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

NIKLAS HUNDER,	)	
	)	
Plaintiff,	)	
	)	2024CH05867
v.	)	Calendar 16
	)	
CHICAGO TRANSIT AUTHORITY,	)	
	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFF'S PETITION

I. INTRODUCTION

Several provisions of the FOIA require Defendant to meet certain deadlines and inform any requester about applicable statutes that affect the timeline of their request. 5 ILCS 140/3(d) requires that a public body respond, deny, or extend its time to respond under Section 3(e) and make such notification under 3(f). Additionally, if a public body wishes to treat a requester as a recurrent requester, it needs to inform the requester within five business days under Section 3.2(b) and under Section 3.2(a), after 21 business days, inform the requester about the status of the request or provide responsive records.

II. CTA DID NOT MEET OR PERFORM ITS REQUIREMENTS AND CONTINUES TO MISREPRESENT THE APPLICABLE STATUE TO THE COURT

Based on the contents of its letters to Plaintiff in Exhibit 1 and Exhibit 2 as presented with the Complaint, Defendant did not inform Plaintiff that it intended to treat Plaintiff's May 28th, 2024 and June 3rd, 2024 requests under Section 3.2. When Defendant did this, it forfeited its right to claim it met all requirements under that section. Since it informed and claimed an exemption under 3(e), which is not available to Defendant had it treated the requests under Section 3.2,

Defendant has affirmed numerous times it intended to respond to this request under Section 3, not Section 3.2. Had Section 3.2 applied, Defendant's action of using an extension of 3(e) would have been improper and in violation of Section 3.2, but that is not the issue here. However Defendant wishes this Court to interpret its actions, it is always in violation of the FOIA. There is no interpretation available to Defendant that is not erroneous or prevents them from violating the FOIA. Its actions will always mean it has violated the FOIA.

At no point in the FOIA does it state that a requester is responsible for being aware of their recurrent requester status and if a requester was unaware of their status, the public body was still free to treat the requester as a recurrent one. While after Plaintiff was eligible for the recurrent requester status on these two requests, Defendant did not claim such status and may not use it against Plaintiff as it would be inconsistent with the text of the FOIA.

With Section 3 being the applicable statute based on Defendant's actions, determining whether Defendant met the requirements is simple. In Plaintiff's May 28th, 2024 request, Exhibit 1 shows that the time to respond was extended under 3(e) to June 11th, 2024. Defendant never again extended its time to respond making June 11th, 2024 the legal deadline to respond to the request. In Plaintiff's June 3rd, 2024 request, Exhibit 1 shows that the time to respond was extended under 3(e) to June 17th, 2024. Defendant never again extended its time to respond making June 17th, 2024 the legal deadline to respond to the request.

In both instances, Defendant did not respond by the legal deadline, constituting two violations of Section 3 of the FOIA; one for each request. The Complaint in this case was made before either request had been answered. In its response to Plaintiff's May 28th, 2024 request, Defendant took 44 business days (34 more than legally allowed) to respond. In its response to

Plaintiff's June 3rd, 2024 request, Defendant took 155 business days (145 more than legally allowed) to produce three responsive records (two of which were identical and only presented in different file formats) and only doing so days before pleadings to the Complaint were to be filed by Defendant.

III. BAD FAITH

The length of time it took to respond compared with the volume of response records returned is difficult to defend and was done in "bad faith" 5 ILCS 140/11(j). Had Defendant known it would take more than ten business days to respond to either request, Defendant had the option to propose an extended timeline for answering such request under Section 3(e) but ultimately did not make one in either request. Plaintiff has never denied an extension request from Defendant across his 63 requests to Defendant.

Defendant cannot claim that producing such records was voluminous because it was afforded the opportunity multiple times under Section 3(g) for both requests and consistent with section 3(f):

> "A public body that requests an extension and subsequently fails to respond to the request may not treat the request as unduly burdensome under subsection (g)."

This is especially true for the June 3rd, 2024 request where CTA took 111 more business days to produce significantly less responsive records than when it took 44 business days to provide responsive records for Plaintiff's May 28th, 2024 request.

Even if Defendant had realized it would be burdensome to process after it deadlines to do so had passed, it made no indication (as detailed in Section B of Plaintiff's Reply) that it ever intended to respond to Plaintiff about the status of its request. Instead, it kept Plaintiff in the dark

about the status of this request which in part contributed to the filing of the Complaint as it appeared Defendant had no intentions to answer. Its intentions of answering were still vague after the filing of the suit as it did not communicate with Plaintiff about the status of his June 3rd, 2024 request and surprisingly dropped a response on January 22nd, 2025 with a non-voluminous amount (three) of responsive records.

Many of the filings in this case have touched on Defendant's belief that it truly is Section 3.2 that applies and not Section 3. It would be difficult to believe that Defendant's attorney, given his decades of experience, has accidentally cited the wrong section of the FOIA here. It is much more probable that Defendant's attorney has intentionally misrepresented numerous times and through its second affirmative defense, tried to convince the Court that the wrong statue applied, albeit, such an effort was likely to be unsuccessful as the Court is well versed in the FOIA's requirements. Because of the seriousness and financial consequences of an Answer, it is not probable that an error was made because such detailed review of the complaint was required to produce an Answer. It is Plaintiff's belief that Defendant performed the necessary review of the complaint and therefore has made an intentional decision to misrepresent instead of an accidental mistake.

In the instance that Defendant's attorney made a mistake by interpreting the wrong statute, it has been free to amend its pleading at any point since the filing of the Answer under 735 ILCS 5/2-616 and with permission from the Court. However, since the filing of its Answer on February 3rd, 2025, no such request has been made, and Defendant continues to try and misrepresent the applicable statute to this Court.

IV. CONCLUSION

With all facts taken as a whole, it is apparent that Defendant is in violation of the FOIA twice and though its FOIA officers and attorney refuses to recognize its shortcomings and have instead resorted to a legal strategy of attempted deception to the Court or in unlikely instance, has made a regrettable error it appears uninterested in correcting or is significant confused on its duties and rights afforded by FOIA.

Plaintiff previously identified requests for relief ii, iv, and vi are moot in his Reply but requests for relief i, v, and vii are still active, and after reviewing all facts and actions in this case, the Court should rule that CTA violated FOIA and grant all incontestable relief requested by Plaintiff.

Dated: April 11, 2025

RESPECTFULLY SUBMITTED,
/s/ Niklas Hunder

Niklas Hunder
Policy Analyst/Researcher