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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,)	
)	
-vs-)	No. 21-CH-64
)	
CITY OF CHAMPAIGN,)	
ILLINOIS STATE POLICE,)	
)	
Defendants.)	

NOTICE OF APPEARANCE

NOW COMES Kwame Raoul, Attorney General of the State of Illinois, by Xinyi Wei, Assistant Attorney General, State of Illinois, and hereby enters her appearance as counsel on behalf of the Defendant, ILLINOIS STATE POLICE, in the above cause.

Respectfully submitted,

ILLINOIS STATE POLICE,

Defendant,

Xinyi Wei, #6327760
Assistant Attorney General
500 South Second Street
Springfield, IL 62701
(217) 782-1841 Phone
(217) 782-8767 Fax
Xinyi.Wei@ilag.gov

KWAME RAOUL, Attorney General
of the State of Illinois,

Attorney for Defendant,

By: s/ Xinyi Wei
Xinyi Wei, #6327760
Assistant Attorney General

Hansen v. City of Champaign, et al.
Champaign County Case No. 21-CH-64

CERTIFICATE OF SERVICE

DeDe DeSalle, under penalties as provided by law pursuant to §1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true and that she has served a copy of the foregoing *Notice of Appearance* upon:

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

City of Champaign
Nancy L. Rabel, ARDC No. 6243699
102 North Neil Street
Champaign, Illinois 61820
(217) 403-8765
nancy.rabel@champaignil.gov

by emailing copies of same to the above-listed email addresses, on February 10, 2022. A copy of said Appearance was also efiled this date with the Circuit Court of Champaign County.

s/ DeDe DeSalle
DeDe DeSalle
Administrative Legal Secretary

General Law Bureau
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 782-1841 Phone
(217) 782-8767 Fax
Xinyi.Wei@ilag.gov
& gls@ilag.gov

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By: AL

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

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

CHRISTOPHER HANSEN,)	
)	
Plaintiff,)	
)	
v.)	No. 21-CH-64
)	
CITY OF CHAMPAIGN,)	
and the ILLINOIS STATE POLICE,)	
)	
Defendants.)	

ANSWER AND AFFIRMATIVE DEFENSES

Defendant, ILLINOIS STATE POLICE, by and through its attorney, KWAME RAOUL, Attorney General of the State of Illinois, hereby files its answer and affirmative defenses, stating as follows:

COMPLAINT

NOW COMES Plaintiff, CHRISTOPHER HANSEN, by the undersigned attorneys, Loevy & Loevy, and brings this suit to overturn Defendants CITY OF CHAMPAIGN and ILLINOIS STATE POLICE's willful violation of the Illinois Freedom of information Act. Defendants have refused to release investigative records of an officer-involved fatal shooting that occurred in Champaign on May 19, 2021. In support of the Complaint, HANSEN states as follows:

ANSWER: Defendant admits HANSEN makes statements in support of his Complaint and denies the remaining allegations in this paragraph.

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.

ANSWER: Defendant admits that this paragraph is a summary and paraphrase of part of Section 1 of the Illinois Freedom of Information Act, 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.

ANSWER: Defendant admits that this paragraph is a summary and paraphrase of part of Section 1 of the Illinois Freedom of Information Act, 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.

ANSWER: Defendant admits that this paragraph 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>.

ANSWER: Defendant admits that CheckCU.org sent to ISP the FOIA request attached to the Complaint as Exhibit B. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in this paragraph.

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

ANSWER: Defendant admits the allegations contained in this paragraph.

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.

ANSWER: Defendant admits the allegations contained in this paragraph.

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.

ANSWER: Defendant admits the allegations contained in this paragraph.

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.*

ANSWER: Defendant admits the allegations contained in this paragraph.

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.

ANSWER: Defendant admits the allegations in this paragraph.

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

ANSWER: Defendant admits CHAMPAIGN cited Section 7(1)(d)(vii) of FOIA.

Defendant lacks knowledge sufficient to form a belief about the remaining allegations contained in this paragraph.

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.*

ANSWER: Defendant lacks knowledge sufficient to form a belief about the allegations contained in this paragraph.

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).

ANSWER: Defendant lacks knowledge sufficient to form a belief about the allegations contained in this paragraph.

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).

ANSWER: Defendant admits that this paragraph recites 5 ILCS 140/7(1)(d)(vii), but with added emphasis.

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).

ANSWER: Defendant lacks knowledge sufficient to form a belief about the allegations

contained in this paragraph.

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.

ANSWER: Defendant admits Exhibit A contains the quoted statement. Defendant lacks knowledge sufficient to form a belief about the remaining allegations contained in this paragraph.

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

ANSWER: Defendant lacks knowledge sufficient to form a belief about the allegations contained in this paragraph.

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.

ANSWER: Defendant lacks knowledge sufficient to form a belief about the allegations contained in this paragraph.

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.

ANSWER: Defendant admits the allegations contained in this paragraph.

19. On September 3, 2021, ISP assigned reference number 21-2647 to the matter and

sought an extension of five-business days. Exhibit C.

ANSWER: Defendant admits the allegations contained in this paragraph.

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.

ANSWER: Defendant admits that the web link it provided in its September 14, 2021 letter attached as Exhibit D in reference to previously released video footage does not work. Defendant admits that the remaining records requested by “CheckCU” were denied pursuant to Sections 7(1)(d)(i), (iii), and (vii) of FOIA.

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).

ANSWER: Defendant lacks knowledge sufficient to form a belief about the truth of the allegations contained in this paragraph.

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).

ANSWER: Defendant admits that this paragraph recites 5 ILCS 140/7(1)(d)(i), (iii), and (vii), with added emphasis.

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).

ANSWER: Defendant denies the allegations contained in this paragraph.

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.

ANSWER: Defendant admits that its September 14, 2021 response to the FOIA request of “CheckCU” stated that “[t]he investigation is ongoing by the Multi-jurisdictional Investigative Team, the Champaign County State’s Attorney’s Office and the Champaign County Coroner’s Office.” Defendant denies the remaining allegations contained in this paragraph.

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.*

ANSWER: Defendant admits the allegations contained in this paragraph.

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

ANSWER: Defendant denies the allegations contained in this paragraph.

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

ANSWER: Defendant denies the allegations contained in this paragraph.

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

28. The above paragraphs are incorporated by reference.

ANSWER: Defendant repeats and incorporates responses to paragraph 1 through paragraph 27 as if fully recited herein.

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

ANSWER: Defendant admits the allegations contained in this paragraph.

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

ANSWER: Defendant lacks knowledge sufficient to form a belief about the allegations contained in this paragraph.

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

ANSWER: Defendant lacks knowledge sufficient to form a belief about the allegations contained in this paragraph.

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

32. The above paragraphs are incorporated by reference.

ANSWER: Defendant repeats and incorporates responses to paragraph 1 through paragraph 31 as if fully recited herein.

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

ANSWER: Defendant admits the allegations contained in this paragraph.

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

ANSWER: Defendant denies the allegations contained in this paragraph.

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

carry this burden.

ANSWER: Defendant lacks knowledge sufficient to form a belief about the allegations contained in this paragraph.

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

ANSWER: Defendant lacks knowledge sufficient to form a belief about the allegations contained in this paragraph.

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

37. The above paragraphs are incorporated by reference.

ANSWER: Defendant repeats and incorporates responses to paragraph 1 through paragraph 36 as if fully recited herein.

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

ANSWER: Defendant admits the allegations contained in this paragraph.

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

ANSWER: Defendant lacks knowledge sufficient to form a belief about the allegations contained in this paragraph.

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

ANSWER: Defendant lacks knowledge sufficient to form a belief about the allegations contained in this paragraph.

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

41. The above paragraphs are incorporated by reference.

ANSWER: Defendant repeats and incorporates responses to paragraph 1 through paragraph 40 as if fully recited herein.

42. ISP is a public body under FOIA.

ANSWER: Defendant admits the allegations contained in this paragraph.

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

ANSWER: Defendant denies the allegations contained in this paragraph.

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

ANSWER: Defendant denies the allegations contained in this paragraph.

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

45. The above paragraphs are incorporated by reference.

ANSWER: Defendant repeats and incorporates responses to paragraph 1 through paragraph 44 as if fully recited herein.

46. ISP is a public body under FOIA.

ANSWER: Defendant admits the allegations contained in this paragraph.

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

ANSWER: Defendant denies the allegations contained in this paragraph.

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

ANSWER: Defendant denies the allegations contained in this paragraph.

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

ANSWER: Defendant denies the allegations contained in this paragraph.

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

50. The above paragraphs are incorporated by reference.

ANSWER: Defendant repeats and incorporates responses to paragraph 1 through paragraph 49 as if fully recited herein.

51. ISP is a public body under FOIA.

ANSWER: Defendant admits the allegations contained in this paragraph.

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

ANSWER: Defendant denies the allegations contained in this paragraph.

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

ANSWER: Defendant denies the allegations contained in this paragraph.

WHEREFORE, HANSEN asks that the Court:

- i. declare that Defendants have violated FOIA;
- ii. order Defendants to conduct an adequate search for the requested records;
- iii. order Defendants to produce the requested records;
- iv. enjoin Defendants from withholding non-exempt public records under FOIA;
- v. order Defendants to pay civil penalties;
- vi. award HANSEN reasonable attorneys' fees and costs;
- vii. award such other relief the Court considers appropriate.

ANSWER: Defendant denies violating the Freedom of Information Act and denies the claims against it. Defendant denies that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

1. Exemptions under the Freedom of Information Act

Pursuant to the relevant exemptions under the Freedom of Information Act, ISP is unable to disclose the requested information and documents until the underlying criminal investigation is concluded. 5 ILCS § 140/7(1)(d)(i), (iii), (vii). *See, e.g., Castro v. Brown's Chicken & Pasta, Inc.*, 314 Ill. App. 3d 542, 555 (1st Dist. 2000) (“[B]oth the Illinois and federal Freedom of Information Acts are parallel in their recognition that investigatory files in ongoing criminal investigations should not be disclosed.”).

Respectfully submitted,

ILLINOIS STATE POLICE,

Defendant,

Xinyi Wei, #6327760
Assistant Attorney General
500 South Second Street
Springfield, IL 62701
(217) 782-1841 Phone
(217) 782-8767 Fax
Xinyi.Wei@ilag.gov

KWAME RAOUL, Attorney General
of the State of Illinois,

Attorney for Defendant,

By: s/ Xinyi Wei
Xinyi Wei, #6327760
Assistant Attorney General

STATE OF ILLINOIS)	Hansen v. City of Champaign et al.
)	Case No. 21-CH-64
COUNTY OF CHAMPAIGN)	

DECLARATION

I, David Catlin, state that I am an employee of the Illinois State Police, Defendant in the above-captioned matter, and that I have read the forgoing document, Defendant's ***Answer and Affirmative Defenses***. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph Nos. 4, 10-12, 14-17, 21, 30-31, 34-36, 39-40.

3/4/2022
Date

Executed in Champaign County, Illinois

David Catlin Digitally signed by David Catlin
Date: 2022.03.04 09:12:53
-06'00'

David Catlin
Illinois State Police

Hansen v. City of Champaign, et al.
Champaign County Case No. 21-CH-64

CERTIFICATE OF SERVICE

Taylor Dodson, under penalties as provided by law pursuant to §1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), certifies that the statements set forth in this certificate of service are true and correct and that she has served a copy of the foregoing Defendant ISP's ***Answer and Affirmative Defenses*** upon:

Joshua Hart Burday at foia@loevy.com
Nancy L. Rabel at nancy.rabel@champaignil.gov

by emailing copies of same to the above-listed email addresses, on March 4, 2022. A copy of said Answer and Affirmative Defenses was also efiled this date with the Circuit Court of Champaign County.

s/ Taylor Dodson
Taylor Dodson
Paralegal II

General Law Bureau
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 782-1841 Phone
(217) 782-8767 Fax
Xinyi.Wei@ilag.gov
& glb@ilag.gov