

FILED DATE: 12/20/2024 4:21 PM 2024CH09985

DEFENDANT CHICAGO TRANSIT AUTHORITY'S
MOTION TO DISMISS COUNTS II, III, V AND VI
AND STRIKE PORTIONS OF PLAINTIFF'S COMPLAINT.
PURSUANT TO 735 ILCS 5/2-615

The Court should grant Defendant Chicago Transit Authority's Motion to Dismiss Counts II, III, V and VI and Strike Portions of Plaintiff's Complaint, Pursuant to 735 ILCS 5/2-615 (the "CTA's Motion"), because they are insufficient to state claims by Counts II, III, V and VI against the Chicago Transit Authority (the "CTA") as the pleaded facts show the CTA did not violate Illinois's Freedom of Information Act ("FOIA"), and there are no pleaded facts to support Plaintiff's conclusory demands for imposition of civil penalties.

Based upon the pleaded allegations in the Complaint filed by Plaintiff Niklas Hunder (‐Plaintiff‐), the CTA properly moves the Court to dismiss Counts II, III, V and VI asserted against it, and for the Court to strike Plaintiff’s demands for civil penalties, as insufficient at law.

A. The Court Should Dismiss Counts II, III, V and VI of Plaintiff's Complaint.

As explained in greater detail hereinbelow, the Court should grant the CTA's Motion and dismiss Counts II, III, V and VI of Plaintiff's Complaint, under Section 2-615, because Plaintiff's allegations do not support those purported causes of action against the CTA, as a matter of law.

Pursuant to Section 2-615, a motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). A defendant properly moves for dismissal of a complaint that is substantially insufficient at law. 735 ILCS 5/2-615(a); *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008) (motion to dismiss under Section 2-615 tests legal sufficiency of complaint).

To survive a motion to dismiss under Section 2-615, a plaintiff "must allege specific facts supporting each element of the cause of the action." *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 406 Ill. App.3d 325, 336 (2010). A plaintiff cannot rely on mere conclusions of law or facts unsupported by specific factual allegations. *Id.*; *See also Pooh-Bah Enterprises*, 232 Ill. 2d at 473. Further, a motion to dismiss under Section 2-615 is properly granted where the allegations in the complaint affirmatively show that the plaintiff cannot succeed on its claims. *R and B Kapital Development, LLC v. North Shore Community Bank and Trust Co.*, 358 Ill.App.3d 912, 919 (2005); *Paxson v. Board of Education School District, No. 87*, 276 Ill.pp.3d 912 (1995).

Here, the allegations of Plaintiff's own Complaint establish the lack of basis for his attempted claims against the CTA in Counts II, III, V and VI.

1. Plaintiff's Allegations Show the CTA Did Not Violate FOIA as to Plaintiff's Requests.

In his Complaint, Plaintiff admits he had been a recurrent requester, pursuant to 5 ILCS 140/2(g)(iii), since January 11, 2024. (Complaint, p. 3, ¶ 12).

Pursuant to 5 ILCS 140/3.2, addressing FOIA requests by recurrent requesters:

- (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.
- (c) Unless the records are exempt from disclosure, a public body shall comply with a request within a reasonable period considering the size and complexity of the request.

5 ILCS 140/3.2(a-c)

In his Complaint, Plaintiff admits that, given his status as a recurrent requester, the above-noted statutory provisions apply to him and his FOIA requests to the CTA. Problematically for Plaintiff, the allegations of his Complaint show that, by Counts II, III, V and VI, Plaintiff has not alleged facts sufficient to state sustainable causes of action against the CTA under these provisions.

2. Plaintiff Cannot Prevail on Count II Regarding His June 20, 2024 FOIA Request.

Plaintiff states: that he submitted a FOIA request to the CTA on June 20, 2024 (Complaint, p.5, ¶ 22); that, on June 27, 2024, the CTA responded to him, with a letter, noting *inter alia* Plaintiff's status and forthcoming treatment as a recurrent requester, that is attached as to the

Complaint as an exhibit (Id., p. 5, ¶ 23, p.6, ¶ 24; Exh. 2); that the CTA further responded on July 22, 2024, notifying him that the second aspect of his request was being treated as unduly burdensome and inviting him to try to reduce the scope to manageable proportions, and estimating a production on August 19, 2024 for the remainder of the request, via a letter attached as an exhibit to the Complaint (Id., p. 6, ¶¶ 25, 26; Exh. 3); and that the CTA further responded on October 4, 2024, with a letter in regard thereto (Id., p. 6, ¶¶ 27, 28; Exh. 4) and producing responsive documents to the first part of the request, that are attached as an exhibit to the Complaint (Id.; Exh. 5). Plaintiff also states that the CTA had engaged in multiple further resolution efforts, with Plaintiff, through July and August of 2024, to try to reduce the scope of Plaintiff's requests, via emails that Plaintiff attached as an exhibit to the Complaint (Id., p. 7, ¶¶ 29, 30, Exh. 6), which efforts ultimately did not result in further production.

Plaintiff then claims, without any supporting facts, that the CTA violated FOIA because it supposedly "failed to finish the conferral process for this request," and that it supposedly "fail[ed] to properly confer in an attempt to reduce this request to manageable proportions." (Complaint, p. 16, ¶¶ 91-92). There is simply no basis for these assertions. Plaintiff's own allegations and exhibits show that the CTA did everything it was required to do under FOIA. They show that the CTA timely responded to Plaintiff's requests, with correspondence with the required substance, and conferred with Plaintiff to try to reduce the scope of his burdensome requests. There is no requirement that the CTA continue to confer with Plaintiff when efforts to do so are unfruitful, and there is no requirement that conferring and communication efforts must result in a further production. Per Plaintiff's own allegations and documents, the CTA fulfilled its obligations under FOIA regarding this request, and Plaintiff cannot maintain his Count II. The Court should thus dismiss Plaintiff's Count II.

3. Plaintiff Cannot Prevail on Count III Regarding His June 20, 2024 FOIA Request.

As explained above, per Plaintiff's own allegations, the CTA timely responded to, and produced documents responsive to one aspect of, the June 20, 2024 request from Plaintiff, and further timely responded to and engaged with Plaintiff in communications to try to reduce Plaintiff's unduly burdensome request to manageable proportions. (Complaint, p. 5, ¶ 23, p.6, ¶ 24; Exh. 2; p. 6, ¶¶ 25, 26; Exh. 3; p. 6, ¶¶ 27, 28; Exh. 4; Exh. 5; p. 7, ¶¶ 29, 30, Exh. 6). There is simply no basis in Plaintiff's Complaint for his conclusory assertions that the CTA somehow "failed to follow proper procedures for responding to this request" (Complaint, p. 17, ¶ 97) and that the CTA somehow "violated FOIA by failing to produce records responsive to this request in a reasonable amount of time." (Id., p. 17, ¶ 98). By Plaintiff's own allegations and exhibits, the CTA timely and correctly responded, produced responsive documents, further timely and properly responded and then engaged in multiple resolution efforts. Thus, by Plaintiff's own Complaint, the CTA fulfilled its obligations under FOIA in regard to this request, and Plaintiff cannot maintain his Count III. The Court should thus dismiss Plaintiff's Count III.

4. Plaintiff Cannot Prevail on Count V Regarding His July 26, 2024 FOIA Request.

Plaintiff states: that he submitted a FOIA request to the CTA on July 26, 2024 (Complaint, p.10, ¶ 49); that, on August 2, 2024, the CTA responded to him, with a letter, noting *inter alia* Plaintiff's status and forthcoming treatment as a recurrent requester, that is attached as to the Complaint as an exhibit (Id., p. 11, ¶¶ 50, 51; Exh. 8); that the CTA later further responded to Plaintiff, on August 26, 2024, that his request was unduly burdensome and inviting Plaintiff to confer to try to reduce the request to manageable proportions, via a letter attached as an exhibit to the Complaint (Id., p. 11, ¶52, p.12, ¶ 53; Exh. 9); that the CTA engaged in multiple further confer efforts through August of 2024, to try to reduce the scope of Plaintiff's requests to manageable

proportions, via correspondence that Plaintiff attached as exhibits to the Complaint (Id., p. 12, ¶¶ 54-56, Exh. 10), which ultimately did not result in an agreement for production of records.

Plaintiff then claims that the CTA allegedly violated FOIA because it supposedly “failed to finish the conferral process for this request,” and that it somehow “violated FOIA by failing to properly confer in an attempt to reduce this request to manageable proportions.” (Complaint, p. 19, ¶¶ 109, 110). There is simply no basis for these assertions, per Plaintiff’s own allegations which show that the CTA did everything it was required to do under FOIA. Per the allegations and exhibits of Plaintiff’s Complaint, the CTA timely and properly responded to Plaintiff’s request and further corresponded with him with notification that his request was unduly burdensome and then conferred with Plaintiff to try to reduce the scope of his unduly burdensome requests. There is no requirement that the CTA continue to confer and negotiate with Plaintiff when efforts to do so are unfruitful, and there is no requirement that such efforts must result in a record production. Per Plaintiff’s own allegations and documents, the CTA fulfilled its obligations under FOIA in regard to this request, and Plaintiff thus cannot maintain his Count V. The Court should thus dismiss Plaintiff’s Count V.

5. Plaintiff Cannot Prevail on Count VI Regarding His July 30, 2024 FOIA Request.

Plaintiff states: that he submitted a FOIA request to the CTA on July 30, 2024 (Complaint, p.13, ¶ 66); that, on August 7, 2024, the CTA responded to him, with a letter, noting *inter alia* Plaintiff’s status and forthcoming treatment as a recurrent requester, that is attached as to the Complaint as an exhibit (Id., p. 13, ¶ 67, p.14, ¶ 68; Exh. 11); *~*~ that the CTA later further responded on August 29, 2024, that his request was unduly burdensome and that the CTA invited him to confer to try to reduce the request to manageable proportions, via a letter attached as an exhibit (Id., p. 14, ¶¶69, 70, Exh. 12); that the CTA engaged in multiple further confer efforts

through August, to try to reduce the scope of Plaintiff's requests, via correspondence, that Plaintiff attached as exhibits (Id., p. 14, ¶¶ 71-73, Exh. 13), which did not result in an agreement by Plaintiff to reduce the scope of his burdensome request or in a document production.

Plaintiff then claims, without supporting facts, that the CTA violated FOIA because it supposedly "failed to finish the conferral process for this request," and that it somehow supposedly "fail[ed] to properly confer in an attempt to reduce this request to manageable proportions." (Id., p. 19, ¶¶ 109, 110). There is no basis for these assertions, per Plaintiff's own Complaint. Plaintiff's own allegations and exhibits show that the CTA did everything it was required to do under FOIA in regard to this request; it timely and properly responded to Plaintiff's request, further corresponded with Plaintiff about the unduly burdensome nature of the request, and conferred with him to try to reduce the scope of his unduly burdensome requests. There is no requirement that the CTA continue to confer with Plaintiff when efforts to do so are unfruitful, and there is no requirement that confer efforts must result in a further production. Per Plaintiff's own allegations and documents, the CTA fulfilled its obligations under FOIA in regard to this request, and Plaintiff thus cannot maintain his Count VI. The Court should thus dismiss Plaintiff's Count VI.

In sum, for Plaintiff's failure, by its Complaint, to set forth factual allegations sufficient to state claims under FOIA against the CTA, by his Counts II, III, V and VI, while actually setting forth allegations precluding such claims, the Court should dismiss Counts II, III, V and VI of Plaintiff's Complaint.

B. The Court Should Strike Plaintiff's Demands for Payment of Civil Penalties.

The Court should grant the CTA's Motion and strike, from all of Plaintiff's Counts I through VI, the demands that the CTA pay civil penalties, because Plaintiff's allegations do not support his conclusory and factually bereft demands for civil penalties under FOIA.

Pursuant to Section 2-615, a court properly strikes out designated immaterial matter, or has designated part of a pleading stricken as substantially insufficient in law. 735 ILCS 2-615(a)(b). Further, it is well settled that Illinois is a fact pleading state. *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996). A plaintiff “must allege specific facts supporting each element of the cause of action, ‘and the court will not admit conclusions of law and conclusory allegations not supported by specific facts’.” *Callaghan v. Village of Clarendon Hills*, 401 Ill.App.3d 287, 300 (2010); *See also Napleton*, 229 Ill. 2d at 305 (because Illinois is a fact-pleading jurisdiction, a plaintiff must allege facts, not mere conclusions).

Pursuant to 5 ILCS 140/11 (j), if a 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. In assessing the civil penalty, the court shall consider in aggravation or mitigation the budget of the public body and whether the public body has previously been assessed penalties for violations of this Act.” 5 ILCS 140/11(j). However, to warrant the imposition of civil penalties for failure to comply with FOIA, the public body defendant “not only must have intentionally failed to comply with the FOIA, but must have done so deliberately, by design, and with a dishonest purpose.” *Edgar County Watchdogs v. Joliet Township*, 2023 IL App (3d) 210520, ¶ 30 (public body that failed to produce documents it was later ordered to produce by court, under FOIA, is not to pay civil penalties because no dishonesty shown); *See also Williams v. Bruscato*, 2021 IL App (2d) 190971, ¶14 (civil penalties under FOIA not awarded where plaintiff made only conclusory allegations, unsupported by specific facts, that defendant's withholding of requested documents were willful and intentional failures or otherwise in bad faith).

Here, in Counts I through VI, for his demands that the Court order the CTA to pay civil penalties under FOIA, Plaintiff has simply alleged boilerplate conclusory allegations, unsupported by any specific facts, that the CTA has “willfully and intentionally, or otherwise in bad faith failed to comply with FOIA.” (Complaint, p. 16, ¶ 87, v; p. 16, ¶ 93, p.17, v; p. 17, ¶ 99, v; p.18, ¶ 105, v; p.19, ¶ 111, v; p. 20, ¶ 117, v). In none of his Counts I through VI, or in any of the incorporated pleadings therein, does Plaintiff ever even conclusorily allege that the CTA has failed to comply with FOIA deliberately, by design, and with a dishonest purpose, much less set forth any facts showing that the CTA has actually intentionally failed to comply with the FOIA and also has done so deliberately, by design, and with a dishonest purposes. To the contrary, Plaintiff’s allegations actually show that the CTA has always responded to Plaintiff’s requests and often tried to work with Plaintiff to find a solution to issues presented by Plaintiff’s burdensome requests. Plaintiff’s allegations not only actually show that the CTA not violated FOIA, they quite clearly show that the CTA could not have intentionally done so, much less done so deliberately, by design, and with a dishonest purposes.

Accordingly, the allegations of Plaintiff’s Complaint and all the counts contained therein all show that Plaintiff’s demands, that the CTA be ordered to pay civil penalties - set forth as demand v in each of Counts I through VI, are substantially insufficient in law and should thus be stricken by the Court.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, Defendant Chicago Transit Authority requests that the Court enter an order: dismissing Counts II, III, V and VI of Plaintiff’s Complaint; striking demand v for payment of civil penalties from Counts I, II, III, IV, V and VI; and for such

other and further relief as may be just and proper.

Dated: December 20, 2024

KENT RAY
General Counsel of the Chicago Transit Authority

By: /s/ Kurt B. Drain
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused a copy of the foregoing Defendant Chicago Transit Authority's Motion to Dismiss, and Strike Portions of, Plaintiff's Complaint Pursuant to 735 ILCS 2-615 to be served on the counsel/part(ies) listed below via Odyssey eFile Illinois system and via email on December 20, 2024:

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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: December 20, 2024

By: /s/ Kurt B. Drain
Kurt B. Drain