

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

NIKLAS HUNDER,)	
)	
Plaintiff,)	
)	2024CH05867
v.)	Calendar 14
)	
CHICAGO TRANSIT AUTHORITY,)	
)	
Defendant.)	

REPLY TO DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT

I. INTRODUCTION AND SUMMARY

Defendant’s Answer demonstrates that it has no accurate account of the facts of the case and cannot mount any appropriate defense other than pointing out that some relief may be moot. In an attempt to defend itself, Defendant inaccuracy states which section it sees as applicable and asks the Court to apply a section that does not apply to this case.

II. THE COURT REJECT DEFENDANT’S AFFIRMATIVE DEFENSES

A. No Validity of Defendant’s Second Affirmative Defense

Defendant is attempting to apply the wrong section of 5 ILCS 140 in its defense. 5 ILCS 140/3 is the section that applies here as rightfully cited by Plaintiff in his Complaint. 5 ILCS 140/3.2 does not apply to these requests because Defendant never informed Plaintiff that his request was being treated under an extended timeline because he was designated as a recurrent requester. As Defendant made clear in Exhibit’s 1 and 2 (letters sent to NIKLAS HUNDER on June 4th, 2024 and June 10th, 2024) that it was not treating the requests under 5 ILCS 140/3.2 because it stated that

“Under the Freedom of Information Act, a public body may extend the time to respond to a FOIA request by up to 5 business days, excluding weekends and state holidays, for a limited number of reasons. 5 ILCS 140/3(e). We are extending the time to respond to your request by 5 business days.”

Considering the actions of Defendant, it appears it is making an meritless about-face on how it intended to respond to Plaintiff. To the extent that Defendant believes it properly treated both requests under 5 ILCS 140/3.2, Defendant has not and cannot offer any proof that it communicated to Plaintiff any of the requirements of the required by Sections 3.2(a) and (b) which are:

“(a) Notwithstanding any provision of this Act to the contrary, a public body shall respond to a request from a recurrent requester, as defined in subsection (g) of Section 2, within 21 business days after receipt. The response shall (i) provide to the requester an estimate of the time required by the public body to provide the records requested and an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents, (ii) deny the request pursuant to one or more of the exemptions set out in this Act, (iii) notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions, or (iv) provide the records requested.

(b) Within 5 business days after receiving a request from a recurrent requester, as defined in subsection (g) of Section 2, the public body shall notify the requester (i) that the public body is treating the request as a request under subsection (g) of Section 2, (ii) of the reasons why the public body is treating the request as a request under subsection (g) of Section 2, and (iii) that the public body will send an initial response within 21 business days after receipt in accordance with subsection (a) of this Section. The public body shall also notify the requester of the proposed responses that can be asserted pursuant to subsection (a) of this Section.”

In addition to not following the required provisions of Section 3.2, Defendant also did not properly extend its time to respond properly under Section 3(f). Defendant only extended its time to respond to June 11th 2024 for 2024-0584 and June 17th, 2024-0607 both of which were five business day extensions. After those dates passed, CTA never again communicated to Plaintiff

that it was seeking an extension or that it even intended to respond. It appears that Defendant only unexpectedly and suddenly responded to Plaintiff's FOIA June 3rd FOIA request (2024-0607) after 155 business days in response to this suit in hopes that all charges would be dismissed. Even if Section 3.2 were applied, the deadlines outlined in the section would have still put Defendant in violation of 5 ILCS 140. No matter how Defendant wants to believe its actions, it is always in violation of this statute.

B. No Validity of Defendant's First Affirmative Defense

Although Defendant ultimately produced responses to FOIA requests 2024-0584 in 41 business days and 2024-0607 in 155 business, Defendant has failed to bring forth any proof that it did not respond in bad faith to this request and the Court should determine that "that [CTA] willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith" and that "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." 5 ILCS 140/11(j)

The lack of communication from Defendant about the status of the request in combination with the time it took to respond and the admissions of Defendant's own attorney underscore that CTA took a period of time not allowed by law to respond to the request and that the records it was required to produce were not voluminous and not burdensome for Defendant to produce for Plaintiff.

At a status hearing on the state of Defendant's Answer to Plaintiff Complaint that took place on March 19th, 2025 at 10:30am, Judge David B. Atkins asked an attorney for Defendant, Kurt Drain, about the amount of records that needed to be disclosed by Defendant. Defendant's attorney responded by stating that the records produced were not voluminous to produce (and by omission, not burdensome to process) which calls into question why CTA in both cases never

properly extended its time to respond and why it took 41 business days and 155 business days (61% of CTA's working days in 2024) to produce non voluminous records. A clear example of Defendant's bad faith in producing these requests.

Given these facts, it is clear that Defendant's claim that Plaintiff's demands for relief i through vii are overly broad is insufficient. Since Defendant ultimately produced records, it is only ii, iii, iv, and vi that are now moot. Demands for relief i, v, and vii are still active. Between Defendant's application of false facts and wrong statutes in this case and the number of request for reviews CTA undergoes with the Public Access Counselor (which have produced numerous nonbinding and binding opinions not in its favor), it is clear Defendant has a systemic issue with answering requests on time. Defendant is eligible for providing relief as requested by subsections i, v, and vii and for the maximum allowed penalty as described by Section 11(j).

CONCLUSION

Defendant cannot mount a proper defense because its actions are indefensible and not permitted by law. Defendant clearly violated 5 ILCS 140/3 (and only presents an argument that it should really be in violation of a section that does not apply here) because it did not follow the procedures for complying with FOIA as outlined by law despite its frivolous beliefs about its actions.

Upon evaluating all merits of the case, the Court will find that Defendant's actions provide for a cut-and-dry analysis showing that Defendant did not meet the requirements numerous times and that it committed violations of 5 ILCS 140/3(f) and in "bad faith" 5 ILCS 140/11(j).

Dated: April 9, 2025

RESPECTFULLY SUBMITTED,

/s/ Niklas Hunder

Niklas Hunder

Policy Analyst/Researcher