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Mariyana T. Spyropoulos
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NIKLAS HUNDER,)
)
Plaintiff,)
) Case No. 2024CH09985
v.)
) Honorable Clare J. Quish
CHICAGO TRANSIT AUTHORITY,)
)
Defendant.)

DEFENDANT CHICAGO TRANSIT AUTHORITY’S
MOTION TO DISMISS COUNTS II, III, VI, VII AND VIII
AND TO STRIKE PORTIONS OF PLAINTIFF’S AMENDED COMPLAINT,
PURSUANT TO 735 ILCS 5/2-615

I. INTRODUCTION AND SUMMARY

The Court should grant Defendant Chicago Transit Authority’s Motion to Dismiss Counts II, III, VI, VII and VIII and to Strike Portions of Plaintiff’s Amended Complaint, Pursuant to 735 ILCS 5/2-615 (“CTA’s Motion”), because Plaintiff’s allegations are insufficient to state claims by Counts II, III, VI, VII and VIII against the Chicago Transit Authority (the “CTA”); as the pleaded facts show, CTA did not violate the stated provisions of Illinois’s Freedom of Information Act (“FOIA”). Plaintiff’s Amended Complaint also does not support Plaintiff’s demands for imposition of civil penalties.

II. THE COURT SHOULD GRANT CTA’S MOTION.

CTA previously moved to dismiss Counts II, III, V and VI of the original Complaint filed by Plaintiff Niklas Hunder (“Plaintiff”) and to strike therefrom Plaintiff’s demands for civil penalties, as insufficient at law. After full briefing of that motion , but before argument, Plaintiff moved to amend his Complaint, ostensibly to address pleading insufficiencies therein. However,

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by his Amended Complaint, Plaintiff's pleaded allegations as to three of his FOIA requests still fail to set forth sufficient facts to enable Plaintiff to maintain claims against CTA for purported violations of the stated provisions of FOIA, in regard to those requests. Plaintiff also still fails to set forth facts supporting his demands for civil penalties under FOIA. Therefore, the Court should grant CTA's Motion and dismiss Counts II, III, VI, VII and VIII of the Amended Complaint and strike Plaintiff's demands for civil penalties, as insufficient at law.

A. CTA Properly Brings this Motion to Dismiss Counts II, III, VI, VII & VIII.

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. Furthermore, 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.App.3d 912 (1995).

Here, the allegations of Plaintiff's Amended Complaint establish the lack of basis for his attempted claims against CTA by Counts II, III, VI, VII and VIII. Thus, CTA properly moves for the dismissal of those claims, which motion should be granted by the Court.

B. The Court Should Dismiss Counts II, III, VI, VII & VIII.

As set forth in greater detail hereinbelow, Plaintiff's allegations do not support the purported causes of action brought by Plaintiff with Counts II, III, VI, VII and VIII, and the Court should grant CTA's Motion and dismiss those counts pursuant to Section 2-615.

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

As an initial matter, in his Amended Complaint, Plaintiff again admits his status as a recurrent requester, pursuant to 5 ILCS 140/2(g)(iii), since January 11, 2024, and states that he remained under such designation through January 10, 2025. (Amended Complaint, p.4, ¶ 14). By his Amended Complaint, Plaintiff now admits that, as a recurrent requester, it is 735 ILCS 140/3.2 that controls responses by a public body such as CTA to Plaintiff's FOIA requests. Plaintiff no longer attempts to state causes of action for purported violation of 735 ILCS 140/3(g), which does not apply to requests brought by a recurrent requester. While this is progress, Plaintiff still fails to sufficiently state claims against CTA by Counts II, III, VI, VII and VIII for violations of 735 ILCS 140/3.2.

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)

As explained below, the allegations of Plaintiff's Amended Complaint show that, by Counts II, III, VI, VII and VIII, Plaintiff has not alleged facts sufficient to state sustainable causes of action against CTA under these above-noted provisions – not under 5 ILCS 140/3.2(a)(iii) and not under 5 ILCS 140/3.2(c) - and those Counts should thus be dismissed.

2. Plaintiff Cannot Prevail on Count II for Violation of 5 ILCS 140/3.2(a)(iii) Regarding His June 20, 2024 FOIA Request.

Plaintiff states: that he submitted a FOIA request to CTA on June 20, 2024 (Amended Complaint, p.6, ¶ 26); that, on June 27, 2024, CTA responded to him, with a letter, noting *inter alia* Plaintiff's status and forthcoming treatment as a recurrent requester, with that letter attached to the Amended Complaint as an exhibit (Id., p.7, ¶¶ 27, 28; Exh. 2); that CTA further responded twenty-one business days later, on July 22, 2024, notifying Plaintiff 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 Amended Complaint (Id., p.7, ¶ 29, p.8, ¶ 30; Exh. 3); that CTA further responded on October 4, 2024, with a letter in regard thereto (Amended Complaint, p.8, ¶¶ 31, 33; Exh. 4) producing 39 pages of documents responsive to the first part of the request, which are attached as an exhibit to the Amended Complaint (Id., ¶¶ 31, 33; Exh. 5);

that CTA engaged in multiple further resolution efforts with Plaintiff, through July and August of 2024, to try to reduce the scope of the second part of Plaintiff's request, via emails that Plaintiff attached as an exhibit (Amended Complaint., p.8, ¶¶ 34, 35; Exh. 6); and that, on November 8, 2024, "CTA produced an additional and final response to the request," which responded to the second aspect of the request and produced documents, although Plaintiff has only attached the first twenty pages of those further produced documents as an exhibit because that production was so voluminous. (Id., p.8, ¶¶ 32, 33; Exh 5A).

Despite all of the above-noted allegations, Plaintiff then claims, in his Count II, that CTA violated 5 ILCS 140/3.2(a)(iii) by supposedly "misleading [Plaintiff] about the status of his request", by supposedly "not making a good faith attempt [] to help [Plaintiff] reduce the scope of his request to a manageable proportion," and that CTA somehow "improperly denied the second aspect of the request." (Id., p.23, ¶ 105). There is simply no basis for these assertions. Plaintiff's own allegations and exhibits show that CTA did everything it was required to do under 5 ILCS 140/3.2(a)(iii); CTA timely responded to Plaintiff's requests, within five business days of the request and then within twenty-one business days of the request, with correspondence with the required substance, produced documents responsive to the first aspect of the request, conferred with Plaintiff to try to reduce the scope of his burdensome requests, and then further responded and produced documents responsive to the second aspect of the request. This is well beyond the requirements of 5 ILCS 140/3.2(a)(iii) for the CTA to "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." There is nothing to support Plaintiff's insistence that, in acting as Plaintiff himself has alleged, CTA violated 5 ILCS 140/3.2(a)(iii). In fact, Plaintiff's own allegations and documents show the opposite – that CTA more than fulfilled its obligations under

5 ILCS 140/3.2(a)(iii), regarding this request, with responses, communications and document productions. Thus, Plaintiff cannot maintain his Count II for purported violation of 5 ILCS 140/3.2(a)(iii) and the Court should thus dismiss Count II.

3. Plaintiff Cannot Prevail on Count III for Violation of 5 ILCS 140/3.2(c) Regarding His June 20, 2024 FOIA Request.

As explained above, per Plaintiff's own allegations, 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 and then produced documents responsive to the second aspect of that request. There is simply no basis for Plaintiff's insistence that, despite all that Plaintiff has alleged, CTA somehow "violated 5 ILCS 140/3.2(c) by not producing a responsive record 'within a reasonable period considering the size and complexity of the request'." (Id., p. 24, ¶ 109). By Plaintiff's own allegations and exhibits, CTA timely and correctly responded, produced responsive documents to the first aspect of the request, engaged in multiple resolution efforts and then further responded and produced further documents to the second aspect of the request. By Plaintiff's own allegations and exhibits, CTA fulfilled its obligations under 5 ILCS 140/3.2(c) in regard to this request. Accordingly, Plaintiff cannot maintain Count III for purported violation of 5 ILCS 140/3.2(c), and the Court should dismiss Count III.

4. Plaintiff Cannot Prevail on Count VI for Violation of 140/3.2(a) Regarding His July 26, 2024 FOIA Request.

Plaintiff states: that he submitted a FOIA request to CTA on July 26, 2024 (Amended Complaint, p.14, ¶ 58); that, on August 2, 2024, CTA responded to him, with a letter, noting *inter alia* Plaintiff's status and forthcoming treatment as a recurrent requester, which Plaintiff attached

to the Amended Complaint as an exhibit (Amended Complaint, p. 14, ¶ 59; p.15, ¶ 60; Exh. 8); that CTA later further responded to Plaintiff, on August 26, 2024, explaining 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 Amended Complaint (Id., p. 15, ¶¶ 61, 62; Exh. 9); that 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 Amended Complaint (Id., p. 15, ¶¶ 63-65, Exh. 10), which ultimately did not result in an agreement for production of records.

For his Count VI, Plaintiff then claims that CTA allegedly violated 5 ILCS 140/3.2(a)(iii) by supposedly "not conferring with [Plaintiff] about the status of his request" and "by not making good faith attempt [] to help [Plaintiff] to reduce the scope of his request to a manageable proportion, and has improperly denied the second aspect of the request." (Amended Complaint, p.25, ¶ 121). There is simply no basis for these assertions, per Plaintiff's own allegations which show that CTA did everything it was required to do under 5 ILCS 140/3.2(a). The allegations and exhibits of Plaintiff's Amended Complaint show that CTA timely and properly responded to Plaintiff's request informing him that his request was unduly burdensome and invited Plaintiff to confer to try to reduce the request to manageable proportions, thus satisfying 5 ILCS 140/3.2(a). Per the Amended Complaint, CTA then also further corresponded with Plaintiff to try to reduce the scope of his unduly burdensome requests. There is no requirement under 5 ILCS 140/3.2(a)(iii), or any part of 3.2(a), that 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, CTA fulfilled its obligations under 5 ILCS

140/3.2(a)(iii) in regard to this request. Plaintiff thus cannot maintain his Count VI which the Court should thus dismiss.

5. Plaintiff Cannot Prevail on Count VII for Violation of 5 ILCS 140/3.2(a)(iii) Regarding His July 30, 2024 FOIA Request.

Plaintiff states: that he submitted a FOIA request to CTA on July 30, 2024 (Amended Complaint, p.18, ¶ 77); that, on August 7, 2024, five business days after the request, CTA responded to him, with a letter, noting *inter alia* Plaintiff's status and treatment as a recurrent requester, which is attached to the Amended Complaint as an exhibit (Id., p.18, ¶¶ 78, 79; Exh. 11); that CTA later further responded twenty-one days after the request, on August 29, 2024, that the request was unduly burdensome and CTA invited Plaintiff to confer to try to reduce the request to manageable proportions, via a letter attached as an exhibit to the Amended Complaint (Id., p.19, ¶¶ 80, 81, Exh. 12); that 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.19, ¶¶ 82-84, Exh. 13); and that CTA provided a further response and documents responsive to the request on February 7, 2025, that are attached as exhibits to the Amended Complaint. (Id., pp.19-20, ¶ 88, p. 20, ¶ 89; Exhs. 12A, 12B).

For his Count VII, Plaintiff then claims that CTA violated 5 ILCS 140/3.2(a)(iii) by supposedly "misleading [Plaintiff] about the status of his request", by supposedly "not making a good faith attempt [] to help [Plaintiff] reduce the scope of his request to a manageable proportion" and that CTA somehow "has improperly denied the second aspect of the request." (Id., p.26, ¶ 105 [sic]).

There is no basis for these assertions, as one need only look at 5 ILCS 140/3.2(a)(iii) and the Amended Complaint to see. The allegations and exhibits show that CTA did everything it was

required to do under 5 ILCS 140/3.2(a)(iii). Specifically, they show that, twenty-one days after the request, on August 29, 2024, CTA did “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.” This satisfied the requirements of 5 ILCS 140/3.2(a)(iii). In addition, CTA also made its initial timely response to Plaintiff’s request, within five business days, further corresponded with Plaintiff about the unduly burdensome nature of the request, conferred with him to try to reduce the scope of his unduly burdensome requests, and ultimately produced the responsive documents. Per Plaintiff’s own allegations and documents, CTA fulfilled its obligations under 5 ILCS 140/3.2(a)(iii) in regard to this request, and then some. Thus, Plaintiff thus cannot maintain his Count VII, which the Court should thus dismiss.

6. Plaintiff Cannot Prevail on Count VIII for Violation of 5 ILCS 140/3.2(c) Regarding His July 30, 2024 FOIA Request.

As explained above, per Plaintiff’s own allegations and exhibits, CTA timely responded to the July 30, 2024 request from Plaintiff, further timely responded to and engaged with Plaintiff in communications to try to reduce Plaintiff’s unduly burdensome request to manageable proportions and then produced documents responsive to that request. There is simply no basis in the Amended Complaint for Plaintiff’s insistence that, despite all that Plaintiff has alleged, CTA somehow “violated 5 ILCS 140/3.2(c) by not producing a responsive record ‘within a reasonable period considering the c]size and complexity of the request’.” (Amended Complaint, p.27, ¶ 109 [sic]). By Plaintiff’s own allegations and exhibits, CTA timely and correctly responded, engaged in multiple resolution efforts and then further responded and produced documents responsive to the request. By Plaintiff’s own allegations and exhibits, CTA fulfilled its obligations under 5 ILCS 140/3.2(c) in regard to this request, and there is no basis for Plaintiff’s conclusory insistence of a

violation. Thus, Plaintiff cannot maintain Count VIII for purported violation of 5 ILCS 140/3.2(c) and the Court should dismiss Count VIII.

C. CTA Properly Brings this Motion to Strike.

Pursuant to Section 2-615, a court properly strikes out designated immaterial matter or has a 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).

Here, Plaintiff’s allegations do not support his demands that CTA pay civil penalties under FOIA, and CTA properly moves to have such demands stricken, which motion should be granted by the Court.

D. The Court Should Strike Plaintiff’s Demands for Civil Penalties.

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 VIII, for Plaintiff’s demands that the Court order CTA to pay civil penalties under FOIA, Plaintiff still fails to allege specific facts showing that CTA has “willfully and intentionally, or otherwise in bad faith failed to comply with FOIA” and that it has done so deliberately, by design, and with a dishonest purpose, as Plaintiff must do in order to support his demands for imposition of civil penalties. (Amended Complaint, p.23, ¶ 102, v; p.23, ¶ 106, ii; p.24, ¶ 110, ii; p.24, ¶ 114, ii; p.25, ¶ 118, ii; p.26, ¶ 122, v; p. 26, ¶ 106 [sic], v [sic]; p.27, ¶ 110 [sic], v [sic]).

In none of his Counts I through VIII, or in the incorporated pleadings therein, does Plaintiff ever even conclusorily allege that CTA has failed to comply with FOIA deliberately, by design, and with a dishonest purpose, much less set forth any facts showing that CTA has intentionally failed to comply with the FOIA and done so deliberately, by design, and with a dishonest purpose. To the contrary, Plaintiff’s allegations actually show that CTA has always responded to his requests and often made efforts to work with Plaintiff to find a solution to issues presented by Plaintiff’s unduly burdensome requests, and that CTA has made multiple productions before and after such efforts.

By his Amended Complaint, Plaintiff now has added allegations and documents that he says show that CTA knew it had not produced further documents or responses to certain requests

from Plaintiff, and he apparently believes that this justifies his demands for civil demands. However, these new allegations still only actually show that CTA has not violated FOIA and, regardless, do nothing to show that CTA violated FOIA deliberately, by design, and with a dishonest purpose.

Thus, the Amended Complaint and the counts contained therein show that Plaintiff's demands that CTA be ordered to pay civil penalties 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, VI, VII and VIII of Plaintiff's Amended Complaint; striking the demands for payment of civil penalties from Counts I, II, III, IV, V, VI, VII and VIII; and for such other and further relief as may be just and proper.

Dated: April 5, 2025

KENT RAY
General Counsel of the Chicago Transit Authority

By: /s/ Kurt B. Drain
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 Amended Complaint Pursuant to 735 ILCS 2-615 to be served on the counsel/part(ies) listed below via Odyssey eFile Illinois system on April 5, 2025:

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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: April 5, 2025

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