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

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

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

Plaintiff Christopher Hansen seeks records related to complaints made by citizens against law enforcement between 2019-2021. Rantoul declined to produce records responsive to the second part of Hansen's request, citing 5 ILCS 140/7(1)(n). It is well-established that this exemption does not apply to the types of records at issue here. By declining to produce responsive records without any basis in law, the Village of Rantoul is continuing to violate FOIA. Rantoul's motion to dismiss should be denied.

I. STANDARD OF REVIEW

A. Motion to Dismiss 2-615.

A 2-615 motion to dismiss "challenges the legal sufficiency of a complaint based on defects apparent on its face. *Marshall v. Burger King Corp*., 222 Ill. 2d 422, 429 (2006). As the Illinois Supreme Court stated, when "[r]eviewing the sufficiency of a complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts." *Id*. We also construe the allegations in the complaint in the light most favorable to the Plaintiff. *Id*. Therefore,

"[a] cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the Plaintiff to recovery." *Id*.

B. FOIA Generally

The General Assembly and Illinois courts have long recognized that government secrecy is rarely appropriate and often abused:

> We are not surprised that governmental entities, including the United States Attorney generally prefer not to reveal their activities to the public. If this were not a truism, no FOIA would be needed. Our legislature enacted the FOIA in recognition that (1) blanket government secrecy does not serve the public interest and (2) transparency should be the norm, except in rare, specified circumstances. The legislature has concluded that the sunshine of public scrutiny is the best antidote to public corruption, and Illinois courts are duty-bound to enforce that policy.

Better Gov't Ass'n v. Blagojevich, 386 Ill. App. 3d 808, 818 (2008) (requiring disclosure of federal grand jury subpoenas). Because of this, the FOIA statute and interpreting case law impose a demanding standard on public bodies seeking to keep records from the public, no matter what the exemption or the nature of the issues. First, every public record is presumed by law to be open to the public, and so a public record may only be withheld if a specific statutory exemption applies and is proven by clear and convincing evidence. 5 ILCS 140/1.2; *Day v. City of Chicago*, 388 Ill. App. 3d 70, 73 (2009) (reversing trial court order granting motion to dismiss and collecting cases setting forth demanding standard to withhold records). If records contain both exempt and non-exempt material, the exempt material may be redacted but the remainder must be released. 5 ILCS 140/7(1).

Second, a public body asserting an exemption must "provide a detailed justification for its claimed exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing." *Id*. at 74 (quoting and citing *Ill. Ed. Ass'n. v. Ill. State Bd. of Ed*., 204 Ill. 2d 456, 464 (2003). Public bodies may not treat exemption language "[a]s some talisman, the

mere utterance of which magically casts a spell of secrecy over the documents at issue. Rather, the public body can meet its burden only by providing some objective indicia that the exemption is applicable under the circumstances." *Id*. at 73, 75 ("These affidavits are one-size-fits-all, generic and conclusory. . . .That is rubber stamp judicature. We decline to take part in it. The City is asking us, as it did the trial court, to take the affiants' word for it. For us to do so would be an abdication of our responsibility.").

Further, FOIA exemptions must be "read narrowly" and in furtherance of the statutory purpose: "[t]o open governmental records to the light of public scrutiny." E.g., Day, 388 Ill. App. 3d at 73; *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997) ("In conducting our analysis, we are guided by the principle that under the Freedom of Information Act, public records are presumed to be open and accessible. The Act does create exceptions to disclosure, but those exceptions are to be read narrowly."). Finally, the "[f]unction of the courts is to interpret the [FOIA] statute as it is written," and not to vary from clear statutory text on policy or other grounds, especially when such variation does not further the statutory purpose of transparency. *Fagel v. Dep't of Transp.*, 2013 IL App (1st) 121841, ¶ 35 (declining to create exemption judicially for electronic data that could be "manipulated") (citing *Pritza v. Village of Lansing*, 405 Ill.App.3d 634, 645 (2010) (courts may not legislate but must interpret the law where the language of the statute is plain and certain). The Illinois Supreme Court has repeatedly held that unless records are exempt under a specific FOIA provision, they must be produced. *Illinois Education Ass 'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 463 (2003) ("Thus, when a public body receives a proper request for information, it must comply with that request unless one of the narrow statutory exemptions set forth in section 7 of the Act applies."); *American Federation of State, County & Municipal Employees (AFSCME), AFL-CIO v. County of Cook*, 136 Ill. 2d 334,

341 (1990) ("The Act, therefore, creates a simple mechanism whereby a public body must comply with a proper request for information unless it can avoid providing the information by invoking one of the narrow exceptions provided in the Act.").

II. ARGUMENT

A. Plaintiff has satisfied Illinois's fact pleading standard and his complaint should not be dismissed under Section 2-615.

Hansen pled specific facts underpinning each of the counts of his complaint. Comp. at ¶¶ 1-16. On November 7, 2021, Hansen submitted a request to the Village of Rantoul. Comp. at ¶ 6. Rantoul responded by identifying one responsive record and declining to produce records it asserted are subject to 5 ILCS 140/7(1)(n). Comp. at ¶ 8. Hansen included the Rantoul response to his complaint in support of his factual assertions. Comp. at ¶ 6. Rantoul did not produce records in FOIA's prescribed time period. Comp. at ¶ 16. These facts are sufficient to plead all three of the counts in the complaint. Applying the standard required at the motion to dismiss stage, Rantoul cannot plausibly show that "It is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Marshall*, 222 Ill.2d at 429. [1]

B. The Records Plaintiff Is Seeking Are Not Exempt From FOIA.

Illinois precedent has clearly established that records of complaints against law enforcement, such as those Hansen requested, are not exempted under FOIA. *See*: *Watkins v. McCarthy*, 2012 IL App (1st) 100632 ¶ 45 (holding that complaint registers were not per se exempt from FOIA as personnel records); *Fraternal Ord. of Police, Chicago Lodge No. 7 v. City of*

[1] Even were Rantoul to prevail under its 2-615 motion, Hansen should be given an opportunity to amend the complaint as both the rule and appellate case law provide. 735 ILCS 5/2-615(d) ("the court may enter appropriate orders either to permit or require pleading over or amending"); *Sinclair v. State Bank of Jerseyville*, 226 Ill. App. 3d 909 (1992) (stating that "Plaintiffs generally are granted at least one opportunity to amend their pleadings" in reference to a 2-615 motion).

Chicago, 2016 IL App (1st) 143884 ¶ 36 "It is undisputed that CR files and related information are subject to disclosure under the FOIA in the absence of an applicable exemption." (Citations omitted); *Kalvin v. City of Chicago*, 2014 IL App (1st) 121846, ¶ 22 ("In sum, section 7(1)(n) does not exempt CRs from disclosure. Under any reading of the statute, CRs do not constitute an 'adjudication' or either an employee grievance or a disciplinary case. Further, the phrase 'related to' must be read narrowly, and in the context of FOIA, CRs are not related to' disciplinary adjudications in a way that might exempt them from disclosure.") (overruled on other grounds by *Perry v. Dep't of Fin. & Pro. Regul*., 2018 IL 122349; *Johnson v. Joliet Police Dep't*, 2018 IL App (3d) 170726 (same). Rantoul fails to cite any contrary authority from any Illinois Court, let alone one from this district. Instead, it cites to the circuit decision in *Kalvin, and the Court of Appeals decision reversing it,* as its only support for its position that there is a dispute over the application of FOIA to complaints against law enforcement. This is clearly insufficient. Illinois courts are a unified court system; this Circuit Court is bound to apply [case law] in the absence of a contradictory case from the relevant District. *See*, e.g., *Vill. of Glenview v. Zwick*, 356 Ill. App. 3d 630, 636 (1st 2005). Under this controlling law, complaints against law enforcement are not considered personnel records for purposes of section 7(1)(n). Rantoul's position runs counter to the well-established precedent of this state.

Rantoul's attempts to apply rules of statutory construction to FOIA are unnecessary for the reasons already discussed, but they also fail to account for FOIA's well-known instruction to favor openness of records and narrow construction of exemptions. *Chapman v. Chicago Dep't of Fin.*, 2022 IL App (1st) 200547 ¶ 22. Canons of statutory construction only apply if the language of the statute is ambiguous. *Id*. at ¶ 24 (citations omitted). These are the touchstones of FOIA interpretation, but Rantoul ignores them in favor of approaches applied to other statutes. *See*

Senese v. Village of Buffalo Grove, 890 N.E.2d 628, 321 III. Dec. 906 (2" Dist. 2008) interpreting the Public Safety Employee Benefits act). Rantoul critiques the Court's interpretation in *Kalven* for "…taking an extremely narrow and literal interpretation of Section 7(1)(n)." Def's MTD at 7. But this is the exact approach FOIA prescribes. *Stern v. Wheaton–Warrenville Community Unit School District 200*, 405 910 N.E.2d 85 (2009). Rantoul's position has no basis in law and is contrary to FOIA's intent and function. It should be rejected, and Rantoul's motion should be denied.

C. Plaintiff Has Met The Pleading Standard For Count II.

Rantoul argues that "no cause of action exists" for failure to perform an adequate search and that Hansen "has not set forth any facts to support such an action." MTD at 10. First, Hansen pled that Rantoul has not produced all records responsive to the request. Comp. at ¶ 16. By challenging the adequacy of the search, Hansen is challenging that Rantoul actually found all of the non-exempt responsive records.

Rantoul fundamentally misunderstands the premise of FOIA cases, where public bodies bear the burden of proof. All records "in the custody or possession" of a public body are "presumed" to be open to the public. 5 ILCS 140/1.2 (emphasis added). If a public body wishes to withhold records it bears the burden of proving that it is allowed to. 5 ILCS 140/1.2; *Day v. City of Chicago*, 388 Ill. App. 3d 70, 73 (2009). The same is true as to the adequacy of the search. Public bodies bear the burden of proving they performed an adequate search for records. *BlueStar Energy Servs., Inc. v. Illinois Commerce Comm'n*, 374 Ill. App. 3d 990, 996-97 (2007). Where a government agency fails to conduct a search based on an erroneous position about the applicability of FOIA to records, courts have found that the agency did not conduct a reasonable search of all areas where responsive records were likely to be found. *Better Gov't Ass'n v. City of Chicago*, 2020

IL App (1st) 190038 ¶ 33 (holding that Defendant failed to conduct an adequate search by following an erroneous legal position). Rantoul does not argue otherwise.

D. Plaintiff Has Met The Pleading Standard For Count III.

Rantoul also claims that Hansen pled no facts supporting that Rantoul willfully and intentionally violated FOIA. Def. MTD at 4. FOIA Section 11(j) states: "If the court determines that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty of not less than $2,500 nor more than $5,000 for each occurrence." According to Speaker Madigan, during floor debates on the 2009 FOIA amendments that introduced civil penalties, the purpose of the provision is to "impose stiff, civil penalties for FOIA violations." 96th General Assembly, House of Representatives, May 27, 2009 Debate, at 92. According to the Speaker, "[t]he problem with Freedom of Information requests has been with local governments and with elements of the Blagojevich administration," and "[a] good way to compel compliance with the statute is to impose stiff civil penalties for noncompliance." *Id*. at 98. Responding to a FOIA request in a manner that has no good-faith legal support is a willful and intentional violation. *Rock River Times v. Rockford Public School District*, 2012 IL App (2d) 110879, ¶ 52 (civil penalties affirmed where argument that public body could claim new exemptions "after its first two claimed exemptions fell through" had no support in statute). Hansen pled that Rantoul denied the FOIA requests. Rantoul has no good-faith legal support for violating the black-letter law of the statute. As discussed, Rantoul ignores the universal interpretation of FOIA that finds that the records at issue are not subject to 5 ILCS 140/7(1)(n). It cites no authority for this unique position. It simple disagrees with the controlling law. As a result, Rantoul's late response is a willful violation necessitating civil penalties.

III. CONCLUSION

Plaintiff Christopher Hansen respectfully asks that Defendant's motion to dismiss be denied.

RESPECTFULLY SUBMITTED,

/s/ Josh Loevy

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CERTIFICATE OF SERVICE

I, Josh Loevy, certify that on March 30, 2022, I caused the foregoing PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS to be served via electronic mail on all counsel of record.

/s/ Josh Loevy