

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

THE COALITION TO SAVE JACKSON)
PARK,)
)
Plaintiff,)
)
v.)
)
CHICAGO PARK DISTRICT,)
)
Defendant, and)
)
OFFICE OF THE MAYOR OF CHICAGO,)
)
Respondent in Discovery.)

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CIRCUIT COURT OF COOK
COUNTY ILLINOIS
CHANCERY DIV.
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COMPLAINT

Plaintiff Coalition To Save Jackson Park, by and through its attorneys, Daniel Massoglia, Esq., and Canon Law Group, P.C., brings this Freedom of Information Act suit seeking release of public records that Defendant Chicago Park District is withholding in willful and intentional violation of the Act. These records pertain to the Obama Presidential Center proposed for construction in Chicago's Jackson Park. Coalition To Save Jackson Park alleges the following in support:

NATURE OF THE ACTION

1. This is a complaint under the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1 *et seq.* against Chicago Park District ("CPaD").
2. Coalition To Save Jackson Park ("CTSJP") seeks records related to specific aspects of the planning, development, and impact of the Obama Presidential Center ("OPC") proposed for construction in Jackson Park.
3. The proposed OPC in Jackson Park is an ongoing source of considerable public discussion and debate among parties concerned about the lack of budgetary planning, impact of

proposed road closures, lack of a Community Benefits Agreement, lack of potential for economic development as the site is currently designed, and impact on the environment and character of historic Jackson Park.

4. CTSJP, by and through Counsel, made a FOIA request on November 3, 2017, but, almost two months after missing its statutory production deadline—and after ignoring repeated telephone and email follow up related to this request—CPaD produced a limited, incomplete, and inadequate set of records on January 11, 2017 that did not include electronic communications.

5. CPaD is in violation of FOIA because, by excluding emails from its production, it has not responded in full to CTSJP's request.

6. CPaD has not asserted any reason for its failure to timely respond or its failure to return phone calls and email messages, and its eventual production did not explain its decision to exclude electronic communications although the request sought them.

PARTIES

7. Plaintiff Coalition To Save Jackson Park is a community group based on the South Side of Chicago, is the requester of the documents at issue in this lawsuit, and is led by Janet Geovanis, a Chicago resident.

8. Defendant Chicago Park District is a public body as defined by 5 ILCS 140/2(a) and is located in Cook County.

9. Respondent in Discovery Office of the Mayor of Chicago is a public body as defined by 5 ILCS 140/2(a) and is located in Cook County. Office of the Mayor of Chicago is named as a respondent in discovery to this suit under the authority and rules of 735 ILCS 5/2-402.

BACKGROUND

Illinois FOIA

10. Illinois FOIA, in its first sentence, states 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.” 5 ILCS 140/1.

11. The timely and diligent handling of requests from the public is, in the eyes of the Illinois Legislature, essential to the “fundamental philosophy of the American constitutional form of government.” *Id.*

12. “All records in the custody or possession of a public body are presumed to be open to inspection or copying,” and “[a]ny 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.” 5 ILCS 140/1.2.

13. The Act defines “public records” as “[a]ll records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, *electronic communications*, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.” 5 ILCS 140/2(c) (emphasis added).

14. “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.” 5 ILCS 140/1.

15. Providing records in accordance with FOIA’s language is “a primary duty of public bodies... fiscal obligations notwithstanding.” FOIA is “the exclusive State statute on freedom of

information.” 5 ILCS 140/1.

16. When a 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).

17. In the course of its violation of FOIA, CPaD has willfully and intentionally violated the law by its serially uncommunicative pattern of conduct related to CTSJP’s request for information about the OPC and Jackson Park, conduct that culminated in a partial production of incomplete and inadequate records.

18. Whether CPaD’s failing to meet a statutory deadline, ignoring repeated communications from the requester, and eventually offering an overwhelmingly incomplete response were the products of the actions of individual employees, inter-agency coordination, or a result of budgetary priority, CPaD’s violation of the Act is willful and intentional. The public body is neglecting its obligations to the public.

CTSJP’s Request and CPaD’s (Non)-Responses

19. On November 3, 2017, CTSJP, via email, filed a FOIA request seeking:

...any and all records related to the following:

1. the decision to offer public parkland for use in the construction of the Obama Presidential Center, in the time periods of a) January 2014 and b) from January 1, 2015 to the present;
2. the ongoing plan to close portions of Marquette and Cornell Drives, from June 1, 2016 to the present;
3. the publicly discussed plan to build an OPC parking garage on additional parkland near or on the Midway Plaisance, from April 1, 2016 to the present;
4. proposed changes to Lake Shore Drive and Stony Island Avenue as a result of development associated with the Obama Presidential Center, from January 1, 2015 to the present;

5. potential flooding and run-off, avian-migration and nesting issues, and impact on local microclimate and temperatures in Jackson Park related to the Obama Presidential Center and its construction, from January 1, 2016 to the present.

See Exhibit 1 at 3.

20. CTSJP's request noted regarding email records:

Your search, inasmuch it relates to email communications, should include the inbox, sent, deleted, and other folders in any relevant email accounts. It should also include records stored in private email accounts and text messaging devices to the extent that those accounts and devices are used for the transaction of public business.

Id.

21. On November 3, 2016, CPaD responded by email acknowledging the request, writing in a separate, automated message "Thank you for your FOIA request."

22. On November 13, 2017, CPaD gave notice via email of a five business day extension in processing the request, writing as justification:

1. the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 of this Act or should be revealed only with appropriate deletions; and
2. there is need for consultation, which shall be conducted with all practicable speed, with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request.

See Exhibit 2 at 3.

23. On November 21, 2017, CPaD employee Ivy Blanton left a telephone message for CTSJP's attorney, Daniel Massoglia, asking CTSJP to call her regarding the request at (312) 742-4789.

24. Later on November 21, 2017, CTSJP called Ms. Blanton back, leaving a voice message. Ms. Blanton called CTSJP back shortly thereafter and the two spoke regarding the request.

25. During the conversation, CTSJP inquired if CPaD was seeking an extension of time to process the request. Ms. Blanton stated that the requested records were “ready” and that all that remained was a “letter from the Commissioner [Michael Kelly],” at which point CPaD would be able to produce “everything.”

26. During this conversation, Ms. Blanton stated that documents would be ready the next day, November 22, 2017.

27. During this conversation CTSJP asked Ms. Blanton to produce prepared records that day, November 21, 2017.

28. At no point in this conversation did Ms. Blanton tell CTSJP that responsive records were exempt or that the request was unduly burdensome or otherwise could not be fulfilled by CPaD.

29. The parties did not agree to any further extension in response time, either orally or in writing as required by 5 ILCS 140/3(e).

30. That day, and the day following this conversation, CPaD produced no records.

31. At no point during this time period did CPaD ask CTSJP to narrow its request.

32. CTSJP made multiple attempts to communicate with Ms. Blanton and CPaD after the November 21, 2017 conversation and subsequent non-production.

33. On December 1, 2017, CTSJP called back CPaD via Ms. Blanton at (312) 742-4789, leaving a voice message seeking to discuss the request and non-production.

34. CPaD did not respond to CTSJP’s December 1, 2017 phone call and message.

35. On December 4, 2017, CTSJP emailed the contact information listed on CPaD’s extension letter, foia@chicagoparkdistrict.com, seeking information about the request. *See* Exhibit 2 at 3-4.

36. CPaD responded to CTSJP’s December 4, 2017 email with a separate automated

message thanking CTSJP for its FOIA request.

37. On December 7, 2017, CTSJP called back for a second time, again leaving a message regarding the request.

38. CPaD did not respond to CTSJP's December 7, 2017 phone call and message.

39. On December 19, 2017, CTSJP again emailed CPaD at foia@chicagoparkdistrict.com seeking information about the request. *See* Exhibit 2 at 4.

40. CPaD responded to CTSJP's December 19, 2017 email with a separate automated message thanking CTSJP for its FOIA request.

41. On December 21, 2017, CTSJP made a third phone call to CPaD, leaving a message seeking information about the request.

42. CPaD did not respond to CTSJP's December 21, 2017 phone call and message.

43. On January 4, 2017, CTSJP sent a letter via email to foia@chicagoparkdistrict.com. *See* Exhibit 2 at 4; Exhibit 3.

44. In this letter, CTSJP demanded CPaD produce overdue records by January 11, 2017 or it would file suit. *See* Exhibit 3.

45. On January 11, 2017, CPaD used the file-sharing service Dropbox to provide CTSJP with seven responsive documents and a FOIA response letter containing three links to public web sites.

46. The response letter denied that CPaD possessed any public records responsive to, for example, CTSJP's request for records regarding "the decision to offer public parkland for use in the construction of the Obama Presidential Center." *See* Exhibit 4 at 1. (The documents produced did include a CPaD Board resolution related to this topic.)

47. CPaD's production included no emails or electronic communications.

48. One or more of the subject areas covered by the CTSJP FOIA request was discussed

by CPaD employees or officers over email during the relevant time frame in the request.

49. “Public records” under the FOIA are defined to include “electronic communications.” 5 ILCS 140/2(c).

50. CTSJP’s request sought “all records” related to its subject areas, as described in Paragraph 19 of this Complaint, offering specific instructions for email searches, as described in Paragraph 20 of this Complaint. *See Exhibit 1.*

51. CPaD’s January 11, 2017 long-overdue, email-free, seven-document production is thus an incomplete production of public records responsive to CTSJP’s request.

52. After reviewing the incomplete production, on January 11, 2017 CTSJP indicated in an email to Ms. Blanton its continued intention to file this lawsuit due to the inadequacy of CPaD’s production. *See Exhibit 5.*

53. On January 12, 2017, Ms. Blanton emailed CTSJP from foia@chicagoparkdistrict.com, asking CTSJP to call her at its convenience. *Id.*

54. That day, Ms. Blanton and CTSJP spoke regarding the request, at which time Ms. Blanton stated that her IT Department had at an indeterminate point described a need for CTSJP to narrow its request as to emails, but that she had failed to mention this to CTSJP. CTSJP indicated that given months of CPaD’s non-responsiveness further informal negotiations on the matter were not likely to be fruitful and that it would proceed as planned with this suit.

Respondent in Discovery Office of the Mayor-led Coordination Among Public Bodies

55. As part of its public advocacy, CTSJP has sent FOIA requests related to the OPC and Jackson Park to several public bodies in Chicago and Cook County, including to the Department of Streets and Sanitation (“DSS”) and the Department of Innovation and Technology (“DoIT”).

56. The DSS request, sent November 3, 2017, eventually led to a records production that contained a November 7, 2017 email message from Mayoral FOIA Officer Shannon Leonard to

several public bodies including CPaD. *See* Exhibit 6.

57. In this message, Ms. Leonard wrote:

All of us received some form of a FOIA request related to the Obama Library from this firm [Massoglia's]. Please share any responses you plan to send BEFORE they go out with me so we can make sure all responses are coordinated. I understand some of you will not have responsive records. Additionally, this request is very broad (especially the one you received CDOT, it is the same as ours.)

Id. (Emphasis original.)

58. Given the contents of this message, it is likely that any CPaD decision to produce documents, or not, and which documents—and thus comply with FOIA, or not—was made with the knowledge, approval, and at the direction of Respondent in Discovery Office of the Mayor of Chicago.

59. Another CTSJP request in which Respondent in Discovery Office of the Mayor of Chicago played an active role in was one sent to DoIT on November 3, 2017 and narrowed December 8, 2017.

60. A DoIT FOIA Officer emailed CTSJP about this narrowed request on January 8, 2017—a request which concerns the proposed Jackson Park PGA Golf Course and Community Benefits Agreements related to the OPC—writing that Shannon Leonard, the Mayoral FOIA Officer, had “some concerns” about documents located while processing CTSJP’s request. *See* Exhibit 7.

61. On a phone call regarding these concerns the next day, January 9, 2017, Mayoral FOIA Officer Leonard stated to CTSJP that the Mayor’s office was handling FOIA exemption review on the request for Alderman Hairston’s office (and by inference for DoIT as well).

62. This second known instance of Mayoral coordination with another public body makes it still more likely that Respondent in Discovery Office of the Mayor of Chicago played an active role in the FOIA violation regarding the CPaD request at issue in this suit.

63. Further, CPaD's extension letter, described in Paragraph 22 of this Complaint, specifically cited a "need for consultation... with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request." *See* Exhibit 2 at 3.

64. Although the public body or components of a public body with which CPaD cited a "need for consultation" in its extension letter is unnamed, it is likely, given the email from Mayoral FOIA Officer Leonard described in Paragraph 57 of this Complaint, and the additional Mayoral coordination described in Paragraphs 60-62 of this Complaint, that this unnamed public body is Respondent in Discovery Office of the Mayor of Chicago.

65. CPaD did not respond to CTSJP's request within the five business days allowed by 5 ILCS 140/3(e)-(f) and its extension letter, and did not respond to multiple phone calls and emails related to the request.

66. Respondent in Discovery Office of the Mayor of Chicago was involved in CPaD's decision-making process with regard to CTSJP's request.

COUNT I – VIOLATION OF SECTION 3 OF FOIA

67. CTSJP incorporates Paragraphs 1-66 of this Complaint by reference.

68. Chicago Park District is a public body.

69. CPaD has withheld public records responsive to CTSJP's FOIA request.

70. Public records" under the FOIA are defined to include "electronic communications." 5 ILCS 140/2(c).

71. At minimum, CPaD has withheld public records responsive to CTSJP's FOIA request by failing to produce electronic communications responsive to the request.

72. These records, and all responsive, unproduced records, are subject to disclosure under FOIA and are currently being withheld in violation of section 3 of FOIA. 5 ILCS 140/2, 3.

73. Because it failed to respond to CTSJP's request within the five business day statutory time frame of its permissive extension, waiting almost two months to make a partial production, CPaD may not in the future assert that producing responsive records is unduly burdensome to its operations. 5 ILCS 140/3(d)-(g).

74. The Court has jurisdiction to "enjoin [CPaD] from withholding public records and to order the production of any public records improperly withheld from the person seeking access [CTSJP]." 5 ILCS 140/11(d).

75. CTSJP is entitled to recover costs and reasonable attorneys' fees under 5 ILCS 140/11(i).

COUNT II – WILLFUL VIOLATION OF FOIA

76. CTSJP incorporates Paragraphs 1-66 of this Complaint by reference.

77. CPaD did not respond to CTSJP's request within the time frames of section 3 of FOIA, and did not respond to CTSJP's five attempts at informal discussion made by email and telephone.

78. While in violation of FOIA and after ignoring CTSJP's attempts to communicate for more than a month, CPD ultimately produced substantially incomplete records to CTSJP.

79. CPaD has, either alone or in concert with another agency, willfully and intentionally violated FOIA, and in bad faith, under 5 ILCS 140/11(j).

80. CTSJP is entitled to recover costs and reasonable attorneys' fees under 5 ILCS 140/11(i).

WHEREFORE, CTSJP asks that the Court enter a judgment in its favor that:

- 1) orders CPaD to promptly produce all responsive requested records;
- 2) awards reasonable attorney's fees and costs;
- 3) awards statutory damages of between \$2,500 and \$5,000 for each willful and

intentional violation of FOIA; and

4) awards CTSJP any other relief the Court should deem just.

Respectfully Submitted,

/s/ Daniel E. Massoglia
One of Plaintiff's Attorneys

Daniel E. Massoglia, Esq.
Daniel E. Massoglia
2865 W. Lyndale St
1
Chicago, IL 60647
dmassoglia@gmail.com
(336) 575-6968
Cook County ID No. 60523

Canon Law Group, P.C.
Ramsin Canon
405 W Superior Street
Suite 512
Chicago, IL 60654
ramsin@canonlawgroup.com
(312) 213-9600
Cook County ID No. 59741