

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

JOHN KRAFT, AND THE EDGAR COUNTY	)	
WATCHDOGS, INC.	)	
	)	
PLAINTIFFS,	)	2020CH000124
	)	
v.	)	
	)	Case No.:
CITY OF URBANA	)	
	)	
DEFENDANT.	)	

**COMPLAINT**

**NOW COMES** Plaintiffs, JOHN KRAFT and the EDGAR COUNTY WATCHDOGS, INC., by and through their attorneys, AMBROZIAK LAW GROUP LLC, and bring this suit to Overturn Defendant's refusal, and willful violation of the Illinois Freedom of Information Act, to respond to Plaintiff's Freedom of Information Act requests. In support of this Complaint, Plaintiffs state 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.

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.

3. All public records 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 140/3.

4. Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. Denial shall be in writing as provided in Section 9 of this Act. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request. 5 ILCS 140/3(d).

5. Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request, the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial. Each notice of denial by a public body shall also inform such person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor. Each notice of denial shall inform such person of his right to judicial review under Section 11 of this Act. 5 ILCS 140/9(a).

6. “Except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.” 5 ILCS 140/11.

### **PARTIES**

7. JOHN KRAFT and EDGAR COUNTY WATCHDOGS INC. (hereafter “Plaintiffs”) are the FOIA requesters in this case.

8. Plaintiffs are neither recurrent requesters, nor do Plaintiffs request documents from the CITY OF URBANA (hereafter “Defendant”) for a commercial purpose as defined by 5 ILCS 140/2.

9. Defendant is a public body under the FOIA and is located in Champaign County, Illinois.

10. The records sought are non-exempt public records of the Defendant.

11. Defendant, in bad faith, willfully and intentionally violated the FOIA by Defendant’s ongoing and constant refusal to, and failure to properly respond to the FOIA request shown below and in the attached Exhibits hereto and incorporated herein.

**FOIA REQUEST- October 27, 2020**

12. On October 27, 2020, Plaintiffs submitted a FOIA request (hereafter “Request”) via email to Defendant. See Exhibit A.

13. In their Request, Plaintiffs requested the following records:

- a. Copy of the names of FOIA requesters, dollar amounts received, and detailed accounting of the final fees, for each FOIA requester who paid any funds, and/or provided self-addressed stamped envelopes, to the city for responses to FOIA requests since May 1, 2020. See *Id.*

14. On October 30, 2020, Plaintiffs received a response to their Request from City of Urbana Assistant City Attorney, Curt Borman. See Exhibit B.

15. Defendant’s response failed to contain the names of the FOIA requesters that Plaintiffs specified in their Request. See *Id.*

16. Defendant claimed that it was exempt from disclosing the names of the FOIA requestors under 5 ILCS 140/7(1)(b), which provides an exemption of disclosure for private information. *Id.*

17. On both October 30, 2020 and November 5, 2020, Plaintiffs sent follow up emails to Defendant which informed Defendant that the requested names were not exempt material under 5

ILCS 140/7(1)(b). See Exhibit C.

18. On November 5, 2020, Defendant informed Plaintiff that it had already taken final action regarding Plaintiffs' Request. See Exhibit D.

19. As of the date of this filing, Defendant has not sent Plaintiffs any supplemental FOIA disclosures regarding Plaintiffs' Request.

20. Under 5 ILCS 140/7(1)(b), the exemption that Defendant raised, private information is exempt from disclosure unless disclosure is required by another provision of the FOIA, State or Federal law, or court order. 5 ILCS 140/7(1)(b).

21. Records regarding the receipts and use of public funds have been codified to be open for inspection by the public under the FOIA (5 ILCS 140/2.5), the Local Records Act (50 ILCS 205/3a), and the Illinois Constitution (Illinois Const., Art. VIII, § 1(c)).

22. The names of FOIA requestors who have paid funds to the Defendant are accordingly open to inspection by the public as part of the Defendant's receipt of public funds.

23. Furthermore, the Legislature failed to include "personal names" under the FOIA definition for private information as used in 5 ILCS 140/7(1)(b). See 5 ILCS 140/12(c-5).

24. The Illinois Supreme Court has held that by excluding names from the definition of private information under 5 ILCS 140/12(c-5), the Legislature did not intend for names to be exempt from disclosure by reasoning that names were basic information and not personal information. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 412 (1997).

25. Accordingly, Defendant failed to comply with Plaintiffs' Request by not responding to the Request with the names of the FOIA requestors responsive to Plaintiffs' Request within the five-business day timeframe imposed by 5 ILCS 140/3(d).

26. Defendant violated the FOIA by failing to provide a valid exemption for why Plaintiffs'

request was denied, as required under 5 ILCS 140/9(a).

**WHEREFORE**, Plaintiffs JOHN KRAFT and THE EDGAR COUNTY WATCHDOGS, INC. pray that this Honorable Court:

- A. In accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way; and
- B. Declare that the CITY OF URBANA has violated the FOIA; and
- C. Order the CITY OF URBANA to produce the requested records; and
- D. Enjoin the CITY OF URBANA from withholding non-exempt public records under the FOIA; and
- E. Order the CITY OF URBANA to pay civil penalties; and
- F. Award Plaintiffs' reasonable attorneys' fees and costs; and
- G. Award such other relief the Court considers just and equitable.

RESPECTFULLY SUBMITTED,

/s/ Denise M. Ambroziak  
Denise M. Ambroziak  
Attorney for Plaintiffs

Denise M. Ambroziak  
ARDC #6244325  
AMBROZIAK LAW GROUP LLC  
Attorneys for Plaintiffs  
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Woodstock, IL 60098  
(815) 459-4949  
ambroziaklaw@comcast.net

# EXHIBIT A

## FOIA Request (City of Urbana) 10-27-2020



John Kraft <john@illinoisleaks.com>

10/27/2020 9:24 AM

To: pdclark@urbanailinois.us; Borman Curt Cc: Marlin, Diane

On behalf of the Edgar County Watchdogs, Inc., and in accordance with the Freedom of Information Act I am requesting the following.

If you are not the FOIA officer, you are required to immediately forward this request to the appropriate FOIA officer as required by statute [5 ILCS 140/3(c)].

I am requesting the following information under the Freedom of Information Act:

1. **Copy of the names of FOIA requesters, dollar amounts received, and detailed accounting of the final fees, for each FOIA requester who paid any funds, and/or provided self-addressed stamped envelopes, to the city for responses to FOIA requests since May 1, 2020.**

Please email all response(s) to this FOIA request to [john@illinoisleaks.com](mailto:john@illinoisleaks.com).

This is not a commercial request.

I, and the organizations I represent (Edgar County Watchdogs Inc, and American Watchdogs Inc), qualify as both media and non-profit under the definitions in Section 2 (c-10) ("Commercial purpose"), and the principal purpose of the request is to access and disseminate information concerning news and current or passing events, or for articles of opinion or features of interest to the public.; Section 2 (f) ("News media") as an Investigative Reporter for the Edgar County Watchdogs, an online news site, and am engaged in making news reels and other motion picture for public viewing, and as a news service to provide news and data to news organization(s) and nonprofits; Section 2 (g) ("Recurrent requester"); and Section 2 (h) ("Voluminous request") of the Freedom of Information Act, for the purposes of being exempt to the provisions of Section 3.1 (Requests for commercial purposes); Section 3.2 (Recurrent requesters); Section 3.6 (Voluminous requests), and Section 6 (Authority to charge fees).

This is also a request for fee waiver, should any fees be imposed, as this information bears on the public business of this public body and will be used to inform citizens of the actions of their public officials and employees, of their rights and responsibilities, of news and current or passing events, and for articles of opinion or features of interest to the public. The principal purpose of this request is to access and disseminate information regarding the health, safety, and welfare or the legal rights of the general public and is not for the principal purpose of gaining a personal or commercial benefit.

Thanks,  
John Kraft  
Edgar County Watchdogs  
7060 Illinois Highway 1  
Paris, Illinois 61944

# EXHIBIT B



From: Borman Curt <[csborman@urbanailinois.us](mailto:csborman@urbanailinois.us)>  
Sent: Friday, October 30, 2020 12:08 PM  
To: John Kraft <[john@illinoisleaks.com](mailto:john@illinoisleaks.com)>  
Subject: Response to FOIA request 2020-F-609

Dear Mr. Kraft:

This message is in response to your Freedom of Information Act (FOIA) request, dated October 27, 2020. The City of Urbana received your request on October 27, 2020, and designated it as FOIA request number 2020-F-609.

FOIA Request 2020-F-609: I am requesting the following information under the Freedom of Information Act:

1. Copy of the names of FOIA requesters, dollar amounts received, and detailed accounting of the final fees, for each FOIA requester who paid any funds, and/or provided self-addressed stamped envelopes, to the city for responses to FOIA requests since May 1, 2020.

We have reviewed all relevant records and have attached the responsive record, except for the names of the FOIA requesters. The names of FOIA requesters are exempt from disclosure under 5 ILCS 140/7(1)(b). The person responsible for this partial denial is Freedom of Information Officer Curt Borman.

If you believe any records you are seeking have been wrongfully withheld or redacted, you are entitled to a review of this decision by the Public Access Counselor of the Office of the Illinois Attorney General. To file a "request for review," you may write to the Public Access Bureau at 500 S. Second Street, Springfield, Illinois 62701, or you may phone 877-299-FOIA (877-299-3642). Any person denied access to inspect or copy any public record also may file suit for injunctive or declaratory relief, in accordance with 5 ILCS 140/11.

Sincerely,

Curt Borman  
Assistant City Attorney

Legal Division | City of Urbana  
400 S. Vine Street | Urbana, Illinois 61801  
217.384.2464

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# EXHIBIT C

From: John Kraft  
Sent: Friday, October 30, 2020 12:18 PM  
To: Borman Curt <[csborman@urbanailinois.us](mailto:csborman@urbanailinois.us)>  
Cc: Kirk Allen <[kirk@illinoisleaks.com](mailto:kirk@illinoisleaks.com)>  
Subject: RE: Response to FOIA request 2020-F-609

Mr. Borman,  
Article VIII, Section 1(c), of the Illinois Constitution, Article 3(a) of the Local Records Act, and Section 2.5 of the Freedom of Information Act override Section 7(1)(b) of the FOIA - so please provide the names associated with the dollar amounts paid.  
Thanks,  
John Kraft

From: John Kraft<[john@illinoisleaks.com](mailto:john@illinoisleaks.com)>  
Sent: Thursday, November 5, 2020 7:34 AM  
To: Borman Curt<<mailto:csborman@urbanailinois.us>>; Clark Phyllis<<mailto:pdclark@urbanailinois.us>>; Marlin, Diane<<mailto:dwmarlin@urbanailinois.us>>  
Cc: Kirk Allen<<mailto:kirk@illinoisleaks.com>>  
Subject: RE: Response to FOIA request 2020-F-609

Mr. Borman,  
I responded on October 30, 2020, as confirmed below, to your partial denial of my request for public records, and have yet to receive a reply to my latest email to you concerning the partial denial.  
Please respond to this appeal to my FOIA denial today with either the names I requested, or a continued denial so that I may exercise my rights under Section 11 of the Freedom of Information Act.  
Thanks in advance,  
John Kraft  
[john@illinoisleaks.com](mailto:john@illinoisleaks.com)

# EXHIBIT D

RE: Response to FOIA request 2020-F-609



Borman Curt <csborman@urbanaillinois.us>

11/5/2020 11:06 AM

To: John Kraft



Dear Mr. Kraft,

Thank you for contacting the City of Urbana about your FOIA request. We have taken final action concerning this request.

Curt Borman

Assistant City Attorney

Legal Division | City of Urbana

400 S. Vine Street | Urbana, Illinois 61801

217.384.2464

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