatedly been called to repudiate attempts by CPD (and entities with similar institutional interests) to frustrate public access to the very public records at issue here. Nonetheless, CPD continues to withhold records pertaining to complaints against and discipline of police officers from the Tribune wholesale and without justification.

3. Accordingly, Tribune seeks an injunction commanding CPD to disclose, promptly and without improper redactions, the records requested in three Tribune FOIA requests. Tribune also seeks an order awarding the Tribune its attorneys’ fees and costs of bringing this lawsuit.

PARTIES

4. Tribune is a major daily newspaper and media outlet with the highest circulation of any daily publication in the Midwest, as well as national and international readership. Timely access to public records is critical to Tribune's mission to keep the public apprised of developments and concerns about government operations. In particular, Tribune has devoted significant resources to leading coverage of community/police relations in Chicago.

5. CPD is a subsidiary body of the City of Chicago and is a "public body" as that term is defined in 5 ILCS §140/2(a).

JURISDICTION AND VENUE

6. Jurisdiction is granted to this Court under Section 11(a) of FOIA, 5 ILCS 140/11(a).

7. Venue is proper in Cook County under Section 11(c) of FOIA, 5 ILCS 140/11(c), because the City of Chicago and CPD are located in Cook County.

FACTUAL BACKGROUND

The Illinois FOIA

1. When it enacted FOIA, the Illinois General Assembly declared that "all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them." 5 ILCS 140/1.

2. FOIA imposes a mandatory statutory duty on public agencies like CPD to "make available to any person for inspection or copying all public records." 5 ILCS 140/3.

3. FOIA recognizes that the value of public records are time-sensitive. 5 ILCS 140/1 ("It is a fundamental obligation of government to . . . provide public records as expediently and efficiently as possible"). Accordingly, FOIA imposes strict timelines on record requests, requiring public bodies to promptly comply with or deny record requests within five business

days. *Id.* §140/3(d). Under limited conditions, including where timely compliance would unduly burden the public body, the public body may (upon timely notice to the requestor) extend its time for responding for “not more than five business days.” *Id.* §140/3(e).

4. In further recognition of the time-sensitive nature of FOIA requests, and the potential for strategic and dilatory noncompliance by public agencies, FOIA expressly forbids agencies from failing to comply with these deadlines on the basis that they failed to adequately staff FOIA offices or adequately allocate resources for compliance with FOIA requests:

The General Assembly recognizes that this Act imposes fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements. The General Assembly declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding.

Id. §140/1.

5. FOIA requires broad governmental transparency, providing that “[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying.” 5 ILCS 140/1. Accordingly, public agencies bear the burden to justify *any* withholding of public records, and if exemptions are invoked, they must be construed against the agency. *Id.* (“Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people.”).

6. Any public body denying a FOIA request must do so in writing, and this writing must include “the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial.” *Id.* §140/9(a). If the public body fails to respond in writing as FOIA requires, it “may

not treat the request as unduly burdensome. . . .” *Id.* §140/3(d).

7. To dissuade noncompliance by public bodies with the public’s right to government information, and to ensure that the public fully enforces that right, FOIA provides that requestors must be awarded their reasonable attorney’s fees where litigation becomes necessary to vindicate their right of timely access to government information. 5 ILCS 140/11(i).

8. FOIA also punishes agency noncompliance with the public’s FOIA rights through the imposition of mandatory statutory penalties, which must be awarded when a public body “willfully and intentionally fail[s] to comply” with FOIA “or otherwise act[s] in bad faith.” 5 ILCS 140/11(j).

The First Request

9. On June 27, 2016, as part of Tribune’s investigation into CPD officer discipline, Tribune reporter Jodi Cohen submitted a FOIA request to CPD seeking “[t]he names of all Chicago Police Department officers or other employees who have been suspended or who have had a suspension pending from June 27, 2012 to the present,” and, for each employee:

the log number associated with the allegation; a description of the violation; the date the suspension was ordered; the number of days suspended; the date(s) the suspension was served, if applicable; an indication of whether the suspension was appealed or grieved; whether it was appealed to an arbitrator or the Police Board; the outcome of the appeal or grievance; the discipline served, if different from the original discipline; and the officers’ assignments, district or unit.

(The “First Request,” a true and correct copy of which is appended hereto as Exhibit A.)

10. To date, CPD has not complied with Ms. Cohen’s request.

11. On June 6, 2016, after the applicable statutory deadline had expired, CPD purported to extend its response deadline for five business days on the basis that the requested records were stored off-site. (A true and correct copy of this putative extension letter is appended hereto as Exhibit B.)

12. CPD did not provide the requested records within five business days. After Ms. Cohen followed up with CPD regarding the lapsed response, FOIA Officer Zuniga agreed to provide an update on Monday, July 18. He did not. Ms. Cohen followed up again by email on July 27 and received no response.

13. Ms. Cohen followed up again by email on October 11, 2016. This time Officer Zuniga responded, stating that he had not heard from the Independent Police Review Authority (“IPRA”). In ensuing correspondence, Ms. Cohen explained that the suspension records sought by the First Request were CPD records, not exclusively IPRA documents, because IPRA is simply an investigative body that recommends discipline, while CPD is responsible for implementing and enforcing disciplinary action, and has its own records about officer discipline that must be produced.

14. On October 19, CPD provided a partial response to the First Request. It did not provide any suspension records. Instead, CPD provided a spreadsheet containing the name and unit of the accused officers, the complaint log number, the category code and description, and recommended and final discipline. CPD did not explain why it provided incomplete records pertaining to officer suspensions, stating only that it had difficulty obtaining certain records from IPRA. (A true and correct copy of CPD’s partial response to the First Request is appended hereto as Exhibit C.)

15. Ms. Cohen followed up again by email on October 19, requesting an explanation for the missing information. She received no response.

The Second Request

16. On November 1, 2016, Tribune reporter Jennifer Smith Richards submitted a FOIA request to CPD seeking records related to two complaint registers against CPD officer Maurice Anderson. Specifically, the request sought:

All documents and records related to CR numbers 1028126 and 1020690. This should include, but not be limited to: Face Sheets, audio or video recordings related to the investigations; summary reports; investigators' logs; records transcribing and/or paraphrasing interviews with witnesses, victims and police officers; To/From reports; Officer statements; and Chicago Police Department incident and supplemental reports.

I also seek records of Chicago Police Department disciplinary records related to the CRs listed above. As such, please also include any records showing the status of the discipline of the officers, or communications about the disciplinary action, after the case was closed at IPRA or IAD or any other investigative body.

(The "Second Request," a true and correct copy of which is appended hereto as Exhibit D.)

17. Complaint registers ("CRs") are public records consisting of files that "contain citizens' allegations of police misconduct and CPD's investigation into the facts of those allegations." *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶ 24 (requiring CRs to be produced); *see also Watkins v. McCarthy*, 2012 IL App (1st) 100632, ¶ 45 (CR files may not be withheld in their entirety); *Gekas v. Williamson*, 393 Ill. App. 3d 573, 586 (4th Dist. 2009) ("Complaints, founded or unfounded, that [an officer] committed misconduct in his [or her] capacity . . . are information that bears on [his or her] public duties," and are not exempt from FOIA) (internal quotation marks omitted).

18. On November 17, 2016, CPD denied the Second Request, claiming without further explanation that the two disciplinary cases (which commenced in 2008 and 2009) were still being investigated, witnesses were still being sought and interviewed, and that the release of records "would obstruct ongoing administrative enforcement proceedings." (The "Second Denial," a true and correct copy of which is appended hereto as Exhibit E.)

19. That same day, Ms. Richards responded by email to the Second Request, asking CPD to state why it "believe[d] these CRs remain open investigations and what the administrative enforcement/proceedings are," and pointing out that the CRs were "from 2008 and 2009 and were investigated by IPRA and closed." She has received no response.

20. On information and belief, the two investigative cases that are the subject of the Second Request were closed before November 1, 2016.

21. On information and belief, the two disciplinary cases are no longer under active investigation.

22. The results of the closed investigations have been published online and in official documents. IPRA summarized the conclusion of its investigation of CR No. 1020690 in its 2008-2009 annual public report, recommending separation for the accused officer from CPD. (A true and correct copy of excerpts from IPRA's 2008-2009 Annual Report is appended hereto as Exhibit F.) IPRA summarized the conclusion of its investigation into CR No. 1028126 in an Abstract of Sustained Cases, recommending five and ten day suspensions for the officers involved. (A true and correct copy of an Abstract of Sustained Cases published by IPRA is appended hereto as Exhibit G.)

The Third Request

23. On November 2, 2016, Ms. Cohen submitted a FOIA request to CPD, "seeking the Unit Grievance Logs from years 2010 to the present." (The "Third Request," a true and correct copy of which is appended hereto as Exhibit H.)

24. On November 8, 2016, CPD Officer L. Webb of the FOIA unit responded to her Request, stating that each unit maintains its own grievance logs in three categories: civilians, police officers and supervisors, and asking which unit's grievance log, and what category, the Third Request sought.

25. On November 15, 2016, Ms. Cohen responded, stating that the Third Request sought grievance logs department-wide, including all grievances that were not settled at the unit

level, but were instead forwarded to CPD's Management Labor Affairs Section ("MLAS").¹

26. CPD made no response for two weeks. When Ms. Cohen finally reached CPD's FOIA officer by telephone on November 28, and reiterated that the already overdue Third Request sought grievances submitted to MLAS, including "the officer name, CR number, grievance number and status of the grievance," CPD informed Ms. Cohen that it was "[f]orwarding [the Third Request] to MLAS now" and would "get back to you as soon as they respond." (A true and correct copy of this correspondence is appended hereto as Exhibit I.)

27. Again, CPD made no response for over a week. When Ms. Cohen followed up by telephone on December 6, 2016, she was informed by CPD FOIA Officer Webb that the Sergeant in the MLAS division had not responded to Officer Webb's requests for the documents, and that the FOIA request was indefinitely delayed. Officer Webb acknowledged to Ms. Cohen that "you have been waiting a long time" but claimed inability to comply with the Third Request, stating: "They still haven't responded to me and I can't send you something that I don't have."

The CPD's Casual and Routine Noncompliance With FOIA

28. Tribune is aware, from its reporting and FOIA requests to other public bodies, that CPD improperly denies FOIA requests in a routine, perfunctory fashion. CPD also routinely violates FOIA's statutory deadlines, and Tribune has been obliged to file several lawsuits in recent years simply to obtain compliance with its rights under FOIA.

29. The Requests that are the subject of this lawsuit are only three of 21 FOIA requests Tribune reporters have submitted in connection with its investigation into CPD discipline.

30. In each case Tribune is investigating, IPRA has closed its investigation.

¹ See Chicago Police Department, *Grievance Procedures, Employee Resource E01-06* (Feb. 21, 2012), available at <http://directives.chicagopolice.org/lt2015/data/a7a57be2-12989d50-1b912-98ae-5cd4983040199e4b.html> (providing overview of grievance process).

31. IPRA and the Chicago Police Board have provided documents related to these cases. CPD, however, has the documents that shed light on the imposition (if any) of final discipline, and continues improperly to withhold them.

32. CPD's dilatory conduct in response to these FOIA requests is consistent with its institutional interest in delaying or denying access to records pertaining to complaints against police officers, and in thwarting Tribune's investigation of any failures in the administration of officer discipline to correct or deter police misconduct.

33. CPD has repeatedly failed to acknowledge or comply with many of Tribune's FOIA requests.

34. When it has responded, CPD has denied Tribune's FOIA requests on grounds that strain credulity and are inconsistent with reliable information provided by other agencies. For example, Tribune has learned from its reporting that CPD has improperly denied at least one other FOIA request by asserting the continuing investigation of an enforcement proceeding IPRA has confirmed to be closed. And CPD has repeatedly and willfully failed to comply with FOIA's statutory deadlines and its own guarantees, leaving Tribune unable to report on matters of public concern with the reasonable timeliness contemplated by FOIA.

COUNT I

Violation of Illinois FOIA

35. Tribune incorporates by references paragraphs 1 through 34 of this Complaint.

36. Tribune seeks disclosure of the records requested in First Request, the Second Request, and the Third Request (together, the "FOIA Requests").

37. The documents sought by the FOIA Requests are public records within the meaning of 5 ILCS 140/2(c) and subject to disclosure by the CPD under FOIA.

38. This court has jurisdiction "to enjoin [the CPD] from withholding public records

and to order the production of any public records improperly withheld from the person seeking access.” 5 ILCS 140/11(d).

39. CPD has failed to produce the records responsive to Tribune’s FOIA Requests.

40. CPD’s non-compliance is willful and intentional within the meaning of 5 ILCS 140/11(j).

41. Tribune is entitled to recover its attorneys’ fees pursuant to 5 ILCS 140/11(i).

PRAYER FOR RELIEF

WHEREFORE, Tribune requests that this Court:

- (1) Enter an injunction ordering CPD to promptly produce the records requested by the FOIA Requests;
- (2) Award Tribune its attorneys’ fees and costs in prosecuting this action;
- (3) Award Tribune civil penalties pursuant to 5 ILCS 140/11(j); and
- (4) Award Tribune any other appropriate relief.

December 9, 2016

Respectfully submitted,

CHICAGO TRIBUNE COMPANY

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