

11/17/2021 11:20 AM
By: AL

Susan W. McGee
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

CHRISTOPHER HANSEN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2021-CH-64
)	
CITY OF CHAMPAIGN,)	
ILLINOIS STATE POLICE,)	
)	
Defendants.)	

**DEFENDANT CITY OF CHAMPAIGN ILLINOIS’
ANSWER TO PLAINTIFF’S COMPLAINT**

NOW COMES Defendant, CITY OF CHAMPAIGN, ILLINOIS (“Defendant” or the “City”), by and through its undersigned counsel, and in answer to Plaintiff’s 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"). 5 ILCS 140/1.

RESPONSE: Paragraph 1 is a summary of part of Section 1 of the Illinois Freedom of Information Act and therefore no answer is required by the City. 5 ILCS 140/1.

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. 5 ILCS 140/1.

RESPONSE: Paragraph 2 is a summary of part of Section 1 of the Illinois Freedom of Information Act and therefore no answer is required by the City. 5 ILCS 140/1.

3. Under FOIA Section 1.2, "[a]ll records in the custody or possession 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." 5 ILCS 140/1.2.

RESPONSE: The City admits that paragraph 3 recites Section 1.2 of the Illinois Freedom of Information Act. 5 ILCS 140/1.2.

PARTIES

4. Plaintiff CHRISTOPHER HANSEN made the FOIA request at issue in this case. HANSEN is the founder of Check CU, which is a non-profit news-media website. *See* <https://checkcu.org/about>.

RESPONSE: The City lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 4 of Plaintiff's complaint.

5. Defendant CITY OF CHAMPAIGN ("CHAMPAIGN") is a public body located in Champaign County, IL.

RESPONSE: The City admits the allegations in paragraph 5 of Plaintiff's complaint.

6. Defendant ILLINOIS STATE POLICE ("ISP") is a public body and a statewide agency that has multiple offices throughout Illinois, including in Champaign County, IL.

RESPONSE: The City admits the allegations in paragraph 6 of Plaintiff's complaint.

AUGUST 23, 2021 FOIA REQUEST TO CHAMPAIGN

7. On August 23, 2021, HANSEN submitted a FOIA request to CHAMPAIGN for "[a]ny and all records related to the shooting which occurred on May 19 around 3:30am which resulted in the injury/death of one or more police officers/suspects. Documents should include all video and audio recordings related to the incident, as well as written reports and email and other correspondence." The response letter that quotes the original request is attached as Exhibit A.

RESPONSE: The City admits the allegations in paragraph 7 of Plaintiff's complaint.

8. On August 26, 2021, CHAMPAIGN assigned reference number 21-186 to the matter and provided a single YouTube link that contains a "portion of the body-worn camera footage." Id.

RESPONSE: The City admits that it assigned FOIA Request #21-186 to Plaintiff's August 23, 2021 FOIA request and that it provided a YouTube link that contained a portion of the body-worn camera footage related to the incident Plaintiff inquired about. The City further answers that it provided an explanation as well as statutory exemption citations and appeal information in its response to Request #21-186.

9. This video pertains to the body-worn camera footage of a single police officer, is less than two minutes, and is posted by ISP on its YouTube page. *See* https://www.youtube.com/watch?v=61_vKLhhI48.

RESPONSE: The City admits the allegations in paragraph 9 of Plaintiff's complaint.

10. CHAMPAIGN withheld the remainder of the records citing Section 7(1)(d)(vii) of FOIA. Exhibit A.

RESPONSE: The City admits the allegations in paragraph 10 of Plaintiff's complaint.

11. CHAMPAIGN did not produce any investigative reports of the officer-involved shooting or the video and audio records of other officers who reported to the scene during or after the shooting. *Id.*

RESPONSE: The City admits the allegations in paragraph 11 of Plaintiff's complaint. Further answering, the City withheld such investigative reports based on Section 7(1)(d)(vii) of FOIA.

12. In violation of Section 9(a) of FOIA, CHAMPAIGN has not provided a "detailed factual basis for the application of any exemption claimed." 5 ILCS 140/9(a).

RESPONSE: The allegations stated in paragraph 12 of Plaintiff's complaint call for a legal conclusion and therefore no response is necessary. To the extent a response is required, the City denies the allegations in paragraph 12 of Plaintiff's complaint.

13. Section (vii) states:

Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

(vii) obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

5 ILCS 140/7(1)(d)(vii). (Emphasis added).

RESPONSE: The City admits the Section 7(1)(d)(vii) of the Freedom of Information Act is quoted in paragraph 13 of Plaintiff's complaint.

14. CHAMPAIGN has not shown how the disclosure of the audio and video records pertaining to the arrest records would "obstruct an ongoing criminal investigation" by CHAMPAIGN. 5 ILCS 140/7(1)(d)(vii).

RESPONSE: The City denies the allegations in paragraph 14 of Plaintiff's complaint.

15. CHAMPAIGN provided only a generic claim indicating that ISP told CHAMPAIGN that "this is an open and ongoing investigation, not all reports have been completed, nor have all records been received from other units/ agencies." Exhibit A.

RESPONSE: The City admits that it indicated that the Illinois State Police told the City "this is an open and ongoing investigation, not all reports have been completed, nor have all records been received from other units/ agencies." The City denies the allegation that it was only a generic claim as stated in paragraph 15 of Plaintiff's complaint.

16. CHAMPAIGN has not demonstrated how the disclosure of the records would interfere with a pending investigation and an ongoing criminal investigation.

RESPONSE: The City denies the allegations in paragraph 16 of Plaintiff's complaint.

17. As of the date of this filing, CHAMPAIGN has failed to comply with FOIA and has not produced all records responsive to the request.

RESPONSE: The allegations stated in paragraph 17 of Plaintiff's complaint call for a legal conclusion and therefore no response is necessary. To the extent a response is required, the City denies the allegations in paragraph 17 of Plaintiff's complaint.

AUGUST 27, 2021 FOIA REQUEST TO ISP

18. On August 27, 2021, HANSEN, under the name of his non-profit news media website Check CU, submitted a FOIA request to ISP for "[a]ny and all records related to the shooting which occurred around 3:30am on May 19[,] 2021 which resulted in the injury/death of one or more police officers/suspects in the City of Champaign. Documents should include all video and audio recordings related to the incident, as well as written reports and email and other correspondence." Exhibit B.

RESPONSE: The allegations stated in paragraphs 18 to 27 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

19. On September 3, 2021, ISP assigned reference number 21-2647 to the matter and sought an extension of five-business days. Exhibit C.

RESPONSE: The allegations stated in paragraph 18 to 27 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

20. On September 14, 2021, ISP provided a non-working link regarding the "previously released video footage" of the fatal shooting and denied the remaining records by citing Sections 7(1)(d)(i), (iii), and (vii) of FOIA. Exhibit D.

RESPONSE: The allegations stated in paragraph 18 to 27 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

21. In violation of Section 9(a) of FOIA, CHAMPAIGN has not provided a "detailed factual basis for the application of any exemption claimed." 5 ILCS 140/9(a).

RESPONSE: The allegations stated in paragraph 18 to 27 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

22. Sections 7(1)(d)(i), (iii), and (vii) state:

Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but ***only to the extent that disclosure would:***

- (i) interfere with pending or actual and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request;
- (iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;
- (vii) obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

5 ILCS 140/7(1)(d)(i), (iii), and (vii). (Emphasis added).

RESPONSE: The allegations stated in paragraph 18 to 27 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

23. ISP has not shown how the disclosure of the records would "interfere with pending or actually reasonably contemplated law enforcement proceedings," "create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing", and "obstruct an ongoing criminal investigation" by the ISP. 5 ILCS 140/7(1)(d)(i), (iii), and (vii).

RESPONSE: The allegations stated in paragraphs 18 to 27 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

24. Instead, ISP only provided a generic claim that the investigation is "ongoing by the Multi-jurisdictional Investigative Team, the Champaign County State's Attorney's Office and the Champaign County Coroner's Office." Exhibit D.

RESPONSE: The allegations stated in paragraphs 18 to 27 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

25. Further, ISP stated that it released some video footage to the media but cannot release the video footage in its entirety due to the "graphic nature of the footage and not to affect the accuracy or influence potential witness statements." *Id.*

RESPONSE: The allegations stated in paragraphs 18 to 27 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

26. ISP has not demonstrated that the requested records are exempt under FOIA.

RESPONSE: The allegations stated in paragraphs 18 to 27 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

27. As of the date of this request, ISP failed to comply with FOIA and has produced no records responsive to the request.

RESPONSE: The allegations stated in paragraphs 18 to 27 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

**COUNT I -AUGUST 23, 2021 FOIA REQUEST TO CHAMPAIGN,
FAILURE TO PRODUCE RECORDS**

28. The above paragraphs are incorporated by reference.

RESPONSE: The City's responses to the above paragraphs are incorporated by reference herein.

29. CITY OF CHAMPAIGN is a public body under FOIA.

RESPONSE: The City admits the allegations in paragraph 29 of Plaintiff's complaint.

30. The records sought in the FOIA request are non-exempt public records.

RESPONSE: The allegations stated in paragraph 30 of Plaintiff's complaint call for a legal conclusion and therefore no response is necessary. To the extent a response is required, the City denies the allegations in paragraph 30 of Plaintiff's complaint.

31. CITY OF CHAMPAIGN violated FOIA by failing to provide records responsive to the request.

RESPONSE: The allegations stated in paragraph 31 of Plaintiff's complaint call for a legal conclusion and therefore no response is necessary. To the extent a response is required, the City denies the allegations in paragraph 31 of Plaintiff's complaint.

**COUNT II -AUGUST 23, 2021 FOIA REQUEST TO CHAMPAIGN,
FAILURE TO PERFORM AN ADEQUATE SEARCH**

32. The above paragraphs are incorporated by reference.

RESPONSE: The City's responses to the above paragraphs are incorporated by reference herein.

33. CITY OF CHAMPAIGN is a public body under FOIA.

RESPONSE: The City admits the allegations in paragraph 33 of Plaintiff's complaint.

34. CITY OF CHAMPAIGN bears the burden of proving beyond material doubt that it performed an adequate search for records responsive to the request.

RESPONSE: The allegations stated in paragraph 34 of Plaintiff's complaint call for a legal conclusion and therefore no response is necessary. To the extent a response is required, the City denies the allegations in paragraph 34 of Plaintiff's complaint.

35. CITY OF CHAMPAIGN has failed to come forward with sufficient evidence to carry this burden.

RESPONSE: The allegations stated in paragraph 35 of Plaintiff's complaint call for a legal conclusion and therefore no response is necessary. To the extent a response is required, the City denies the allegations in paragraph 35 of Plaintiff's complaint.

36. CITY OF CHAMPAIGN has violated FOIA by failing to adequately search for records responsive to the request.

RESPONSE: The allegations stated in paragraph 36 of Plaintiff's complaint call for a legal conclusion and therefore no response is necessary. To the extent a response is required, the City denies the allegations in paragraph 36 of Plaintiff's complaint.

**COUNT III -AUGUST 23, 2021 FOIA REQUEST TO CHAMPAIGN,
WILLFUL AND INTENTIONAL VIOLATION OF FOIA**

37. The above paragraphs are incorporated by reference.

RESPONSE: The City's responses to the above paragraphs are incorporated by reference herein.

38. CITY OF CHAMPAIGN is a public body under FOIA.

RESPONSE: The City admits the allegations in paragraph 38 of Plaintiff's complaint.

39. The records sought in the FOIA request are non-exempt public records.

RESPONSE: The allegations stated in paragraph 39 of Plaintiff's complaint call for a legal conclusion and therefore no response is necessary. To the extent a response is required, the City denies the allegations in paragraph 39 of Plaintiff's complaint.

40. CITY OF CHAMPAIGN has willfully and intentionally or otherwise in bad faith violated FOIA.

RESPONSE: The allegations stated in paragraph 40 of Plaintiff's complaint call for a legal conclusion and therefore no response is necessary. To the extent a response is required, the City denies the allegations in paragraph 40 of Plaintiff's complaint.

**COUNT IV -AUGUST 27, 2021 FOIA REQUEST TO ISP,
FAILURE TO PRODUCE RECORDS**

41. The above paragraphs are incorporated by reference.

RESPONSE: The City's responses to the above paragraphs are incorporated by reference herein.

42. ISP is a public body under FOIA.

RESPONSE: The allegations stated in paragraphs 42 to 44 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

43. The records sought in the FOIA request are non-exempt public records.

RESPONSE: The allegations stated in paragraphs 42 to 44 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

44. ISP violated FOIA by failing to provide records responsive to the request.

RESPONSE: The allegations stated in paragraphs 42 to 44 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

**COUNT V -AUGUST 27, 2021 FOIA REQUEST TO ISP,
FAILURE TO PERFORM AN ADEQUATE SEARCH**

45. The above paragraphs are incorporated by reference.

RESPONSE: The City's responses to the above paragraphs are incorporated by reference herein.

46. ISP is a public body under FOIA.

RESPONSE: The allegations stated in paragraphs 46 to 49 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

47. ISP bears the burden of proving beyond material doubt that it performed an adequate search for records responsive to the request.

RESPONSE: The allegations stated in paragraphs 46 to 49 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

48. ISP has failed to come forward with sufficient evidence to carry this burden.

RESPONSE: The allegations stated in paragraphs 46 to 49 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

49. ISP has violated FOIA by failing to adequately search for records responsive to the request.

RESPONSE: The allegations stated in paragraphs 46 to 49 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

**COUNT VI-AUGUST 27, 2021 FOIA REQUEST TO ISP,
WILLFUL AND INTENTIONAL VIOLATION OF FOIA**

50. The above paragraphs are incorporated by reference.

RESPONSE: The City's responses to the above paragraphs are incorporated by reference herein.

51. ISP is a public body under FOIA.

RESPONSE: The allegations stated in paragraphs 51 to 53 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

52. The records sought in the FOIA request are non-exempt public records.

RESPONSE: The allegations stated in paragraphs 51 to 53 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

53. ISP has willfully and intentionally or otherwise in bad faith violated FOIA.

RESPONSE: The allegations stated in paragraphs 51 to 53 of Plaintiff's complaint are directed to ISP therefore no response is required from the City.

Dated: November 17, 2021

By: /s/ Nancy L. Rabel
Assistant City Attorney

Prepared by:
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IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

CHRISTOPHER HANSEN,)
)
Plaintiff,)
)
v.)
)
CITY OF CHAMPAIGN,)
ILLINOIS STATE POLICE,)
)
Defendants.)

Case No. 2021-CH-64

CERTIFICATE OF SERVICE

I certify under 735 ILCS 5/1-109 that November 17, 2021, I electronically filed the foregoing with the Champaign County Clerk of the Court via Odyssey eFileIL and that I also served a copy of the Defendant, City of Champaign's Answer to Plaintiff's complaint upon the following:

Joshua Hart Burday, Attorney for Plaintiff
Lovey & Lovey
foia@lovey.com

and by placing a true and correct copy of the Defendant City of Champaign's Answer in an envelope, addressed the party shown below:

Illinois State Police
C/O Illinois Attorney General's Office
100 West Randolph
Chicago, IL 60601

That she sealed the envelope and deposited the same into the City of Champaign mailing system located in the City Building at 102 N. Neil Street, Champaign, Illinois for the application of sufficient postage and for deposit in the United States Mail at Champaign, Illinois at or about the hour of 5:00 p.m. on the 17th day of November 2021.

By: /s/ Shannon M. Miner, Paralegal

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