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

NIKLAS HUNDER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2024CH09985
	)	
CHICAGO TRANSIT AUTHORITY,	)	
	)	
Defendant.	)	

I. INTRODUCTION

The Court shall deny the defendant, CHICAGO TRANSIT AUTHORITY's ("CTA") Motion to Dismiss Counts II, III, V, VI and Strike Portions of Plaintiff's Complaint, Pursuant to 735 ILCS 5/2-615 because as expanded on below, existing case law and opinions of the Public Access Counselor show, CTA "willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith," when it refused to engage in good-faith dialogue with Plaintiff to narrow his request.

II. THE COURT SHOULD DENY CTA'S MOTION

A. Existing Case Law and Opinions of the Public Access Counselor Nullifies CTA's Claims of Innocence

CTA's Motion to Dismiss asks this court to disregard existing determinations from case law and of binding opinions issued by the Public Access Counselor. The Motion to Dismiss seeks to tailor the facts to CTA's incorrect interpretation of the law. As further explained in detail, Defendant attempts to apply the same rationale for dismissal of Counts II, III, V, and IV despite the facts differing between exchanges made for each FOIA request to bring Plaintiff's requests to reasonable workloads for a public body.

The American Heritage Dictionary defines “opportunity” as “a chance for progress or advancement." The American Heritage Dictionary 872 (2d coll. ed. 1982). Black’s Law Dictionary defines “confer” as “to hold a conference; to consult with one” another." Black's Law Dictionary (11th ed. 2019).

In, *Sargent Shriver National Center on Poverty Law, Inc. v. Board of Education of City of Chicago*, 2018 IL App (1st) 171846, the Illinois Appellate Court issued guidance that a public body must “engage in the good-faith dialogue required by that [5 ILCS 140/3(g)] section” before denying a requester’s request as unduly burdensome.

This interpretation was cited as the legal basis for Public Access Opinion 21-001 which determined that a public body “section 3(g) requires a public body to engage in a ‘good-faith dialogue’ when the requester seeks an opportunity to confer" about narrowing a request to manageable proportions.” Public Access Opinion 21-001 (Request for Review - 2020 PAC 65160 p.10) (January 26, 2021). In addition, the Public Access Counselor determined that a public body must “follow through in good faith if the requester accepts the public body's offer.” Public Access Opinion 21-001 (Request for Review - 2020 PAC 65160 p.) (January 26, 2021) p.16). When interpreting any statute “[the] statute should be read as a whole and construed so that no part of it is rendered meaningless or superfluous”. CTA’s wishful interpretation fails to apply this determination to Section 3(g) and to 5 ILCS 140 in its entirety. *People v. Jones*, 214 Ill. 2d 187, 193 (2006).

Defendant’s Motion to Dismiss is purely based upon its preferred interpretation of 5 ILCS 140 and offers no citation of the law itself or any existing precedent because it does not exist and

attempting to do so would undermine its shallow attempt to relieve itself of further production of records and damages owed to Plaintiff.

B. Merit of Count II (Violation of 5 ILCS 140/3(g))

The last communication between Plaintiff and Defendant shown in Exhibit 6 attached to the Complaint (Complaint, p.7 ¶ ¶ 29, 30, Exh. 6) shows that Plaintiff accepted Defendant's suggestion that he reduce the time frame and further followed up with Defendant to confirm his modification made the request no longer burdensome to process. Defendant never responded to Plaintiff's request. By failing to respond to Plaintiff, Defendant failed to "follow through in good faith if the requester accepts the public body's offer," Defendant violated 5 ILCS 140 3(g). Public Access Opinion 21-001 (Request for Review - 2020 PAC 65160 p.16) (January 26, 2021).

In Public Access Option 21-001, the PAC found that "Section 3(g) unambiguously provides that a prerequisite for denying a request as unduly burdensome is to offer to communicate with the requester *about possibilities for reducing the scope of the request to manageable proportions*" (emphasis added). (Request for Review - 2020 PAC 65160 p.10) (January 26, 2021). Defendant's interpretation of "opportunity to confer" allows it to send one response that provides no additional information to inform the requester on how they may reduce their request to manageable proportions. Without Defendant producing any additional information about its records other than it being "thousands and thousands of notifications," it produced no additional information that could help the requester sufficiently narrow his request.

C. Merit of Count III (Violation of 5 ILCS 140/3.2(c))

The basis of Defendant's Motion to Dismiss for count III of the Complaint is that Defendant eventually responded to the request and that response time is irrelevant despite the text of 5 ILCS

140. “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(c).

Item 1 of Plaintiff’s June 20th, 2024 response asked for the following:

> “Exit Surveys and employee satisfaction surveys administered by any CTA personnel after the employee was fired, terminated, resigned, discharged, etc. from 1/1/22 to 5 business days before this request is filled. In the event of documents that would typically be exempt under 5 ILCS 140/7(f), the head of the public body Dorval R. Carter referenced these documents in the Q2/May 2024 subject matter hearing held by the Committee on Transportation and Public Way on May 30th, 2024.” (Id., p.5 ¶ ¶ 22; Exh. 4).

As described in the Complaint, “CTA is also providing you with an estimate of the time required by CTA to complete the processing of the remainder of your request. CTA anticipates at this time that it will need until **August 19, 2024** to complete the remainder of your request.” (Id., p.6 ¶ ¶ 25). Also ignored by the Defendant is the attestation provided in the Complaint that “In its partial response to NIKLAS HUNDER on October 4th, 2024, 33 business days after its estimated response date, and 74 business days after the request was filed, CTA has violated 5 ILCS 140/3.2(c) by not providing a response “within a reasonable period considering the size and complexity of the request.” 5 ILCS 140/3.2(c). Plaintiff agreed to the estimated response of August, 19th, 2024 for the production of records to the first part of his complaint.

Exhibit 5, the responsive record for part one of Plaintiff’s June 20th, 2024 request — attached to the Complaint is a 61-page, unredacted copy online survey provided in a .PDF format for delivery to Plaintiff. Defendant is arguing and wants the court to strike this count from the

complaint and affirm that 74 business days (and 33 business days after its estimate) after a request was filed to produce an unredacted, 61-page document is a response "within a reasonable period considering the size and complexity of the request" 5 ILCS 140/3.2(c). Defendant believes that a processing rate of less than 1 page/day of this request is acceptable. This is an unreasonable amount of time considering the size and complexity of item 1 of the request.

D. Merit of Count V (Violation of 5 ILCS 140/3.2(c))

Defendant, in using the same narrative for its justification for dismissal as it did for Count III of the Complaint omits a significant difference. Defendant indicated in the last correspondence with Plaintiff that "[It] will update [Plaintiff] as soon as possible next week on this one." (Complaint, Exh, 10). In Public Access Option 21-001, the PAC found that "Section 3(g) unambiguously provides that a prerequisite for denying a request as unduly burdensome is to offer to communicate with the requester *about possibilities for reducing the scope of the request to manageable proportions*" (emphasis added). (Request for Review - 2020 PAC 65160 p.10) (January 26, 2021). In indicating that it would review Plaintiff's revised request and make a determination if the revised request was no longer unduly burdensome to process, the fate of the request (whether it has been reduced to a reasonable workload or was still not in compliance) was out of the control of Plaintiff. In sending the follow-up communication to Defendant on September 12th, 2024, Plaintiff exercised his only administrative remedy to obtain a determination about the status of the request.

In arguing, "there is no requirement that such efforts must result in record production," Defendant wishes to disregard precedent detailed in Section A of this motion, ignore its own communications with Plaintiff, and seek affirmation that misleading the Defendant on the status

of his request and then use it as justification for noncompliance is allowable practice under 5 ILCS 140/3. (Mot. To Dismiss and Strike, p.5-6).

E. Merit of Count VI (Violation of 5 ILCS 140/3.2(c))

Defendant, in using the same narrative for its justification for dismissal as it did for Counts III and V of the Complaint omits the significant differences in addition to reporting the series of events for this request incorrectly.

Defendant indicated in the last correspondence with Plaintiff that "[It is] working here to determine if that change alone will make [Plaintiff's] request manageable to process" (Complaint, Exh, 13). In Public Access Option 21-001, the PAC found that "Section 3(g) unambiguously provides that a prerequisite for denying a request as unduly burdensome is to offer to communicate with the requester *about possibilities for reducing the scope of the request to manageable proportions*" (emphasis added). (Request for Review - 2020 PAC 65160 p.10) (January 26, 2021). In indicating that it would review Plaintiff's revised request and make a determination if the revised request was no longer unduly burdensome to it, the fate of the request (whether it has been reduced to a reasonable workload or was still not in compliance) was out of the control of Plaintiff.

Defendant incorrectly states that "CTA engaged in multiple further conferral efforts through August, to try to reduce the scope of Plaintiff's request." Defendant references Exhibit 13 as the exhibit showing "multiple conferral effort" when the exhibit clearly shows that Plaintiff offered one revision, not multiple. It also shows that by not responding to Plaintiff's attempt to confer at least once, Defendant never upheld its half of the conferring process as defined by Black's Law Dictionary.

Defendant's failure to engage in "good faith dialogue" with Plaintiff does not meet the requirements of 5 ILCS 140/3(g) therefore, Defendant improperly claimed the Section 3(g) exemption when it failed to confer with Plaintiff and should have responded to the request within 21 business days as outlined in 5 ILCS 140/3.2.

F. The Court Does Not Need to Strike Plaintiff's Request to Assess Civil Penalties

While Plaintiff already provided the necessary details and applicable exhibits to demonstrate the requirement for a verdict of guilt in his Compliant, with the additional production of details above, CTA's claims that "Plaintiff's allegations do not support his conclusory and factually bereft demands for civil penalties" is now moot. Defendant's motion is so overreaching that it seeks to dismiss all civil penalties despite the overwhelming evidence for all counts plus additional legal precedent presented above and additionally in the absence of it trying to dismiss counts I and IV of the Complaint.

If Defendant did not intend to "willfully, and intentionally, or otherwise in bad faith" fail to comply with FOIA, it would have proactively responded to Plaintiff's request when it received the Complaint and realized that it was either the last respondent promising a response in a conferral process or had failed to file the proper paperwork. Instead, the defendant has refused to produce records or follow the proper paperwork, nevertheless, make any acknowledgment of its shortcomings. Repeatedly failing to file the appropriate paperwork, despite being made aware of the violation, is not an accident. CTA's actions demonstrate that it repeatedly acts at a minimum in "bad faith" and with a dishonest purpose if not intentionally.

Even if CTA had returned responsive records after receiving this complaint, Roxana Community Unit School District v. Illinois Environmental Protection Agency determined a

request for civil penalties survives a moot FOIA claim. *Roxana Community Unit School District v. Illinois Environmental Protection Agency* No. 1, 2013 IL App (4th) 120825, ¶ ¶ 42.

Further, Exhibit 14 (attached to this filing), is a responsive record from requests 2024-0445 and 2024-0745 showing the status of all FOIA requests submitted to Defendant between 1/1/24 and 6/30/24. These records demonstrate the scale of Defendant's "willful, and intentional, or otherwise in bad faith" attempts to respond not only to Plaintiff's request but to several hundreds of other requests submitted to them. Even though Defendant has all the relevant information to know whether it is in compliance with any given request, they choose to be out of compliance or hope that requesters will continuously forget to follow up with them so that they may also "forget" about a request. This strategy of attempted exhaustion is exactly what has happened here, except, Plaintiff has filed suit prompting Defendant's newly renewed attention to the matter. In the absence of this suit, it is unclear if Defendant ever intended to respond to requests.

G. Conclusion

There is overwhelming merit from the evidence presented with additional legal backing from existing case law and Public Access Opinions to support the allegations against CTA. Defendant's Motion to Dismiss is at best an unsupported disagreement to the complaint, assembled with the copy and paste buttons so as to apply the same rationale for dismissal regardless of the underlying facts of the case.

For the reasons set forth herein, Plaintiff requests this Court deny Defendant's Motion to Dismiss Counts II, III, V, VI, and Strike Portions of Plaintiff's Complaint.

Dated: January 22, 2025

RESPECTFULLY SUBMITTED,
/s/ Niklas Hunder

Niklas Hunder
Policy Analyst/Researcher

Exhibit 14