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

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

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

I. INTRODUCTION AND SUMMARY

In its 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"), Defendant Chicago Transit Authority ("CTA") explained: that the Court should dismiss Counts II, III, V and VI of Plaintiff's Complaint because the pleaded facts show the CTA did not violate Illinois's Freedom of Information Act ("FOIA"); and that the Court should strike Plaintiff's conclusory demands for imposition of civil penalties which are without supporting pleaded facts.

By his attempted opposition to CTA's Motion, Plaintiff Niklas Hunder ("Plaintiff") presents no legally valid based arguments to rebut the showing made in the CTA's Motion. He instead tries

to rely on the wrong statutory provision for his claims as a recurrent requester and asserts claims without basis in law or logic. In regard to the CTA's Motion to strike Plaintiff's claims for payment of civil damages, Plaintiff makes almost no response at all, other than to present odd and speculative allegations of what the CTA could or would have done, with new allegations of

purported facts that are not in the Complaint, while also attaching a new document as a purported exhibit to unsuccessfully try to present some sort of support for his claims. Such a response actually further makes the CTA's argument that Plaintiff's pleaded claims for civil penalties are obviously insufficiently stated and should be dismissed and stricken.

For all of these reasons, as explained in further detail below, the CTA's Motion should be granted, dismissing Counts II, III, V and VI, with prejudice, and striking all of Plaintiff's claims for civil penalties.

II.
THE COURT SHOULD GRANT THE CTA'S MOTION AND DISMISS COUNTS II, III, V AND VI OF PLAINTIFF'S COMPLAINT

As explained in the CTA's Motion, the Court should dismiss Counts II, III, V and VI, pursuant to Section 2-615 because the pleaded allegations in Plaintiff's Complaint show no factual basis for those Counts against the CTA for violations of the Illinois Freedom of Information Act ("FOIA"). Plaintiff's Opposition does nothing to defeat the CTA's Motion insofar as it is based wholly on arguments about a statutory provision of FOIA that, as a matter of law, does not apply to Plaintiff and his claims against the CTA and on the baseless insistence that his unsupported conclusory allegations must somehow be enough. The plain reality is that Plaintiff's allegations simply cannot support his attempted claims against the CTA, as a matter of law, and the Court should dismiss Counts II, III, V and VI with prejudice.

A. In Its Motion, the CTA Explained that Plaintiff, as a Recurrent Requester, Has Not Asserted Facts to Maintain Counts II, III, V and VI, as a Matter of Law.

As the CTA further noted in its Motion, 5 ILCS 140/3.2 is the statutory provision that addresses FOIA requests by recurrent requesters, specifically providing that:

> (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 the CTA further noted in its Motion, Plaintiff, in his Complaint: specifically admits his status as a "recurrent requester," pursuant to 5 ILCS 140/2(g)(iii), since January 11, 2024. (Complaint, p. 3, ¶ 12); admits that, given his status as a recurrent requester, the above-noted statutory provision – 5 ILCS 140/3.2(a-c) - applies to him and his FOIA requests to the CTA; yet fails to state facts sufficient to state causes of action against the CTA under this applicable provision for Counts II, III, V and VI.

B. In His Opposition Plaintiff Does Not Rebut the CTA's Showing that Plaintiff, as a Recurrent Requester, Has Not Asserted Facts to Maintain Counts II, III, V & VI.

In his Opposition, Plaintiff generally just ignores the CTA's argument and showing that Plaintiff has not asserted sufficient factual allegations to state certain of his Counts against the CTA under 5 ILCS 140/3.2(a-c). He simply ignores the actual state of the law and instead just insists that he has alleged facts to support Counts for purported statutory violations that, in reality,

he cannot assert, as a matter of law.

In his Opposition, Plaintiff: asserts arguments as to what he claims is required under 5 ILCS 140/3(g), for a public body to confer with a requesting party about FOIA requests; presents citations to statutory provisions and authorities that Plaintiff claims support his argument as to 5 ILCS 140/3(g); and argues that Plaintiff's Complaint allegations somehow show the CTA violated the claimed requirements of 5 ILCS 140/3(g).

Problematically for Plaintiff: the statutory provision on which Plaintiff relies - 5 ILCS 140/3(g) - is a FOIA section that patently does not apply to Plaintiff as a designated recurrent requester; the section of FOIA that does apply to Plaintiff as recurrent requester is 5 ILCS 140/3.2; the CTA's Motion explained that Plaintiff's allegations in his Complaint are insufficient to assert claims against the CTA for violations of 5 ILCS 3.2; and Plaintiff, in his Opposition, did not make, and cannot make, any argument that he has asserted sufficient factual allegations to maintain his Counts II, III, V and VI, against CTA for violation of 5 ILCS 3.2.

Plaintiff's entire argument, in his Opposition, as to what he claims his Complaint's alleged factual allegations show in regard to 5 ILCS 140/3(g), is generally irrelevant, and the CTA's showings by its Motion, as to why Plaintiff's allegations are insufficient to assert claims against the CTA for violations of FOIA - 5 ILCS 140/3.2 - remain unrebutted by Plaintiff. The Court should accordingly dismiss Counts II, III, V and VI with prejudice.

1. Plaintiff Cannot Maintain Count II.

As the CTA explained in its Motion, Plaintiff, by his Count II allegations, actually shows that the CTA did everything it was required to do under, and did not violate, FOIA. The CTA noted that it is 5 ILCS 140/3.2 that addresses FOIA requests from a recurrent requester. It also noted that the Complaint shows that: the CTA timely responded, under FOIA, to Plaintiff's June 20, 2024

request, with the required substance, including telling Plaintiff he was being treated as a recurrent requester and that part of his request would be responded to with production and part was unduly burdensome; that the CTA then conferred with Plaintiff to try to reduce the scope of his unduly burdensome requests; and that there is no requirement under 5 ILCS 140/3.2 that the CTA continue to confer with Plaintiff when efforts to do so are unfruitful, and no requirement that conferring efforts must result in a further production.

By his Opposition, Plaintiff simply ignores the CTA's argument. He instead insists that 5 ILCS 140/3(g) and Public Access Opinion 21-001 (January 26, 2021) required the CTA to have conferred with Plaintiff to reduce the scope of the request before the CTA ever told Plaintiff it was unduly burdensome. This is patently untrue. It is 5 ILCS 140/3.2 - **not** 5 ILCS 140/3(g) - that sets the CTA's requirements for responding to the June 20, 2024 request from Plaintiff as a recurrent requester. Significantly, 5 ILCS 140/3.2 does **not** require a public body to confer with a requesting party to reduce the scope of a request before informing the requester that it is unduly burdensome. Moreover, Public Access Opinion 21-001 only discusses the requirements of ILCS 140/3(g); it does not address 5 ILCS 140/3.2 at all. Thus, Plaintiff, by his Opposition, has done nothing to rebut the CTA's Motion showing that Plaintiff's Count II fails to set forth sufficient allegations for a claim for violation of 5 ILCS 140/3.2. Accordingly, the Court should grant the CTA's Motion and dismiss Plaintiff's Count II, with prejudice.

2. Plaintiff Cannot Maintain Count III.

As the CTA explained in its Motion, Plaintiff, by his Count III, does not allege facts showing that the CTA violated FOIA in its response and production of documents to Plaintiff's June 20, 2024 request. As explained, per the allegations of Count III, the CTA: timely made its initial response within five business days to the request; then further responded within twenty-one

business days of the request, letting Plaintiff know that one aspect of the request was unduly burdensome and why, and giving an estimated time for production of documents to the other aspect thereof; then produced documents responsive to that other aspect of the request; and engaged with Plaintiff in communications regarding Plaintiff's unduly burdensome aspect of the request. As the CTA explained, there is simply no basis alleged for Plaintiff's conclusory assertions that the CTA "failed to follow proper procedures for responding to this request" or "violated FOIA by failing to produce records responsive to this request in a reasonable amount of time."

By his Opposition, Plaintiff does not rebut the CTA's showing that there is no basis for Count III's claim that the CTA "failed to follow proper procedures for responding to this request," leaving that argument unopposed. Plaintiff does try, and with citation to the actually relevant statute - 5 ILCS 140/3.2, to defend his conclusory assertions that the CTA failed to produce records responsive to this request in a reasonable amount of time. However, Plaintiff still points to no facts that actually support such a claim. Plaintiff's effort to argue that the CTA did not produce the documents by the time of its originally estimated deadline does not avail Plaintiff. The statue only requires the CTA to provide an **estimated** deadline; it does not require an exact deadline or require that such an estimated deadline be met or provide that not meeting it violates the statute. It further patently does not provide that producing documents a month and a half later somehow violates the statute. 5 ILCS 140/3.2 (a-c).

Moreover, there is no basis in logic or law for Plaintiff's claim that he has alleged a violation because the CTA did produce documents but did so two and a half months after the request. Plaintiff claims that, because 61 pages of documents were produced in response to the one aspect of his request that that response volume somehow must mean that 74 days to produce them is not a reasonable period of time. Not only does that "logic" make no sense, it does not

have anything to do with the statutory standard. The statute indicates that the reasonableness of the period of time for production is judged in consideration of "the size and complexity of the request" – not the number of pages produced. 5 ILCS 140/3.2 (c). Here, Plaintiff's request was for production of every single exit survey and employee satisfaction survey by any CTA personnel after employment termination for any reason over more than a six-month period. (Complaint, Exh. 3). Nothing is alleged by Plaintiff to show how or why responding to such a request with production of the requested documents somehow violates the statute; Plaintiff just states that it is his belief that less than 1 page per day should be the acceptable rate, without any stated legal basis for his proffered belief. Accordingly, Plaintiff, by his Opposition, cannot show that his Count III sets forth sufficient factual allegations for a claim for violation of 5 ILCS 140/3.2, and the Court should dismiss that Count III, with prejudice.

3. Plaintiff Cannot Maintain Count V.

As the CTA explained in its Motion, Plaintiff, by his Count V allegations, shows that the CTA did everything it was required to do under, and did not violate, FOIA. The CTA noted: that 5 ILCS 140/3.2 applies to this request from Plaintiff as a recurrent requester; that the Complaint shows that the CTA timely made its initial response to Plaintiff's July 26, 2024 Request; and that it then timely made its second response to Plaintiff, notifying him that his request was unduly burdensome and starting the process of conferring about the scope. As explained, there is no requirement under 5 ILCS 140/3.2 that the CTA confer with a recurrent requester such as Plaintiff for a specific amount of time, or that it continue to confer with Plaintiff when efforts to do so are unfruitful, or that the CTA do so until the recurrent requester is finally satisfied. Nor is there any requirement under 5 ILCS 140/3.2 that conferring and communication efforts must result in a production of documents to an unduly burdensome request.

By his Opposition, Plaintiff simply ignores the CTA's argument and the fact that 5 ILCS 140/3.2 governs the CTA's responses to this recurrent requester Plaintiff. Plaintiff instead again baselessly claims that 5 ILCS 140/3(g) applies and that the CTA somehow violated that inapplicable statute. As already explained above, this argument by Plaintiff trying to apply the wrong statutory provision is meritless as a matter of law. Thus, Plaintiff, by his Opposition, has done nothing to rebut the CTA's showing that Count V does no set forth sufficient allegations for a claimed violation of 5 ILCS 140/3.2, and the Court should dismiss Count V, with prejudice.

4. Plaintiff Cannot Maintain Count VI.

As the CTA explained in its Motion, Plaintiff, by his Count VI, sets forth allegations that actually show the CTA did everything it was required to under, and did not violate, FOIA, with 5 ILCS 140/3.2 being the applicable statutory provision given Plaintiff's status as a recurrent requester. Specifically, Plaintiff's Count VI shows that the CTA complied with 5 ILCS 140/3.2, by: timely making its initial response to Plaintiff's July 30, 2024 Request; timely making its second response; and notifying Plaintiff that his request was unduly burdensome and starting the process of conferring about the scope. As the CTA explained, there is no requirement under 5 ILCS 140/3.2 that the CTA "finish" the conferral process to Plaintiff's satisfaction or that the CTA engage in it to Plaintiff's satisfaction that it has been "properly conducted" or that the CTA ultimately produce documents as the result of the conferral process regarding an unduly burdensome request.

By his Opposition, Plaintiff once again simply ignores the CTA's argument and the fact that it is 5 ILCS 140/3.2 that governs the CTA's responses to Plaintiff as a recurrent requester. Plaintiff again baselessly argues that 5 ILCS 140/3(g) applies and that the CTA violated 5 ILCS 140/3(g). As already explained, Plaintiff cannot avoid dismissal simply by trying to apply the wrong statutory provision and ignoring that his Complaint's allegations show the applicable statute

was complied with by the CTA. Thus, Plaintiff, by his Opposition, has not presented any actual argument to the CTA's showing that Count VI fails to set forth sufficient allegations for a claim under 5 ILCS 140/3.2, and the Court should therefore dismiss Plaintiff's Count VI, with prejudice.

III.
THE COURT SHOULD GRANT THE CTA'S MOTION AND STRIKE PLAINTIFF'S DEMANDS FOR CIVIL PENALTIES.

As explained in the CTA's Motion, the Court should strike, from all of Plaintiff's Counts I through VI, Plaintiff's 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. By his Opposition, not only does Plaintiff fail to rebut the CTA's Motion, it actually further establishes that Plaintiff has not sufficiently pleaded facts to support claims for imposition of civil penalties.

As the CTA has explained, under 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). Illinois is fact pleading jurisdiction. So, a plaintiff must allege specific facts supporting each element of the cause of action, and "conclusions of law and conclusory allegations not supported by specific facts" will not save a claim that is not insufficiently factually pleaded. *Callaghan v. Village of Clarendon Hills*, 401 Ill.App.3d 287, 300 (2010). A party opposing a motion under Section 2-615 has to be able to show that there are sufficient factual allegations in the Complaint; otherwise, the motion is to be granted.

In its Motion, the CTA explained the high standard that is required for a party to sufficiently state a claim for imposition of civil penalties under FOIA – facts showing that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith (5 ILCS 140/11 (j)) and that the public body must "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. As explained, conclusory allegations, unsupported by specific facts, that a defendant's withholding of requested documents was willful and intentional failure or otherwise in bad faith is not enough for an award of civil penalties. *Williams v. Bruscato*, 2021 IL App (2d) 190971, ¶14. The bar for claims for civil penalties is so high that the courts have determined that, even claims that a public body failed to produce documents it was later ordered to produce by court, under FOIA, are not enough without dishonesty shown. *Edgar County, supra.*

In its Motion, the CTA also explained that, in purported support of his demands for the CTA to pay civil penalties under FOIA, Plaintiff has merely made boilerplate conclusory allegations, unsupported by any allegations of specific facts, that the CTA has "willfully and intentionally, or otherwise in bad faith failed to comply with FOIA." Plaintiff has not provided even conclusory allegations, much less any facts, that the CTA has failed to comply with FOIA deliberately, by design, and with a dishonest purpose. Per the Complaint, 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 unduly burdensome requests. As the CTA's Motion explained, there is nothing alleged, in Plaintiff's Complaint, to show that the CTA intentionally did anything in violation of any applicable FOIA provisions, much less did it deliberately, by design, and with a dishonest purposes.

In its Opposition, Plaintiff does not address the CTA's arguments from the Motion or the Complaint's patent lack of sufficient supporting allegations for claims for civil penalties. Plaintiff instead presents a jumble of vague assertions as to what Plaintiff feels the CTA would have done "if [it] did not intend to 'willfully, and intentionally, or otherwise in bad faith' fail to comply with FOIA." Plaintiff then makes new, vague allegations that the CTA has refused "to follow the proper

paperwork or make any acknowledgement of its shortcomings" and that the CTA has "repeatedly failed to file the appropriate paperwork." (Opposition, p. 7, ¶ 3). What this could possibly mean is neither apparent nor explained. Plaintiff then also attaches a brand new document, as purported "Exhibit 14" to its Opposition, that Plaintiff claims deals with other parties' FOIA requests to the CTA, that have nothing to do with Plaintiff's requests. (Opposition, p. 8, ¶ 2).

Obviously, allegations and documents that are newly presented with an Opposition to a motion under Section 2-615 are improper and do nothing to address, much less remedy, deficiencies in the challenged Complaint. Here, they are flatly irrelevant to the CTA's pending Motion and should be disregarded by the Court. Further, they would be irrelevant, even had they been presented as part of a Complaint, to Plaintiff's claims for imposition of civil penalties. The new "allegations" are conclusory and speculative assertions as to what Plaintiff thinks the CTA could have or would have done, and Plaintiff even admits that his new "allegations" would not show intent. (Opposition, p. 7, ¶ 3). The new "exhibit" to the Opposition appears to address wholly unrelated FOIA request by other unrelated parties, regarding unstated matters – patently irrelevant to the CTA's dealing with this Plaintiff, a recurrent requester, and this set of his requests.

With Plaintiff having presented essentially nothing in actual opposition to the CTA's motion to strike, and certainly nothing that rebuts the showing made by the CTA's Motion, the Court should grant the CTA's Motion and strike Plaintiff's demands for imposition of civil penalties from all of Plaintiff's Counts I through VI.

IV.
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 Plaintiff's demands 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: February 11, 2025

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, pursuant to Section 1-109, that he caused a copy of the foregoing Defendant Chicago Transit Authority's Reply in Support of 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 February 11, 2025:

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By: /s/ Kurt B. Drain
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