

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JENNIFER HELSBY,)
)
Plaintiff,)
)
v.)
)
CHICAGO POLICE DEPARTMENT,)
)
)
Defendant.)

COMPLAINT

NOW COMES Plaintiff, JENNIFER HELSBY, by her undersigned attorneys, LOEVY & LOEVY, and brings this Freedom of Information Act suit to require Defendant CHICAGO POLICE DEPARTMENT to produce unredacted records in connection with CPD spending almost fifty thousand dollars to purchase “covert” hardware using public funds. In support of its Complaint, HELSBY alleges:

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. *Id.*

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 140/1.2.

4. Under the Illinois Constitution and FOIA, records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public without exception. Ill. Const. Article VII § 1(c); 5 ILCS 140/2.5; 50 ILCS 205/3a.

5. Under FOIA Section 11(h), “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.”

6. Defendant CPD has violated FOIA and the Illinois Constitution by redacting non-exempt information including the type of hardware and its manufacturer from copies of invoices from the Bureau of Organized Crime.

PARTIES

7. Plaintiff JENNIFER HELSBY (“HELSEBY”) is the FOIA requester in this case.

8. Defendant CHICAGO POLICE DEPARTMENT is a public body located in Cook County, Illinois.

HELSEBY’S FOIA REQUEST AND CPD’S DENIAL

9. On September 14, 2015, HELSEBY requested from CPD under FOIA documents sufficient to show what nine specific checks “were used to purchase, any solicitation or bidding that went into the check, emails about the funding, and any receipt for the funding.” A true and correct copy of the request is attached as Exhibit A.

10. On September 28, 2015, CPD produced records in response to the request, but redacted information showing what was purchased and from whom, among other information. A true and correct copy of the response letter is attached as Exhibit B.

11. The redacted information clearly pertains to the use of public funds, and is therefore also subject to disclosure, without exception, under FOIA and the Illinois Constitution.

COUNT I – VIOLATION OF FOIA

12. The above paragraphs are incorporated by reference.
13. CPD is a public body under FOIA.
14. The redacted information is not exempt under FOIA.
15. CPD has willfully and intentionally violated FOIA by failing to produce the unredacted records requested by HELSBY.

WHEREFORE, CPD asks that the Court:

- i. 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;
- ii. declare that CPD has violated FOIA;
- iii. order CPD to produce the unredacted requested record under FOIA;
- iv. enjoin CPD from withholding non-exempt public records under FOIA;
- v. award HELSBY reasonable attorneys' fees and costs;
- vi. order CPD to pay civil penalties for willfully and intentionally violating FOIA in bad faith; and
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ Matthew Topic

Attorneys for Plaintiff
JENNIFER HELSBY

Matthew Topic
LOEVY & LOEVY
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Chicago, IL 60607
312-243-5900
matt@loevy.com
Atty. No. 41295

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1505 Fund Check Expenditures information

Jen Helsby <jen.helsby@gmail.com>
To: foia@chicagopolice.org

Mon, Sep 14, 2015 at 12:59 AM

Greetings,

I am seeking the following public records, regardless of physical form or characteristics, under the Illinois Freedom of Information Act (5 ILCS 140/1 to 11) about the following 1505 or 1505ML expenses by their date and check number. I am seeking documents sufficient to show what the following checks were used to purchase, any solicitation or bidding that went into the check, emails about the funding, and any receipt for the funding.

Check #17772 dated 01/02/2015 for the amount \$7190.0
Check #17789 dated 01/05/2015 for the amount \$19015.98
Check #17790 dated 01/05/2015 for the amount \$15032.37
Check #17792 dated 01/06/2015 for the amount \$8500.0
Check #17795 dated 01/06/2015 for the amount \$48012.0
Check #17811 dated 01/15/2015 for the amount \$5811.5
Check #17820 dated 01/22/2015 for the amount \$8500.0
Check #17844 dated 02/03/2015 for the amount \$5716.0
Check #17849 dated 02/04/2015 for the amount \$15221.37

Additionally, I am requesting that you treat this request as a media request and if possible expedite the processing. The requested documents will be made available to the general public, and this request is not being made for commercial purposes. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

Thanks,

Jennifer Helsby, Ph.D.



Rahm Emanuel
Mayor

Department of Police • City of Chicago
3510 S. Michigan Avenue • Chicago, Illinois 60653

Garry F. McCarthy
Superintendent of Police

September 28, 2015

Sent via E-Mail

Jennifer Helsby, Ph.D.
E-Mail: Jen.helsby@gmail.com

RE: NOTICE OF RESPONSE TO FOIA REQUEST
REQUEST DATE: September 21, 2015
FOIA FILE NO.: 15-5293

Dear Dr. Helsby:

The Chicago Police Department is in receipt of your Freedom of Information Act (FOIA) request. In your request you indicate that you are seeking the following:

"I am seeking the following public records, regardless of physical form or characteristics, under the Illinois Freedom of Information Act (5 ILCS 140/1 to 11) about the following 1505 or 1505ML expenses by their date and check number. I am seeking documents sufficient to show what the following checks were used to purchase, any solicitation or bidding that went into the check, emails about the funding, and any receipt for the funding.

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Check #17820 dated 01/22/2015 for the amount \$8500.0
Check #17844 dated 02/03/2015 for the amount \$5716.0
Check #17849 dated 02/04/2015 for the amount \$15221.37"

Your request was reviewed by the undersigned in consultation with personnel from the Bureau of Organized Crime. The enclosed records were located by above personnel as responsive to your request and furnished to the undersigned. The Bureau of Organized Crime furnished to the undersigned (9) nine documents specifying the purchase with the above listed checks. Upon review, it has been determined that copies of these records can be released with certain information redacted. The redacted information is exempt from disclosure under the following provisions of the Illinois Freedom of information Act;

5 ILCS 140/7(1)(b) Private information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.

5 ILCS 140/2(c-5) "Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification

number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

5 ILCS 140/7 (1)(c) Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

5ILCS 140/7 (1)(d)(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request;

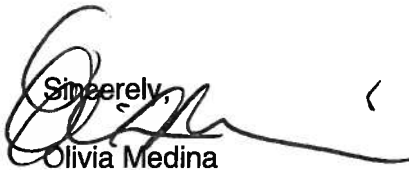
Information withheld under §7(1)(b) and §7(1)(c) is account names/numbers and officers' signatures. In addition, information withheld under §7(1)(d)(v) is specific hardware that is utilized for covert operations, revealing such information can clearly jeopardize the Department's future undercover operations.

If you can be of further assistance, you may contact me at (312) 745-5308, or by mail at the following address:

Chicago Police Department
Attention: Freedom of Information Officer
Office of Legal Affairs
3510 S. Michigan Ave.
Chicago, IL 60653

You have the right to have a denial reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General, 500 S. Second St., Springfield, IL 62706, (877)299-3642. You also have the right to seek judicial review of your denial by filing a lawsuit in the Cook county Circuit Court.

Sincerely,


Olivia Medina
Public Information Officer
Department of Police

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