

FILED DATE: 1/29/2025 3:36 PM 2024CH05867

Case No. 2024CH05867

71

Mariyana T. Spyropoulos 1/29/2025 3:37 PM

appearance in this matter on December 3, 2024.

On December 9, 2024, the Court held its initial Status Hearing, which was attended by counsel for Plaintiff and counsel for CTA. At that initial Status Hearing, CTA informed the Court that some of Plaintiff's FOIA requests had already received responses and had received responsive documents from CTA, and that it was anticipated CTA would be responding and producing documents to any remaining requests soon. To give CTA time to respond and produce documents to Plaintiff's remaining requests, and in light of the upcoming holidays, CTA asked for forty-five days to respond to the Complaint. As CTA explained, it was hoped that the issues in this matter could thus be narrowed and potential resolutions could potentially be addressed at the next Status Hearing. Plaintiff did not object. Accordingly, the Court set January 23, 2025 as the date for CTA to respond to the Complaint and set a further Status Hearing to occur on February 3, 2025.

On January 22, 2025, CTA responded to Plaintiff with produced documents, addressing Plaintiff's last remaining FOIA request at issue in this matter.

During the week of January 21, 2025, through and including January 28, 2025, lead counsels for the CTA regarding this matter have been out of the office, dealing with personal medical issues that arose. Accordingly, with these counsel out, CTA did not file its Answer to Plaintiff's Complaint on Thursday, January 23, 2025, intending to file its Answer during the week of January 27, 2025, in anticipation of counsels' medical issues having hopefully resolved by that time.

Almost immediately thereafter, at 7:46 am, the morning of Friday, January 24, 2025, Plaintiff filed a motion for default judgment. Nowhere in that motion, filed only hours after the date for the CTA to file an Answer, is there any explanation, beyond bare citation to statutes, of

any reason the Court should take so drastic a step as entering default against CTA. Plaintiff did not, and could not, set forth any claim of prejudice or service of the interests of justice to such support such a motion. In this case, that is only months old, and in which CTA has now responded to and produced documents to Plaintiff regarding all of his remaining FOIA requests at issue in this matter, Plaintiff obviously has not suffered, and will not suffer, any prejudice as a result of CTA answering the Complaint mere days after the deadline to otherwise do so.

**THE COURT SHOULD GRANT CTA'S MOTION AND
EXTEND THE TIME FOR CTA TO ANSWER, BY FOUR BUSINESS DAYS.**

It is well settled that “the law prefers that controversies be determined according to the substantive rights of the parties,” rather than by other determination such as by default judgment. *Godfrey Healthcare & Rehabilitation Center, LLC v. Toigo*, 2019 IL App (5th) 170473, ¶ 39. When deciding whether or not to allow a party to respond to a complaint, the “overriding consideration is whether substantial justice is being done between the litigants, and whether it is reasonable, under the circumstances, to compel the parties to go to trial on the merits.” *In re Haley D.*, 2011 IL 110886, ¶ 57.

In the instant case, given the relative youth of these proceedings and the fact that Plaintiff now has all the responses and documents it sought by its Complaint, including ones received even before this Complaint was filed, it is clear that Plaintiff would not suffer, and has not claimed to suffer, any prejudice from the Court granting CTA leave to file its Answer¹ on January 29, 2025 - four business days after the date to have filed it. Clearly, the law’s interest in making a determination according to the substantive rights of the parties and the interest in seeing

¹ A copy of CTA’s proposed Answer is attached hereto as Exhibit A.

substantial justice done between the parties, as well as the interests of judicial economy², all will be served by the Court granting CTA's Motion and granting CTA leave to file its Answer on January 29, 2025.

WHEREFORE, for the reasons set forth hereinabove, Defendant Chicago Transit Authority respectfully requests that the Court enter an order: extending the time, until January 29, 2025, for CTA to file its Answer to Plaintiff's Complaint; granting CTA leave to file its Answer to Plaintiff's Complaint on January 29, 2025; and for such other and further relief as may be just and proper.

Dated: January 29, 2025

KENT RAY

General Counsel of the Chicago Transit Authority

By: /s/ Kurt B. Drain
Kurt B. Drain, Chief Attorney

Attorney No. 90500
Chicago Transit Authority
567 West Lake Street
Chicago, IL 60661-1465
(312) 681-2932
kdrain@transitchicago.com

² In addition, the Court granting CTA leave to file its Answer on January 27, 2025, would clearly be in the interests of judicial economy. It would avoid the time otherwise expended in entry of a default judgment, which would be followed by CTA bringing a motion to vacate within 30 days, which the long and well established case law (e.g. *Godfrey Healthcare; In re Haley D.*, *supra*) would support the Court granting.

EXHIBIT A

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

NIKLAS HUNDER,)
) Case No. 2024CH05867
Plaintiff,)
)
v.)
)
CHICAGO TRANSIT AUTHORITY,)
)
Defendant.)

**DEFENDANT CHICAGO TRANSIT AUTHORITY'S
ANSWER TO COMPLAINT OF PLAINTIFF NIKLAS HUNDER**

NOW COMES Defendant Chicago Transit Authority ("CTA"), by and through its attorneys, Kent Ray, General Counsel, and Kurt B. Drain, Chief Attorney, and for its Answer to Plaintiff's Complaint states as follows:

COMPLAINT

1. NOW COMES Plaintiff NIKLAS HUNDER who brings this suit to overturn CHICAGO TRANSIT AUTHORITY's willful violation of the Illinois Freedom of Information Act in its refusal to conduct a reasonable search, issue a determination, and produce records regarding bus lane improvements and rail staff headcount in Chicago. In support of the Complaint, NIKLAS HUNDER states as follows:

ANSWER: CTA admits that Plaintiff Niklas Hunder ("Plaintiff") has commenced an action against the CTA containing allegations and requests for relief regarding the Illinois freedom of Information Act. This Paragraph 1 is introductory and does not contain actual allegations of fact such as would require admission or denial. To the extent that an admission or denial might be required, CTA denies such allegations.

2. 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.

ANSWER: This Paragraph 2 consists of the partial recitation of, plus some different language to, part of 5 ILCS 140/1, with that statute cited, and there are accordingly no factual allegations in this Paragraph 2 to admit or deny.

3. 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. To the extent that a response might be required, Defendant CTA admits that 5 ILCS 140/1 sets forth the public policy behind FOIA.

ANSWER: This Paragraph 3 consists of the partial recitation of, plus some different language to, part of 5 ILCS 140/1, with that statute cited, and there are accordingly no factual allegations in this Paragraph 3 to admit or deny. To the extent that a response might be required, CTA admits that restraints on access to information, to the extent permitted by FOIA, are limited exceptions pursuant to 5 ILCS 140/1.

4. Under 5 ILCS 140/1.2, "[a]ll records in the custody or possession 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.

ANSWER: This Paragraph 4 consists of the partial recitation of part of 5 ILCS 140/1, with that

statute cited, and there are accordingly no factual allegations in this Paragraph 4 to admit or deny.

5. Under 5 ILCS 140/3(d), "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. A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g)."

ANSWER: This Paragraph 5 consists of the recitation of 5 ILCS 140/3(d), with that statute cited, and there are accordingly no factual allegations in this Paragraph 5 to admit or deny.

6. Under 5 ILCS 140/3(e), "The time for response under this Section may be extended by the public body for not more than 5 business days from the original due date."

ANSWER: This Paragraph 6 consists of the partial and incomplete recitation of 5 ILCS 140/3(3), with that statute cited, and there are accordingly no factual allegations in this Paragraph 6 to admit or deny.

7. Under 5 ILCS 140/3(f), "When additional time is required for any of the above reasons, the public body shall, within 5 business days after receipt of the request, notify the person making the request of the reasons for the extension and the date by which the response will be forthcoming."

ANSWER: This Paragraph 6 consists of the partial and incomplete recitation of 5 ILCS 140/3(f), with that statute cited, and there are accordingly no factual allegations in this Paragraph 7 to admit or deny.

8. Plaintiff NIKLAS HUNDER made the FOIA requests at issue in this case.

ANSWER: On information and belief, CTA admits that Plaintiff has submitted FOIA requests to the CTA, in connection with which Plaintiff has since made allegations set forth in the Complaint he has filed in this matter.

9. Defendant CHICAGO TRANSIT AUTHORITY ("CTA") is a public body located in Cook County, Illinois.

ANSWER: CTA admits the allegations of Paragraph 9

10. On May 28th, 2024, NIKLAS HUNDER submitted a FOIA request to CTA for the following:

"Architectural/Engineering or any drawings/documents created showing the implementation/design of Bus Rapid Transit lanes/markings on Ashland Avenue between Cermak and Irving Park. Such drawings may include design features such as transit signal priority. Also, search for documents indicating a construction plan or documents that indicate the start and completion date of this project. An example of these documents are those made by reference from CDOT employee Dave Smith during an online meeting about Belmont bike lanes on 5/16/24.

Also search for any documents meeting the previous description for any lines identified by the Better Streets for Busses plan.

In the files provided, records in file types (but not limited to) .dwg, .dxf, .dwt, .dws, .obj, .dae, .fbx, .3ds, .rvt, .txt, or any raster image should be provided in addition to any image formats or .pdf formats.

The time frame for responsive records can extend from 1/1/2011 to the date of filing."

ANSWER: CTA admits that Plaintiff sent an email on the noted date that included the language quoted in Paragraph 10.

11. On June 4th, 2024, CTA acknowledged receipt of the request, assigned reference

number FOIA 2024-0584 to the matter, and notified NIKLAS HUNDER under 5 ILCS 140/3(e) that it was extending CTA 's time to respond to his request by 5 business days to June 11th, 2024.

ANSWER: CTA admits the allegations of Paragraph 11.

12. A true and correct copy of the acknowledgement/extension letter quoting the request is attached as Exhibit 1.

ANSWER: CTA admits that the document attached as Exhibit 1 to Plaintiff's Complaint appears to be an accurate, although redacted, copy of correspondence CTA sent to Plaintiff on June 4, 2024.

13. As of the date of this filing, CTA has failed to comply with FOIA and has not produced records responsive to the request.

ANSWER: The allegation that CTA has failed to comply with FOIA calls for a legal conclusion to which no response is required, and to the extent that a response may be deemed necessary, that allegation is denied. CTA admits that, as of the date that Plaintiff filed his Complaint in this matter, CTA had not produced records responsive to Plaintiff's request submitted on May 28, 2024, but CTA denies that it has failed to respond to or to produce records responsive to that request.

14. From May 28th, 2024, continuing to present, CTA has been aware of FOIA's statutory deadlines pertaining to the request.

ANSWER: CTA admits the allegations of Paragraph 14.

15. All public bodies are required to take annual Public Access Counselor trainings.

ANSWER: The allegations of this Paragraph 15 call for a legal conclusion to which no response is required. To the extent that a response might be required, CTA admits that 5 ILCS 140/3.5 sets forth certain training requirements for FOIA officers but denies that those requirements extend to "public bodies" as a whole.

16. The PAC training for the year of and year preceding the request in this case indicate the deadlines to respond to requests.

ANSWER: The CTA objects that the allegations of this Paragraph 16, as stated by Plaintiff, are too vague, ambiguous and confusing to be reasonably susceptible to admission or denial.

Subject to and notwithstanding these objections to the impropriety of Plaintiff's allegations, to the extent that an answer might be required, CTA admits that FOIA officers at CTA had taken and completed PAC training in the time period preceding the requests that Plaintiff emailed to CTA on May 28, 2024.

17. Upon information and belief, defendant's FOIA officer took the required PAC training prior to the deadline to respond to the request.

ANSWER: The CTA objects that the allegations of this Paragraph 17, as stated by Plaintiff, are too vague, ambiguous and confusing to be reasonably susceptible to admission or denial. Subject to and notwithstanding these objections to the impropriety of Plaintiff's allegations, to the extent that an answer might be required, CTA admits that CTA FOIA officers had completed PAC FOIA training in the time period preceding the requests that Plaintiff emailed to CTA on May 28, 2024.

18. On June 3rd, 2024, NIKLAS HUNDER submitted a FOIA request to CTA for the following:

"When a Rail Operator or Rail Manager training class took place or is scheduled to take place in 2024.

How many employees were enrolled in each unique class, how many passed the class, and what positions those who passed were hired into (RTO, CSO, CRO, extra board, tower workers, signal operations, etc.) broken down by month. Records matching the previous definition but not showing the monthly breakdown should still be provided.

Headcount of all rail operations staff per month broken down by Rapid Transit Operator, Combined Rail Operator, Combined Service Operator, Switch Worker, Tower Worker, and Extra Board.

How many of each position were either terminated or resigned for each month and how many employees were hired into any of those positions by month. Records should show the reason for terminating an employee (not just any reason an employee could be terminated). Records

matching the previous definition but not providing a monthly breakdown should still be provided.

For the first part, one type of matching record would be titled "rapid transit operator initial training class" followed by the class number.

For items two to four, CTA has this type of record in its HR records as demonstrated in its response to 2024-0193.

For Items three and four, CTA provided similar data in its response to 2023-1139.

The time frame for responsive records can extend from 1/1/2024 to 10 days before the fulfillment of this request."

ANSWER: *CTA admits that Plaintiff sent an email on the noted date that included the language quoted in Paragraph 18.

19. On June 10th, 2024, CTA acknowledged receipt of the request, assigned reference number FOIA 2024-0607 to the matter, and notified NIKLAS HUNDER under 5 ILCS 140/3(e) that it was extending CTA's time to respond to his request by 5 business days to June 17th, 2024.

ANSWER: CTA admits the allegations of Paragraph 19.

20. A true and correct copy of the acknowledgement/extension letter quoting the request is attached as Exhibit 2.

ANSWER: CTA admits that the document attached as Exhibit 2 to Plaintiff's Complaint appears to be an accurate, although redacted, copy of correspondence CTA sent to Plaintiff on June 10, 2024.

21. As of the date of this filing, CTA has failed to comply with FOIA and has not produced records responsive to the request.

ANSWER: The allegation that CTA has failed to comply with FOIA calls for a legal conclusion to which no response is required, and to the extent that a response might be deemed necessary, that allegation is denied. CTA admits that, as of the date that Plaintiff filed his Complaint in this matter,

CTA had not produced records responsive to Plaintiff's request submitted on June 3, 2024, but CTA denies that it has failed to respond to or to produce records responsive to that request.

22. From June 3rd, 2024, continuing to present, CTA has been aware of FOIA's statutory deadlines pertaining to the request.

ANSWER: CTA admits the allegations of Paragraph 22.

23. All public bodies are required to take annual Public Access Counselor trainings.

ANSWER: The allegations of this Paragraph 23 call for a legal conclusion to which no response is required. To the extent a response might be required, CTA admits that 5 ILCS 140/3.5 sets forth certain training requirements for FOIA officers, but denies that those requirements extend to "public bodies" as a whole.

24. The PAC training for the year of and year preceding the request in this case indicate the deadlines to respond to requests.

ANSWER: The CTA objects that the allegations of this Paragraph 24, as stated by Plaintiff, are too vague, ambiguous and confusing to be reasonably susceptible to admission or denial. Subject to and notwithstanding these objections to the impropriety of Plaintiff's allegations, to the extent that an answer might be required, CTA admits that FOIA officers at CTA had taken and completed PAC training in the time period preceding the requests that Plaintiff emailed to CTA on June 3, 2024.

25. Upon information and belief, defendant's FOIA officer took the required PAC training prior to the deadline to respond to the request.

ANSWER: The CTA objects that the allegations of this Paragraph 25, as stated by Plaintiff, are too vague, ambiguous and confusing to be reasonably susceptible to admission or denial. Subject to and notwithstanding these objections to the impropriety of Plaintiff's allegations, to the extent

that an answer might be required, CTA admits that CTA FOIA officers had completed PAC FOIA training in the time period preceding the requests that Plaintiff emailed to CTA on June 3, 2024.

**COUNT I – MAY 28th, 2024 FOIA REQUEST
CTA'S FOIA VIOLATION**

26. Paragraphs 10-17, above, are incorporated by reference.

ANSWER: CTA reasserts and incorporates by reference, as though set forth verbatim herein, its responses set forth above to Paragraphs 10-17.

27. CTA is a public body under FOIA.

ANSWER: CTA admits the allegations of Paragraph 27

28. The records sought in the FOIA request include non-exempt public records or non-exempt sections of public records of CTA.

ANSWER: The allegations of this Paragraph 28 call for a legal conclusion to which no response is required.

29. CTA has failed to adequately search for records responsive to the request.

ANSWER: CTA denies the allegations of Paragraph 29.

30. CTA violated FOIA by failing to produce records responsive to the request by the required extended deadline.

ANSWER: CTA denies the allegations of Paragraph 30.

31. CTA willfully and intentionally, or otherwise in bad faith failed to comply with FOIA.

ANSWER: CTA denies the allegations of Paragraph 31.

**COUNT II – JUNE 3RD, 2024 FOIA REQUEST
CTA'S FOIA VIOLATION**

32. Paragraphs 18-25, above, are incorporated by reference.

ANSWER: CTA reasserts and incorporates by reference, as though set forth verbatim herein, its responses set forth above to Paragraphs 18-25.

33. CTA is a public body under FOIA.

ANSWER: CTA admits the allegations of Paragraph 33.

34. The records sought in the FOIA request include non-exempt public records or non-exempt sections of public records of CTA.

ANSWER: The allegations of this Paragraph 28 call for a legal conclusion to which no response is required.

35. CTA has failed to adequately search for records responsive to the request.

ANSWER: CTA denies the allegations of Paragraph 35.

36. CTA violated FOIA by failing to produce records responsive to the request by the required extended deadline.

ANSWER: CTA denies the allegations of Paragraph 36.

37. CTA willfully and intentionally, or otherwise in bad faith failed to comply with FOIA.

ANSWER: CTA denies the allegations of Paragraph 37.

DEFENDANT CHICAGO TRANSIT AUTHORITY'S
AFFIRMATIVE DEFENSES

CTA hereby states the following affirmative and additional defenses to the Complaint:

FIRST AFFIRMATIVE DEFENSE:
Non-Exempt Records Have Been Produced

1. As of July 26, 2024, CTA had produced non-exempt records in response to Plaintiff's May 28, 2024 FOIA Request, including: documents regarding Ashland Bus Rapid Transit

including an appendix of the Environmental Assessment and a link to other documents; and responsive documents related to other projects.

2. As of January 22, 2025, 2024, CTA has produced non-exempt records in response to Plaintiff's June 3, 2024 FOIA Request, including: a list of the RTO training classes held or scheduled to be held in 2024; a spreadsheet showing outcome of RTO Training classes in 2024 through June 29, 2024; a file with information regarding individuals attending the RTO training as of June 27, 2024; a link to published combined headcounts for the positions named in the request; and an Excel workbook with information as to monthly headcount for each position requested from January to June 2024, terminations per month in 2024 for the positions requested and reasons, new hires/transitions data for each position requested, and transitions out of the requested positions per month in 2024.

3. With non-exempt documents responsive to Plaintiff's noted FOIA Requests already produced in this matter, Plaintiff's requests for injunctive relief ii through vi in its prayers for relief for both counts asserted are moot.

SECOND AFFIRMATIVE DEFENSE:
Plaintiff Is a Recurrent Requester to Whom 5 ILCS 140/3 Does Not Apply

4. "'Recurrent requester", as used in Section 3.2 of the Illinois Freedom of Information Act ("FOIA") (this "Act"), means a person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period." 5 ILCS 140/2(g).

5. As of January 11, 2024, Plaintiff had been designated a "recurrent requester," pursuant to Section 3.2 of the Act.

6. Plaintiff was aware that he had been designated a "recurrent requester" when he

submitted his FOIA Requests to CTA on May 28, 2024 and on June 3, 2024.

7. Plaintiff was aware that he had been designated a “recurrent requester” when he filed his Complaint in this matter.

8. “The time periods for compliance or denial of a request to inspect or copy records set out in this Section shall not apply to requests for records made for a commercial purpose, requests by *a recurrent requester*, or voluminous requests. Such requests shall be subject to the provisions of Sections 3.1, 3.2, and 3.6 of this Act, as applicable.” 5 ILCS 140/3(i) (Emphasis Added).

9. When Plaintiff submitted his FOIA Requests to CTA on May 28, 2024 and on June 3, 2024, his requests were subject to the response provisions applicable to requests from a “recurrent requester.

10. Therefore, the statutory response requirements set forth in Plaintiff’s Complaint are not relevant to a recurrent requester, and Plaintiff is not entitled to relief for any alleged violations of FOIA by the CTA.

WHEREFORE, Defendant Chicago Transit Authority requests that the Court enter an order: dismissing Counts I and II of Plaintiff’s Complaint and Plaintiff’s demands i through vii therein; and for such other and further relief as may be just and proper.

Dated: January 29, 2025

KENT RAY
General Counsel of the Chicago Transit Authority

By: /s/ Kurt B. Drain
Kurt B. Drain, Chief Attorney

Attorney No. 90500
Chicago Transit Authority
567 West Lake Street
Chicago, IL 60661-1465
(312) 681-2932
kdrain@transitchicago.com

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, hereby certifies that he caused a copy of the foregoing Defendant Chicago Transit Authority's Motion for Extension of Time to Answer Complaint to be served on the counsel/part(ies) listed below via Odyssey eFile Illinois system and via email on January 29, 2025:

Niklas Hunder
4522 N. Hamilton Ave., Apt. # 1
Chicago, Illinois 60625
1 (440) 600-4413
nikhunder@gmail.com
Plaintiff

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: January 29, 2025

By: /s/ Kurt B. Drain