

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

2017 FEB 22 PM 3:09

CHICAGO TRIBUNE COMPANY LLC,)
)
 Plaintiff,)
)
 v.)
)
 CHICAGO STATE UNIVERSITY,)
)
 Defendant.)

Case No.

CIRCUIT COURT OF COOK COUNTY, ILLINOIS CHANCERY DIV. CLERK DOROTHY BROWN

2017CH02677
CALENDAR/ROOM 02
TIME 00:00
Injunction

COMPLAINT

Plaintiff Chicago Tribune Company ('Tribune') brings this Complaint pursuant to the Illinois Freedom of Information Act against Defendant Chicago State University ('CSU') for CSU's 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, CSU has withheld public records requested by Tribune relating to the expenditure of public funds for a multi-million dollar campus expansion.

2. Chicago State University is a public university that receives nearly all of its funding from Illinois taxpayers, including \$20.1 million in emergency funding approved by the General Assembly in April 2016. Those taxpayers, including Tribune and its readers, have a statutory right to know how their money is spent. 5 ILCS §140/2.5 ('All records relating to the obligation, receipt, and use of public funds of the State . . . are public records subject to inspection and copying by the public.').

3. The public has a particularly acute interest in CSU's expenditures, which have previously involved alleged improprieties. Wayne Watson, the CSU president who oversaw the transactions at issue in this lawsuit, was appointed amidst allegations 'that focused on Watson's

alleged use of state funds to renovate the so-called ‘presidential residence,’” and departed in 2016 as allegations of contract-steering and other misconduct continued to be aired in the courts. *Crowley v. Watson*, 2016 IL App (1st) 142847, ¶ 5-7.

4. Nonetheless, CSU has consistently resisted public scrutiny of its expenditures. Indeed, CSU’s former FOIA officer, James Crowley, was fired for complying with FOIA after former president Watson called a meeting and demanded that he withhold public records:

Watson badgered him repeatedly during this hour-long meeting and suggested that only two pages (a moving company’s bill) needed to be produced to satisfy the FOIA requests. Crowley, meanwhile, insisted that the entire pile of documents was going to be produced. According to Crowley, Watson demanded that nothing be produced without his personal review

Crowley, 2016 IL App (1st) 142847 at ¶ 7 (affirming \$3 million wrongful termination verdict to former FOIA officer). Ultimately, CSU had to pay nearly \$4.3 million for its misconduct.

5. Tribune has devoted significant resources to addressing the public’s concern about CSU’s stewardship of public monies and ‘managerial transgressions.’¹ In response to Tribune’s FOIA requests, CSU has repeatedly violated FOIA’s statutory deadlines, and Tribune has been forced to seek assistance from counsel simply to obtain responses required by statute.

6. Now, CSU has refused to produce any records pertaining to the planned development of a satellite campus (the ‘West Side Campus’) – a multi-million dollar project that CSU continues to pursue despite 300 layoffs in 2016, and a debt burden of approximately \$350 million. CSU’s refusal comes notwithstanding that numerous procurements are complete, contractors have been selected, and contracts have been executed and paid with public monies.

¹ E.g. Jodi S. Cohen & Lolly Bowean, *Chicago State University graduation rate drops to 11 percent* (CHICAGO TRIBUNE, May 6, 2016), available at <http://www.chicagotribune.com/news/ct-chicago-state-board-meeting-20160506-story.html> (reporting that in 2016, CSU enrolled only 86 freshmen, a drop of 25 percent, and its graduation rate fell to 11%); see also Richard Vedder, *The Death Of A University: The Sad Story of Chicago State* (FORBES, Oct. 6th, 2016), available at <http://www.forbes.com/sites/ccap/2016/10/06/the-death-of-a-university-the-sad-story-of-chicago-state/#bb59cb641b42>.

7. CSU's refusal is also inconsistent with the responses of other public bodies to Tribune's FOIA requests, which confirm the existence, completion, and payment of contracts relating to the West Side Campus expansion project. For example, in response to a Tribune FOIA request, the Illinois Capital Development Board produced a project status report created by CSU that lists, as of over two years ago, a number of 'completed' engagements with contractors for tasks relating to the expansion project, including 'completed' appraisals, an executed letter of intent, an executed purchase and sale agreement, a 'completed' engagement with a marketing consultant, an executed contract with an architect, an environmental consultant, and a zoning attorney. The document also reflects \$340,000 in expenditures as of two years ago, and another \$661,219 in committed funding, including obligations to pay a site selection consultant (\$19,999), a feasibility consultant (\$255,970), three real estate appraisers (\$3,000-5,000 each), a marketing consultant (\$18,700), an architect (\$9,600), a zoning attorney (\$19,500), and an environmental consultant (\$24,944). (*See* CSU Project Status Report 4.0, appended hereto as Exhibit A.) On information and belief, identical copies of records also exist in CSU's custody, yet CSU has withheld them, and all other records pertaining to its continuing expenditure of public funds on the West Side Campus expansion project.

8. Accordingly, Tribune seeks an injunction commanding CSU to disclose improperly withheld public records pertaining to the West Side Campus expansion project, and an order awarding Tribune its attorney's fees and the costs of bringing this lawsuit.

PARTIES

9. 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 its readers apprised of public affairs. In particular, Tribune has devoted significant resources to its coverage of CSU.

10. Chicago State University is a ‘public body’ as that term is defined by FOIA. 5 ILCS §140/2(a) (including ‘state universities’).

JURISDICTION AND VENUE

11. Jurisdiction is vested in this Court by Section 11(a) of FOIA, 5 ILCS 140/11(a).

12. Venue in Cook County is proper under Section 11(c) of FOIA, 5 ILCS 140/11(c), because Chicago State University is located in Cook County.

FACTUAL BACKGROUND

The Illinois FOIA

13. FOIA imposes a mandatory statutory duty on public bodies like CSU to ‘make available to any person for inspection or copying all public records.’ 5 ILCS 140/3.

14. In FOIA, the General Assembly specifically required public access to records that pertain to the stewardship and expenditure of public funds. 5 ILCS §140/2.5 (‘All records relating to the obligation, receipt, and use of public funds of the State . . . are public records subject to inspection and copying by the public.’).

15. FOIA recognizes that the value of public records is 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 compliance with record requests. *Id.* §140/3(d) (requiring compliance within five business days).

16. ‘All 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 bodies bear the burden to justify *any* withholding of public records, and if exemptions are invoked, they must be construed against the public body. *Id.* (‘Restrictions on access to information . . . 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.’). Consistent with this principle, even where a statutory exemption applies to information in a public record, the public body must produce as much of the record as possible through narrow redaction, rather than complete withholding.

17. Any public body denying a FOIA request must do so in writing, and 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).

18. To dissuade public bodies from noncompliance, and to ensure that the public fully enforces its rights, FOIA requires public bodies to pay requestors’ attorney’s fees and costs whenever litigation becomes necessary to vindicate FOIA rights. 5 ILCS 140/11(i).

19. FOIA also punishes noncompliance through mandatory statutory penalties that 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).

Tribune’s FOIA Request

20. CSU is pursuing a multi-million dollar capital project, seeking to build a satellite campus on Chicago’s west side.² *See* Ex. A p. 3 (providing CSU’s overview of the project).

21. On October 25, 2016, as part of Tribune’s investigation into the proposed expansion, Tribune reporter Dawn Rhodes submitted a FOIA request to CSU, seeking:

1. Contracts awarded ‘for work on the university’s West Side satellite campus,’ including nine specifically identified contractors engaged by CSU;
2. Reports submitted to the university from its contractors detailing completed work or research; and

² *See* Dawn Rhodes & Peter Matuszak, *Despite financial struggles, Chicago State has for years worked to open \$60M second campus*, (CHICAGO TRIBUNE, Feb. 6, 2017), available at <http://www.chicagotribune.com/news/ct-chicago-state-west-side-campus-met-20170204-story.html>.

3. Agreements pertaining to the purchase and sale of property selected for the West Side satellite campus.

(The 'Request,' a true and correct copy of which is appended hereto as Exhibit B.)

22. By letter dated November 1, 2016, CSU invoked a statutory extension of its response deadline in order to search for responsive records and make necessary redactions. (A true and correct copy of that correspondence is appended hereto as Exhibit C.) No records were produced by November 8, 2016, the last day authorized by statute.

23. By letter dated November 16, 2016, CSU denied the Request in its entirety, claiming that two statutory exemptions to FOIA, 5 ILCS 140/7(1)(h) and 140/7(1)(r), authorized CSU to withhold all responsive records. (The 'Denial,' a true and correct copy of which is appended hereto as Exhibit D.) The Denial provided no factual basis for withholding.

24. Section 140/7(1)(h) exempts '[p]roposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made.' It does not apply to contracts that have been awarded.

25. As a year-old CSU project database confirms, contracts have been awarded to all of the firms listed in the Request. *See* Exhibit E (the 'Project Database').

26. Vendor payments have already been made to at least three of the nine firms identified in the Request. *See* Exhibit F (excerpt from CSU's vendor payment chart).

27. Section 140/7(1)(r) exempts 'records, documents, and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated.'

28. CSU has already 'completed' several negotiations for real estate. Public records

confirm that CSU negotiated and executed a Purchase and Sales Agreement, and negotiated at least two amendments, the latter of which was signed by former President Watson. *See* Ex. B at 4 ('A Second Amendment to the Purchase and Sales Agreement was completed and signed by the seller 5/4/15. President Watson signed the amendment 4/30/15.');

see also Ex. A, *passim*.

29. Beginning in late November, counsel for Tribune repeatedly attempted to contact CSU's FOIA officer by telephone about the Denial, leaving recorded messages and a verbal message with an administrative assistant. The calls were not returned.

30. On December 7, 2016 counsel for Tribune sent an email message to CSU's FOIA officer, expressing willingness to reach an amicable resolution but indicating that no further delay would be accepted. (A true and correct copy of that correspondence is appended hereto as Exhibit G.)

31. On December 8, 2016, Tribune submitted another FOIA request to CSU, seeking contracts, invoices, and payment records associated with eleven purchase orders listed on CSU's Project Database. (A true and correct copy of the Purchase Order Request is appended hereto as Exhibit H.)

32. That same day, December 8, 2016, CSU's FOIA officer, joined by CSU's general counsel, called counsel for Tribune.

33. During that conversation, Tribune's counsel pointed out that certain contracts had been awarded, and payments had been made to certain vendors, and asked if CSU would produce responsive records as to those contracts, payments, and vendors listed on its Project Database. CSU refused.

34. CSU took the position that *any* records that bear on the West Side Campus development project may properly be withheld as pertaining to real estate negotiations, and concluded the call.

35. CSU has consistently refused to produce any records pertaining to executed and performed contracts, or the expenditure of public funds, that pertain to the West Side Campus expansion project. On January 3, 2017, CSU denied Tribune's FOIA request of December 8, 2016, invoking the same exemptions in the same conclusory fashion as the Denial. (A true and correct copy of that Purchase Order Denial is appended hereto as Exhibit I.)

36. To date, CSU has provided no documents in response to the Request.

COUNT I
Violation of Illinois FOIA

37. Tribune incorporates by references paragraphs 1 through 36 of this Complaint.

38. Tribune seeks full and immediate disclosure of the records requested in First and Second Requests (together, the 'FOIA Requests').

39. The documents sought by the FOIA Requests are public records within the meaning of 5 ILCS 140/2(c) and must be disclosed by CSU under FOIA.

40. This court has jurisdiction 'to enjoin [CSU] 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).

41. CSU has failed to produce the records responsive to the FOIA Requests.

42. CSU's non-compliance is willful and intentional within the meaning of 5 ILCS 140/11(j).

43. 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 CSU to promptly produce the records requested by the Request;

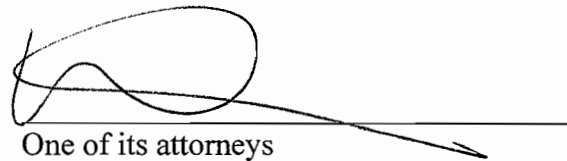
- (2) Enter a declaration CSU violated FOIA by refusing to produce records responsive to the Request;
- (3) Award Tribune its attorneys' fees and costs in prosecuting this action;
- (4) Award Tribune civil penalties pursuant to 5 ILCS 140/11(j); and
- (5) Award Tribune any other appropriate relief.

Dated: February 22, 2017

Respectfully submitted,

CHICAGO TRIBUNE COMPANY

By:



One of its attorneys

Natalie J. Spears
Patrick Kabat
DENTONS US LLP
233 S. Wacker Drive, Suite 5900
Chicago, IL 60606-6404
(312) 876-2556
Firm #56309

Of Counsel:
Karen Flax
Deputy General Counsel
Tribune Publishing Company, LLC
435 N. Michigan Ave.
Chicago, IL 60611