

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

BETTER GOVERNMENT ASSOCIATION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CITY OF CHICAGO OFFICE OF MAYOR, )  
CITY OF CHICAGO DEPARTMENT )  
OF PUBLIC HEALTH, )  
 )  
Defendants. )  
 )

**COMPLAINT**

NOW COMES Plaintiff, BETTER GOVERNMENT ASSOCIATION, by its undersigned attorneys, LOEVY & LOEVY, and brings this Freedom of Information Act suit against CITY OF CHICAGO MAYOR'S OFFICE and CITY OF CHICAGO DEPARTMENT OF PUBLIC HEALTH seeking release of records about lead in drinking water consumed by Chicago Public School students and the City's efforts to manage media stories and public inquiry about this issue. In support of its Complaint, BGA states as follows:

**INTRODUCTION**

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois 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 as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act ("FOIA").

2. Restraints on access to information, to the extent permitted by FOIA, 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 the people.

3. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.

4. 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 impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence. 5 ILCS 140/11(j).

5. Under FOIA Section 11(h), “except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.”

#### **PARTIES**

6. Plaintiff BETTER GOVERNMENT ASSOCIATION (“BGA”) is a nonpartisan, Illinois non-profit corporation, whose mission is to educate the public about waste, inefficiencies, and corruption in government by acting as a watchdog agency uncovering and exposing this type of activity; to promote respect for the law; and to support public officials in the rightful performance of their duties. BGA was founded in 1923 to protect the integrity of the political process in Chicago.

7. Defendant CITY OF CHICAGO OFFICE OF MAYOR (“MAYOR’S OFFICE”) is a public body located in Cook County, Illinois.

8. Defendant CITY OF CHICAGO DEPARTMENT OF PUBLIC HEALTH (“CHICAGO HEALTH DEPARTMENT”) is a public body located in Cook County, Illinois.

**BACKGROUND**

9. Last year, it was discovered that the drinking water at over 100 CPS schools had unacceptably high levels of lead, often more than 300 parts per billion and as high as 1100 parts per billion. By way of reference, the U.S. Environmental Protection Agency has advised that people should not consume drinking water with lead levels exceeding 15 parts per billion and the U.S. Food and Drug Administration does not permit lead levels in bottled water above 5 parts per billion.

10. The unacceptably high levels of led in CPS drinking water were not discovered by CPS or the City. Rather, an investigation by the Chicago Tribune revealed that CPS and the City had not tested the drinking water provided to young school children since at least 2012. *See e.g. Juan Perez Jr., Chicago Tribune, CPS is testing schools for high lead levels in water: What you should know* (June 19, 2016).

**BGA’S REQUESTS AND THE CITY’S DENIALS**

11. On June 17, 2016, BGA requested from the MAYOR’S OFFICE any emails and other communications between Chicago Health Department Commissioner Julie Morita and anyone in the Mayor’s Office from April 1, 2016, through the date of the request.

12. In response, the MAYOR’S OFFICE claimed under Section 3(g) of FOIA, that the public interest in disclosure of these records was insufficient to justify the work involved in producing them and insisted that BGA narrow the request.

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13. In response, on June 30, 2016, BGA narrowed its request to emails of only four MAYOR'S OFFICE officials (Eileen Mitchell, Adam Collins, Kelley Quinn, and Rahm Emanuel) and limited the subject matter to "lead and CPS." A true and correct copy of the request is attached as Exhibit A.

14. In response, the MAYOR'S OFFICE produced some records, but redacted or withheld a number of records based on Section 7(1)(f) of FOIA, which applies to opinions expressed during deliberation on matters of government policy but does not apply to other matters or to factual information. The MAYOR'S OFFICE also asserted personal privacy exemptions that BGA does not challenge in this suit. A true and correct copy of the response letter and the redacted pages from the document production that BGA challenges in this suit are attached as Exhibit B.

15. According to the MAYOR'S OFFICE, inherently by virtue of the terms of the Section 7(1)(f) exemption it asserted, City officials did not discuss any facts in their emails deciding how to talk to the public and the media about the CPS lead problem.

16. According to the MAYOR'S OFFICE, inherently by virtue of the terms of the Section 7(1)(f) exemption it asserted, deciding how to speak to the public and the press about lead problems at CPS is a matter of "policy."

17. In fact, the MAYOR'S OFFICE has withheld factual information about the CPS lead problem in response to BGA's request and the discussions did not involve any formulation of policy.

18. On June 17, 2016, BGA requested from CHICAGO HEALTH DEPARTMENT all emails and other communications between Dr. Morita and anyone at CPS from April 1, 2016, through the date of the request.

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19. In response, CHICAGO HEALTH DEPARTMENT claimed, under FOIA Section 3(g), that the public interest in disclosure of these records was insufficient to justify the work involved in producing them and insisted that BGA narrow the request.

20. On July 6, 2016, BGA narrowed its request to all emails and communications from April 1, 2016, through the date of the request between Dr. Morita and Forest Claypool, Doug Kucia, Jason Kierna, Emily Bittner, and/or Michael Passman. A true and correct copy of the request is attached as Exhibit C.

21. CHICAGO HEALTH DEPARTMENT produced records in response to the request, but many were redacted. In violation of FOIA, CHICAGO HEALTH DEPARTMENT failed to identify any exemptions, or other statutorily required information for a FOIA denial, in its response letter. A true and correct copy of the response letter and the redacted pages from the document production that BGA challenges in this suit are attached as Exhibit D.

22. Included in the redacted or withheld emails by both Defendants are discussions of draft versions of a letter CPS eventually sent to parents about reports of lead in the drinking water consumed by their children.

23. The redactions also include the entirety of the comments that CITY HEALTH DEPARTMENT's Commissioner Dr. Morita made to the draft letter. Because of the redactions, the public is unable to determine the extent to which the City provided information to parents that differs from the comments of its chief public health officer.

24. Also included in the redacted or withheld emails are drafts of remarks to be made by Dr. Morita about the CPS lead problem that were drafted not by her, but by the Chief of Strategic Planning and Communications at CPS. The redactions also include comments to Dr. Morita's draft remarks made by the Mayor's Communications Director.

25. The redactions also include remarks that were drafted for CPS CEO Forrest Claypool and comments on those draft remarks.

26. In a prior FOIA case in this Circuit, Judge Larsen held, in a final decision that was not appealed, that discussions by City officials about how to address media inquiries or what information to provide to the public are not subject to the deliberative process exemption. As a result, collateral estoppel prevents the City from even asserting the exemption over that kind of material.

27. Further, the public interest in records that would reveal whether the government is being honest and complete in its communications with the public is substantial and reflects the primary reason for freedom of information in the first place: “After all, what FOIA requesters are frequently seeking is evidence of discrepancies between what their government is saying versus what it is doing, or what it is saying in public versus what it is saying behind closed doors. . . . The concern of the [deliberative process] privilege is to prevent the chilling of internal agency discussions that are necessary to the operation of good government; it is not concerned with chilling agency efforts to obfuscate, which are anathema to the operation of democratic government.” *Nat’l Day Laborer Org. Network v. U.S. Immigration & Customs Enforcement Agency*, 811 F. Supp. 2d 713, 741-42 (S.D.N.Y. 2011).

28. Inconsistent redactions made to duplicate copies of the same emails further confirm that the City has over-redacted these records. For example, the City redacted the following statement in one copy but not another: “As long as Rosa is ok with this, can we please just simply let her [a reporter] know that we can’t provide any information at all about the students that have been tested due to HIPAA regulations?” This statement is clearly not exempt,

and also reflects a mischaracterization of HIPAA, which would not prohibit the release of lead testing data with patient names redacted.

29. BGA also challenges the sufficiency of the City's search for responsive records, which the City will be required, under well-established legal precedent, to prove to have been thorough and complete.

30. For example, it does not appear that the City searched for or even inquired about any responsive emails on so-called personal email accounts of the people whose email BGA has sought.

31. The City is aware that Rahm Emanuel has used so-called personal email accounts to discuss public business.

32. The City is aware that Kelley Quinn has used a so-called personal email account to discuss public business.

33. The City is aware that Adam Collins has used a so-called personal email account to discuss public business.

34. The City is aware that Eileen Mitchell has used a so-called personal email account to discuss public business.

35. The City "cannot limit its search to only one record system if there are others that are likely to turn up the information requested." *Campbell v. U.S. Dept. of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). As a result, the City's failure to search personal accounts known to have been used to discuss public business did not comply with well-established law.

36. On at least two separate occasions, counsel for BGA contacted the City's Law Department in an effort to resolve this matter without the need for litigation, but the Law Department failed to respond.

**COUNT I – MAYOR’S OFFICE**

- 37. The above paragraphs are incorporated by reference.
- 38. MAYOR’S OFFICE is a public body under FOIA.
- 39. BGA requested public records of the MAYOR’S OFFICE under FOIA.
- 40. MAYOR’S OFFICE violated FOIA by withholding non-exempt records.
- 41. MAYOR’S OFFICE’s violations were willful and intentional.

**COUNT II – CITY HEALTH DEPARTMENT**

- 42. The above paragraphs are incorporated by reference.
- 43. CITY HEALTH DEPARTMENT is a public body under FOIA.
- 44. BGA requested public records of CITY HEALTH DEPARTMENT under FOIA.
- 45. CITY HEALTH DEPARTMENT violated FOIA by withholding non-exempt records.
- 46. CITY HEALTH DEPARTMENT’s violations were willful and intentional.

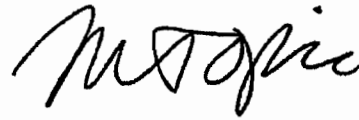
**WHEREFORE**, BGA asks that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court’s docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;
- ii. order Defendants to produce the requested records under FOIA;
- iii. award BGA reasonable attorneys’ fees and costs;
- iv. order Defendants to pay a civil penalty of \$5000 for each violation; and
- v. award such other relief the Court considers appropriate.

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RESPECTFULLY SUBMITTED,



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