

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

CHICAGO CIVIL RIGHTS PROJECT,)
)
Plaintiff,)
)
v.)
)
CITY OF CHICAGO,)
)
Defendant.)

COMPLAINT

Plaintiff CHICAGO CIVIL RIGHTS PROJECT files this action seeking a writ of *mandamus* compelling Defendant CITY OF CHICAGO, through its Office of Emergency Management and Communication, to cease its illegal destruction of 911 and other recordings in violation of the Local Records Act.

THE LOCAL RECORDS ACT

1. The Illinois Local Records Act (LRA) makes clear that with limited exceptions, “all public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law.”

2. The LRA further specifies that “except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.” Under the LRA, the applicable Local Records Commission (LRC) issues regulations binding on all public officials, including the approval of retention and destruction schedules for specific types of records. The LRA provides that “the head of each agency shall submit to the appropriate Commission, in accordance with

the regulations of the Commission, lists or schedules of public records in his custody that are not needed in the transaction of current business *that do not have sufficient administrative, legal or fiscal value to warrant their further preservation.*”

3. The LRA applies to all public records, which are defined as “any book, paper, map, photograph, born-digital electronic material, digitized electronic material, electronic material with a combination of digitized and born-digital material, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein.”

4. This list or schedule to destroy records is called an “Application” and has several conditions which must be met before destruction of the record in question can occur.

5. Destruction of the record is actually accomplished when a representative of the government agency seeking to destroy a record signs a “Destruction Certificate” which certifies that the conditions in the Application have been met and files the Certificate with the LRC.

6. The LRA is administered in Cook County by the County Local Records Commission.

7. The State Archivist oversees the entire process of drafting and submitting Applications and Certificates.

PARTIES

8. Plaintiff CHICAGO CIVIL RIGHTS PROJECT (CCRP) is a voluntary unincorporated association of Chicago-area attorneys dedicated to civil rights and police accountability.

9. CCRP members and their clients frequently rely on 911 recordings as evidence in civil rights, criminal defense, and exoneration cases.

10. Defendant CITY OF CHICAGO is a public agency subject to the LRA.

DEFENDANT'S ILLEGAL DESTRUCTION OF 911 RECORDINGS

11. OEMC is responsible, on behalf of the CITY OF CHICAGO, for the recording and management of all 911 calls and radio communications between officers in the City.

12. Historically, OEMC has destroyed 911 recordings after 30 days for administrative convenience unless given specific notice to preserve a recording. Upon information and belief, the 30-day time period is a relic of a time in which recordings were stored on physical tape and needed to be overwritten for cost reasons.

13. All 911 recordings now exist digitally.

14. For a cost of less than \$10,000, OEMC could purchase sufficient computer memory to store 20 years of 911 calls.

15. Upon information and belief, back-up copies of 911 recordings exist but are not searched in response to requests for 911 recordings by the public or attorneys.

16. OEMC's requests to destroy 911 recordings after 30 days violate LRA Section 10 because 911 recordings more than 30 days old have sufficient legal value to warrant their further preservation. More specifically, by way of example, criminal defendants are not always arrested within 30 days of the alleged crime being committed, criminal defense attorneys rarely come into possession of information suggesting that 911 or other recordings may be relevant to the accused until after the 30-day deadline has passed, and civil rights lawsuits are rarely filed within 30 days of a 911 call that is relevant to the claim.

17. The LRA conditions destruction of 911 recordings on a certification by OEMC that the recordings for which disposal is sought comply with the conditions in the Application:

that the recordings in question do not contain any relevant evidence in any proceeding *either pending or anticipated*.

18. Officers of OEMC have certified for decades that the 911 recordings that they seek to destroy meet the above conditions without conducting any affirmative investigation and with knowledge that the current system is inadequate to ensure compliance.

COUNT I – VIOLATION OF LOCAL RECORDS ACT

19. The above paragraphs are incorporated by reference.

20. Defendant is subject to the requirements of the Local Records Act.

21. By failing to conduct a good faith investigation before certifying that the 911 recordings Defendant seeks to destroy contain no probative evidence, Defendant has violated the LRA.

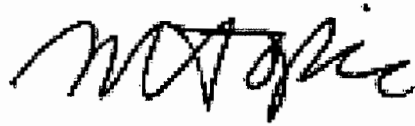
22. By seeking the destruction of 911 recordings that have administrative and legal value beyond 30 days, notwithstanding the very small costs of retention, Defendant has violated the LRA

23. Unless enjoined through this *mandamus* action, Defendant will continue to violate the LRA.

WHEREFORE, Plaintiff asks that the Court:

- i. issue a writ of mandamus requiring Defendant to cease all destruction of 911 recordings;
- ii. issue a writ of mandamus requiring Defendant to transfer all 911 recordings existing in any back-up systems into Defendant's primary system, such that they will be available for production in response to requests from the public; and
- iii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,



Attorneys for Plaintiff
CHICAGO CIVIL RIGHTS PROJECT

Matthew Topic
Joshua Burday
LOEVY & LOEVY
311 North Aberdeen
Chicago, IL 60607
312-243-5900
foia@loevy.com
Atty. No. 41295

J. Nicolas Albuquerk
Albuquerk & Associates
1450 W. Randolph St.
Chicago, Illinois 60607
773-847-2600
Nick.Albuquerk@Gmail.com
Atty. No. 37955

Daniel J. Stohr
311 North Aberdeen
Chicago, IL 60607
312-726-1180
Djs7@sbcglobal.net
Atty. No. 11971

ELECTRONICALLY FILED
3/21/2017 9:24 AM
2017-CH-04038
PAGE 5 of 5