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

CHRISTOPHER HANSEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2021-CH-81
	)	
VILLAGE OF RANTOUL,	)	
Defendant.	)	

DEFENDANT'S COMBINED MOTION TO DISMISS
(735 ILCS 5/2-615; 735 ILCS 5/2-619)

NOW COMES, Defendant, VILLAGE OF RANTOUL, ("Rantoul"), by and through its attorney, DAVID B. WESNER, of EVANS, FROEHLICH, BETH & CHAMLEY, Champaign, Illinois, and pursuant to 735 ILCS 5/2-619.1 brings this Combined Motion to Dismiss under 735 ILCS 5/2-615 and 735 ILCS 5/2-619 of the Code of Civil Procedure, and moves this Honorable Court to dismiss, with prejudice, all counts of the Complaint and in support thereof states as follows:

STANDARD OF REVIEW

A. 735 ILCS 5/2-615

A motion to dismiss may be brought pursuant to Section 2-615 attacking the legal sufficiency of the complaint. *Cochran v. Securitas Security Services USA, Inc.*, 2017 IL 121200, 93 N.E.3d 493, 497 (2017); *Peters v. Riggs*, 2015 IL App (4th) 140043, ¶ 39, 32 N.E.3d 49, 61 (4th Dist. 2015). Illinois is a fact-pleading jurisdiction, so the Complaint must allege facts, not mere conclusions, that establish a viable cause of action. *Bogenberger v. Pi Kappa Alpha Corp., Inc.*, 2018 IL 120951, ¶ 35, 104 N.E.3d 1110, 1122 (2018). Allegations that are conclusory should not be taken as true by the Court when considering a Section 2-615 motion to dismiss, unless supported by specific factual allegations. *Schweihs v. Chase Home Finance*, 2016 IL 120041, ¶ 27, 77 N.E.3d

50, 57 (2016); *Jarvis v. South Oak Dodge, Inc.*, 201 Ill.2d 81, 86, 773 N.E.2d 641, 644-45 (2002); *Johnson v. Matrix Finance Services Corp.*, 354 Ill. App. 3d 684, 688, 820 N.E.2d 1094, 1098 (4th Dist. 2004) ("A plaintiff cannot rely simply upon conclusions of law or fact unsupported by specific factual allegations.").

A section 2-615 motion to dismiss tests the legal sufficiency of a complaint. *Vitro v. Mihelcic*, 209 Ill.2d 76, 81, 282 Ill.Dec. 335, 806 N.E.2d 632 (Ill. 2004). The critical inquiry is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *Id.*

B. 735 ILCS 5/2-619

A motion to dismiss brought pursuant to Section 2-619 "is warranted only where it clearly is apparent that no set of facts can be proved that would entitle a plaintiff to recover." *Thornton v. Shah*, 333 Ill.App.3d 1011, 1018, 777 N.E.2d 396, 403 (1st. Dist. 2002)). "Because all properly pleaded facts are accepted as true, a reviewing court is concerned only with the question of law presented by the pleadings." *Id.* A § 2-619 motion does not, however, admit "conclusions of law and conclusory factual allegations unsupported by allegations of specific facts alleged in the complaint." *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶16, 135 N.E.3d 73, 79 (2019). "Section 2-619(a)'s purpose is to provide litigants with a method of disposing of issues of law and easily proved issues of fact – *relating to the affirmative matter* – early in the litigation." *Reynolds, supra*, 988 N.E.2d at 993.

a. Section 2-619(a)(9) – Affirmative Matter

Section 2-619(a)(9) allows for a motion for involuntary dismissal, where the "legal sufficiency of the complaint" is admitted, as are "all well-pleaded facts and all reasonable inferences therefrom." *Id.* A motion brought under §2-619(a)(9) permits dismissal of an action

where 'the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim. (citation omitted). The phrase 'affirmative matter' refers to a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *McIntosh, supra*, 135 N.E.3d at 79; *see also, Reynolds, supra*, 988 N.E.2d at 993; *Harris v. ChartOne*, 362 Ill.App.3d 878, 841 N.E.2d 1028 (5th Dist. 2005) (defendant may assert an affirmative matter that defeats the claim under a Section 2-619(a)(9) motion to dismiss.).

Illinois' Supreme Court has explained an affirmative matter as "some kind of defense 'other than a negation of the essential allegations of the plaintiff's cause of action' (citation omitted) and 'something in the nature of a defense which negates the cause of action completely.'" *Reynolds, supra*, 988 N.E.2d at 994.

Count I – Failure to Produce Records

Basis Number 1 – Conclusory Statements (735 ILCS 5/2-615)

A. Plaintiff's statements set forth in Count I are conclusory in nature and do not explain how his allegations arrive at the conclusion he is attempting to present.

B. Plaintiff does not provide or recite specific facts to adequately support his allegations and conclusions in Count I.

C. The allegations in Count I do not state a valid cause of action.

D. Plaintiff's Count I is insufficient in law and should be dismissed with prejudice.

Basis Number 2 – Count I Generally (735 ILCS 5/2-615; 735 ILCS 5/2-619(a)(9))

E. The allegations in Count I do not state a cause of action.

F. The allegations of County I are defeated by other affirmative matter.

G. As stated in Rantoul's response to the request, attached to the complaint as Exhibit A, only one complaint related to the nature of the request. As further provided in the response, the complaint had only recently been received by Rantoul at the time the request was submitted. Although not an elaborate statement regarding the complaint, Rantoul's response clearly indicates that no "disposition or findings letter" would have existed at that time. Also, Rantoul's response clearly indicates that no appeal would have occurred since the complaint had only recently been received by Rantoul. As such, the focus of the issue would be the portion of the request regarding "complaint investigation documents such as reports and memorandums". The request clearly indicates that it is directed at complaints against police officers, which are part of the disciplinary process.

H. Sections 7 and 7.5 of the Freedom of Information Act, 5 ILCS 140/1 et seq., (FOIA) provide for general exemptions and statutory exemptions which allow for the denial of the release of records.

I. Rantoul cited the specific exemption in FOIA that pertains to the disciplinary process, being Section 7(1)(n). Section 7(1)(n) provides the following exemption: "Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed."

J. The first part of Section 7(1)(n) exempts, ie allows the denial of the release of, records relating to a public body's adjudication of employee disciplinary cases. The records requested by Plaintiff are those types of records which are exempt under Section 7(1)(n), ie they relate to Rantoul's adjudication of employee disciplinary matters.

K. The request at issue here pertains to those records which are specifically exempt from disclosure pursuant to Section 7(1)(n). Rantoul properly cited the exemption allowed by Section 7(1)(n) in denying the release of records.

L. Plaintiff cites Kalven v. City of Chicago, 7 N.E.3d 741, 379 Ill.Dec. 903 (1st Dist. 2014) for the proposition that a term defined and used in a particular way by the Chicago Police Department should also extend to and be applied in the same fashion by all other police departments within Illinois. Such a proposition is untenable and cannot support an allegation that Rantoul has failed to comply with FOIA.

M. Plaintiff further cites Kalven for the proposition that, regardless of whether Rantoul uses the same term in the same way as Chicago, any complaints filed against a police officer and the subsequent investigative records are not exempt under Section 7(1)(n) of FOIA. Such conclusion is not supported by the clear meaning and intent of Section 7(1)(n).

N. As noted in Kalven, the circuit court determined that the complaint registers of the Chicago Police Department were exempt under Section 7(1)(n) of FOIA. The appellate court reversed that decision. Clearly, courts are at odds with the application of Section 7(1)(n) of FOIA.

O. With regard to statutory construction, the principal objective is to ascertain and give effect to the intent of the legislature. Kalven, *Id.*; See also Senese v. Village of Buffalo Grove, 890 N.E.2d 628, 321 Ill.Dec. 906 (2nd Dist. 2008).

P. A determination of legislative intent begins with the language of the statute which must be given its plain, ordinary, and popularly understood meaning. Kalven, *Id;* Senese, *Id.*

Q. The appellate court in Kalven focused its discussion and decision on only two terms in one part of Section 7(1)(n), being the terms "related to" and "adjudication" in the first

part of said section. In limiting its statutory construction analysis in such a way, the appellate court failed to fully and properly perform an analysis of the entirety of Section 7(1)(n).

R. The appellate court, in defining "adjudication", indicates that it is a formal legal process resulting in a decision. However, after properly describing "adjudication" as a process, they narrow the definition to suggest that it is only the hearing itself. A court may not re-define a term to something other than its clearly understood and intended meaning. The term process is defined as a series of actions or steps taken in order to achieve a result. *See Merriam-Webster's Dictionary.* The process of a disciplinary matter begins with the filing of a complaint, will likely include an investigation, and will result in a decision as to whether any discipline should be imposed. As such, the records requested by Plaintiff fall squarely within the term "adjudication" and are therefore exempt from release under Section 7(1)(n) of FOIA.

S. The appellate court failed to perform an analysis of the term "related to". The appellate court did not provide a definition for "related to" and merely reached a conclusion that Chicago's interpretation was too broad. The court made reference to the cases cited by Chicago with regard to the definition. The cases cited by Chicago provided that the term "related to" is a broad term. The appellate court discounted the cases by merely indicating that they were not cases interpreting FOIA. The result reached by the appellate court would suggest that the definition of the term "related to" changes based solely upon the nature of the case in which they are used. Such a result is incongruous when it comes to interpreting language and giving it its plain and ordinary meaning.

T. The term "related to" means to connect something with something else. *See Merriam-Webster's Dictionary.* The clear meaning and intent of this term in Section 7(1)(n) is

that the exemption is meant to encompass those records which are connected to each other within the process of an employee disciplinary matter, from the initial complaint all the way through to the final result. As such, the records requested by Plaintiff are "related to" the adjudication of an employee disciplinary matter and are therefore exempt from release under Section 7(1)(n) of FOIA.

U. The court in Senese v. Village of Buffalo Grove, 890 N.E.2d 628, 321 Ill.Dec. 906 (2nd Dist. 2008) was called upon to interpret a statute. The court recited the objectives of statutory construction when it held: the principal objective is to ascertain and give effect to the intent of the legislature; and, the language of the statute must be given its plain, ordinary and popularly understood meaning. The court further held that: a literal interpretation is not controlling where the spirit and intent of the General Assembly in enacting a statute are clearly expressed, its objects and purposes are clearly set forth, and a literal interpretation of a particular clause would defeat the obvious intent, where literal enforcement of a statute will result in a great injustice that was not contemplated by the General Assembly, or where a literal interpretation would lead to an absurd result. *Id.*

V. The decision of the appellate court in Kalven could be said to be taking an extremely narrow and literal interpretation of Section 7(1)(n). In line with Senese, such an interpretation defeats the obvious intent of the legislature, creates an injustice to employees and officers of municipalities by way of releasing information that results in smearing an employee's or officer's name in the face of baseless, unfounded complaints where no discipline has been imposed, and is an absurd result when reading the entirety of Section 7(1)(n).

W. The appellate court in Kalven fails to conduct a full analysis and associate the main exemption provision in Section 7(1)(n) to the remaining clause of the section which creates an exception to the exemption.

X. Consistent with statutory construction analysis, Section 7(1)(n) must be read in its entirety. The first portion of Section 7(1)(n) creates the exemption for those particular records, which allows for the denial of their release. The remaining clause begins with the term "however", which clearly indicates that it is an exception to the main exemption. The exception is limited solely to the final outcome in a case where discipline is imposed. The exception is specific and very limited in what must be released. As such, the clear intent and meaning of the main exemption is that it relates to all other records involved in a disciplinary matter whereby those records are not subject to being released.

Y. The reading advocated by Plaintiff and suggested to be supported by Kalven would make the "however" clause of Section 7(1)(n) superfluous and a nullity. Their reading would require that all records be released. If that is to be the case, then releasing discipline on one hand while not releasing an unfounded finding in the other leads to a nonsensical result. Once all of the records are released, the decision in any particular case becomes immaterial. Further, when performing statutory construction analysis, it is understood that the legislature would not purposely include language in a statute that would have no use or meaning.

Z. Although the meaning and intent of Section 7(1)(n) is readily ascertainable from reading the provision, circuit courts and appellate courts seem to be at odds with its interpretation. In that light, the legislative history is instructive. The legislative history supports the clear meaning and intent as set forth above, and advocated by Rantoul.

AA. The Legislative History, a copy of which is attached hereto and incorporated by reference herein as Exhibit A, reflects that all of the records pertaining to a disciplinary matter, other than the discipline imposed would be exempt. Legislative History Pp 103-104.

BB. Representative Black posed a specific question regarding Section 7(1)(n) by using the example of a disciplinary matter that resulted in termination. Representative Black asked specifically whether all of the records that led up to the termination would be exempt under Section 7(1)(n). Speaker Madigan, being the advocate for the bill (amendments to FOIA), unequivocally answered that those records would, in fact, be exempt. *Id.*

CC. The Legislative History clearly supports the plain and ordinary meaning of Section 7(1)(n), being that all records involved in disciplinary matters are exempt. The sole exception is for the discipline if discipline is imposed.

DD. In conducting its analysis of statutory construction, this Court should reach the conclusion that Section 7(1)(n) of FOIA exempts records relating to the process a municipality goes through when dealing with an employee or officer disciplinary matter, except for the final outcome in cases where discipline is imposed. In such determination, Section 7(1)(n) exempts from release the records requested by Plaintiff and therefore Plaintiff's complaint does not state a cause of action and is defeated by other affirmative matter.

EE. Plaintiff's Count I is insufficient in law and should be dismissed with prejudice.

FF. Plaintiff's Count I is defeated by other affirmative matter, being Section 7(1)(n) of FOIA, which exempts those records requested by Plaintiff. Therefore, Plaintiff's Count I should be dismissed with prejudice.

Count II – Failure to Search

(735 ILCS 5/2-615)

Basis: Not a valid cause of action

A. Section 11 of FOIA provides that a person denied access to any public record by a public body may file suit for injunctive or declaratory relief.

B. The cause of action contemplated by Section 11 of FOIA is an injunction against the continued denial of access to non-exempt records.

C. Section 11 of FOIA does not create a cause of action for "failure to search".

D. The allegations in Count II do not state a valid cause of action.

E. Plaintiff's Count II is insufficient in law and should be dismissed with prejudice.

Count III – Willful and Intentional Violation of FOIA

(735 ILCS 5/2-615)

Basis Number 1 – Not a Valid Cause of Action

A. Section 11 of FOIA provides that a person denied access to any public record by a public body may file suit for injunctive or declaratory relief.

B. The cause of action contemplated by Section 11 of FOIA is an injunction against the continued denial of access to non-exempt records.

C. Section 11 of FOIA does not create a cause of action for "willful and intentional violation of FOIA".

D. The allegations in Count III do not state a valid cause of action.

E. Plaintiff's Count III is insufficient in law and should be dismissed with prejudice.

<u>Basis Number 2 - Statements are Conclusory in Nature</u>

F. If the Court determines that FOIA provides for a separate cause of action for "willful and intentional violation", Plaintiff's statements in Count III are conclusory in nature and do not explain how his allegations arrive at the conclusion he is attempting to present.

G. Plaintiff does not provide facts to adequately support his allegations and conclusions in Count III.

H. Plaintiff's Count III is insufficient in law and should be dismissed with prejudice.

WHEREFORE, Defendant, Village of Rantoul, pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(9) of the Code of Civil Procedure, prays that this Court dismiss with prejudice all counts of the Complaint of Christopher Hansen, and order that Plaintiff pay Defendant's attorney's fees.

Respectfully submitted,
Village of Rantoul,

BY: ______________________
One of Its Attorneys

CERTIFICATE OF SERVICE

I, David B. Wesner, certify under 735 ILCS 5/1-109 that on February 2, 2022, I electronically filed the foregoing with the Champaign County Clerk of the Court via Odyssey eFileIL which will send notification of such filing by electronic service to the below-listed counsel of record:

Josh Loevy
Loevy & Loevy
Attorneys for Plaintiff
311 North Aberdeen, 3rd Floor
Chicago, IL 60607

I, David B. Wesner, also served the foregoing on February 2, 2022, by e-mailing to:

Josh Loevy
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David B. Wesner

Prepared by:
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STATE OF ILLINOIS
96th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

62nd Legislative Day 5/27/2009

Speaker Turner: "The hour of 11:00 having come and gone, today, May 27, 2009, the House will be in Session. We shall be led in prayer today by Pastor Craig Miller, who is with the Plainfield Methodist Church in Plainfield, Illinois. Pastor Miller is the guest of Representative Cross. Members and guests are asked to refrain from starting their laptops, turn off all cell phones and pagers, and rise for the invocation and the Pledge of Allegiance. Pastor Miller."

Pastor Miller: "Thank you. Let us pray. Gracious and loving God, I give You thanks for those assembled here today as Legislators and public servants, and I thank You for their cultural, social, political diversity and for the… the host of legislative talents and interests that collectively they bring to this time and to this place. Almighty just and merciful God, it is with a profound sense of privilege and responsibility that this assembly gathers today to undertake the affairs of state for the citizens of Illinois. It is a daunting task, especially in these very difficult times for our nation and for our state. Today, I… I pray for all who hold public office and who demonstrate civil authority, but especially for this legislative assembly as it seeks to bring order to our society and to implement to those means and measures that secure justice and prosperity within our state borders. Inspire with Your will and purpose and inform with Your wisdom those actions that are taken and the decisions that are made within the walls of this legislative chamber. Instill within the hearts and minds of each Member of this

Exhibit A

Madigan: "The… the individual making the request has the option to go to the public access counselor or to court."

Black: "All right. So, the…"

Madigan: "And I… Mr. Black, because they like you so much, Mr. Black, Mr. Craven has just called that the Press Association supports the Bill."

Black: "I'm glad to know that, seriously, and Mr. Craven and I go way back. Thank you."

Madigan: "Sure."

Black: "If I… if I could just… just two more questions. In other words, if I hear you correctly, the public access counselor could then prevent what has been the case for several years, the Illinois State Police denying release of records regarding a official of some government regarding a DUI arrest. Well, that's an invasion of his privacy. We won't release that."

Madigan: "The answer is yes."

Black: "So, the public access counselor could get into that and say, you have no grounds to do that."

Madigan: "Correct."

Black: "Okay."

Madigan: "That's why we've provided for the public access counselor…"

Black: "Okay."

Madigan: "…in the Bill."

Black: "Just keep in mind, I've sponsored that Bill both of the last years, you know, some… a subcredit, perhaps. Two questions that I don't understand. The final outcome of a disciplinary case would not be exempt. So, if you fired

somebody for malfeasance or for cause, I can get that record. I can say, why was he fired, he was fired for cause, right? That is not exempt."

Madigan: "The answer is yes."

Black: "All right. But if I want the records that led up to his… his or her firing, those personnel records would be exempt. Is that my understanding?"

Madigan: "Would be exempt?"

Black: "Yes. All of the details that led to the dismissal."

Madigan: "I'm advised the answer is yes."

Black: " Okay. Settlement agreements entered into, and this has long been a bone of contention, a school district, a city, a township, a county, whatever, they reach a settlement on a…"

Speaker Mautino: "The Gentleman will finish this question then a number… another Member be able to yield."

Black: "Thank you. This is my final question. They reach an agreement on a lawsuit. They don't go to court. They settle for an amount of money, and this is often driven the taxpayer as well as the media gatekeepers crazy. Well, what did… how much did it cost? Well, we don't have to tell you that. We can't tell you that because part of the agreement was that neither side would disclose what we paid, but yet the taxpayer says, well, you paid them, literally, even though you may have an insurance policy, you paid them with my tax money. What do you mean I can't tell… I can't be told what you settled that case for? If I understand what you're saying, that settlement would now be FOIable."