

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
EDGAR COUNTY, ILLINOIS**

EDGAR COUNTY WATCHDOGS, INC., an )  
Illinois not-for-profit corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ILLINOIS ARTS COUNCIL AGENCY, )  
 )  
Defendant. )  
 )  
 )  
 )

Case No. 16 MR 23

**FILED**

**MAY - 9 2016**

*Sandra K. Willett*  
Circuit Clerk, 5th Judicial Circuit Edgar County

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**Introduction**

1. This is an action to obtain a court order declaring that Plaintiff Edgar County Watchdogs, Inc. (“Edgar County Watchdogs”) has a right to inspect and copy certain records it has requested from Defendant Illinois Arts Council Agency (“IACA”) under the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 140/1, *et seq.*, and to order IACA to produce those records.

**Jurisdiction and Venue**

2. This Court has jurisdiction under 5 ILCS 140/11 because Plaintiff challenges the failure of Defendant, a public body of the State of Illinois, to produce records responsive to a FOIA request for public records. Venue is proper in Edgar County under 5 ILCS 140/11(b) because it is where the party denied access resides.

**Parties**

3. Plaintiff Edgar County Watchdogs is an Illinois corporation and a non-profit watchdog organization with an office in Edgar County, Illinois.

4. Defendant IACA is a “public body” as that term is defined in 5 ILCS 140/2(a).

### **Factual Allegations**

#### **Plaintiff’s FOIA Request to IACA**

5. This case concerns a FOIA request that John Kraft, a member of Edgar County Watchdogs, submitted on behalf of Edgar County Watchdogs by electronic mail to IACA on March 28, 2016.

The request, included in a series of emails attached as Exhibit 1, asked IACA to produce copies of:

- (1) “all expense reimbursements to Board Members for the past 2 years.”
- (2) “all meeting minutes for the past 2 years.”
- (3) “the current annual meeting schedule[,]” and
- (4) “the complete compensation package of all employees (by-name).”

#### **IACA’s Failure to Timely Respond**

6. On March 30, 2016, IACA’s Chairman, Shirley R. Madigan, responded to Plaintiff’s request with an e-mail (also contained in Exhibit 1) stating that IACA was “in need of an extension to respond.”

7. Later on that same day, Mr. Kraft replied by e-mail (also contained in Exhibit 1), seeking clarification by asking, “So are you saying you need an additional 5 days?”

8. On April 1, 2016, Ms. Madigan replied by e-mail (contained in Exhibit 1), stating: “We would like an additional 5 day extension.”

9. FOIA requires a public body to “either comply with or deny a request for public records within 5 business days after its receipt of the request.” 5 ILCS 140/3(d). If circumstances warrant, the public body may extend the time for response by “not more than 5 business days

from the original due date.” 5 ILCS 140/3(e). In other words, a public body has a maximum of ten business days to respond to a FOIA request.

10. The deadline for IACA’s response to Plaintiff’s FOIA request was therefore ten business days after the request was received, or April 11, 2016.

11. IACA, however, did not provide Plaintiff with any responsive records or a letter denying Plaintiff’s FOIA request by the April 11, 2016 deadline.

12. On April 25, 2016, Plaintiff’s counsel, Jacob H. Huebert of the Liberty Justice Center, sent Ms. Madigan a letter via electronic mail (attached as Exhibit 2). The letter stated in part: “Although Mr. Kraft and Edgar County Watchdogs do not agree to any extension beyond the single five-day extension authorized by FOIA, we will expect to receive all records responsive to Mr. Kraft’s request by Friday, April 29, 2016. If you believe that is not possible, please contact me directly before that date to discuss this matter.”

#### **IACA’s Denial of Part 1 Plaintiffs’ FOIA Request**

13. On April 27, 2016, Ms. Madigan sent Mr. Kraft a response on behalf of IACA by electronic mail (attached as Exhibit 3).

14. Along with its response, IACA produced a record responsive to the second part of Plaintiff’s FOIA request. The response indicated that IACA has no records responsive to the third part of the FOIA request.

15. In response to the first part of Plaintiff’s request – seeking records reflecting “all expense reimbursements to Board Members for the past 2 years” – IACA’s response only stated that “IACA enabling legislation states ‘No member may receive compensation for his services...,’” apparently quoting 20 ILCS 3915/2.

16. IACA's statement was not actually responsive to the first part of Plaintiff's request because it did not seek records regarding "compensation" but rather sought records reflecting "expense reimbursements" – which IACA is explicitly authorized to make under 20 ILCS 3915/2, which states that "each [IACA Board] member may be reimbursed for expenses incurred in the performance of his duties."

17. On April 29, 2016, Plaintiff's counsel sent Ms. Madigan another letter by electronic mail, in which he observed that Mr. Kraft sought records of "expense reimbursements," not "compensation," and asked IACA to "clarify whether IACA has any records of expense reimbursements to Board Members from the past two years... by Thursday, May 5, 2016."

18. IACA has not responded to counsel's letter and has not indicated to Plaintiff whether IACA has any records of expense reimbursements to Board Members from the past two years.

19. By failing to timely provide records responsive to Part 1 of Plaintiff's FOIA request, IACA has denied that portion of Plaintiff's request. *See* 5 ILCS 140/3.

#### **IACA's Denial of Part 4 Plaintiff's FOIA Request**

20. In its April 27, 2016, letter to Plaintiff, IACA responded to the fourth part of Plaintiff's request – which sought "the complete compensation package of all employees" – by stating:

The IACA is unable to comply with this request. It is unduly burdensome because it is unclear, categorical, and overly broad. The information that you are requesting may be kept by another agency such as the Illinois Comptroller's Office or the Department of Central Management Services.

21. In his April 29, 2016, letter to Ms. Madigan (Exhibit 4), Plaintiff's counsel observed that, under 5 ILCS 140/3(d), IACA is not permitted to treat Plaintiff's request as unduly burdensome because IACA did not respond to Plaintiff's request within the time provided by FOIA. Counsel also noted that Plaintiff's request for "the complete compensation package of all employees" was, in fact, clear. Accordingly, counsel asked IACA to provide records responsive to Part 4 of Plaintiff's FOIA request by May 5, 2016.

22. IACA still has not provided any records responsive to Part 4 of Plaintiff's FOIA request.

### **IACA's Failure to Comply with FOIA's Requirements for FOIA Denials**

23. IACA's letter partially denying Plaintiff's FOIA request failed to include "the reasons for the denial, including a *detailed* factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial" as required by 5 ILCS 140/9(a) (emphasis added).

24. IACA's denials of Parts 1 and 4 of Plaintiff's FOIA request also failed to "inform [Plaintiff] of the right to review by the Public Access Counselor," "provide the address and phone number for the Public Access Counselor," or "inform [Plaintiff] of his right to judicial review" – all of which FOIA required it to do. 5 ILCS 140/9(a).

## **COUNT I ILLINOIS FREEDOM OF INFORMATION ACT**

25. Plaintiff re-alleges Paragraphs 1 through 24 of this Complaint as though fully set forth herein.

26. The records sought in the first and fourth parts of Plaintiff's FOIA request are public records subject to disclosure under FOIA.

27. IACA cannot show by clear and convincing evidence that any records it has that are responsive to the first and fourth parts of Plaintiff's FOIA request are exempt from disclosure.

28. Because IACA failed to timely respond to Plaintiff's request, FOIA bars IACA from refusing to produce records responsive to the fourth part of Plaintiff's request (or any other part of the request) on the ground that doing so would be unduly burdensome. *See* 5 ILCS 140/3(f).

29. Plaintiff is therefore entitled to have IACA produce all records responsive to the first and fourth parts of its FOIA request.

30. Because IACA has wrongfully failed to produce the requested records, Plaintiff is entitled to an award of its reasonable attorneys' fees and costs under 5 ILCS 140/11(i).

#### **Relief Requested**

**WHEREFORE**, Plaintiff Edgar County Watchdogs, Inc., respectfully requests that this Court:

- A. Enter a declaratory judgment that Plaintiff is entitled to the records it has sought in the first and fourth parts of its FOIA request of March 28, 2016;
- B. Order IACA to produce all records responsive to the first and fourth parts of Plaintiff's FOIA request of March 28, 2016;
- C. Award Plaintiff its reasonable attorneys' fees and costs; and
- D. Award Plaintiff any additional relief the Court deems just and proper.

**Dated: May 6, 2016.**

Respectfully submitted,

**EDGAR COUNTY WATCHDOGS, INC.**

By:  \_\_\_\_\_

One of its attorneys

Jacob H. Huebert (#6305339)

Jeffrey M. Schwab (#6290710)

James J. McQuaid (#6321108)

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[jmcquaid@libertyjusticecenter.org](mailto:jmcquaid@libertyjusticecenter.org)

# Exhibit 1



**From:** Shirley Madigan [<mailto:Shirley.Madigan@illinois.gov>]  
**Sent:** Friday, April 01, 2016 1:50 PM  
**To:** John Kraft <[john@illinoisleaks.com](mailto:john@illinoisleaks.com)>  
**Cc:** Romie Munoz <[Romie.Munoz@illinois.gov](mailto:Romie.Munoz@illinois.gov)>  
**Subject:** RE: FOIA Request (IAC) - 3-28-2016

Dear Mr. Kraft,

We would like an additional 5 day extension.

Thank you,

*Shirley R. Madigan*  
Chairman, Illinois Arts Council Agency

**From:** John Kraft [<mailto:john@illinoisleaks.com>]  
**Sent:** Wednesday, March 30, 2016 9:09 PM  
**To:** Shirley Madigan  
**Cc:** Romie Munoz  
**Subject:** RE: FOIA Request (IAC) - 3-28-2016

So are you saying you need an additional 5 days?

John Kraft

**From:** Shirley Madigan [<mailto:Shirley.Madigan@illinois.gov>]  
**Sent:** Wednesday, March 30, 2016 11:30 AM  
**To:** John Kraft <[john@illinoisleaks.com](mailto:john@illinoisleaks.com)>  
**Cc:** Romie Munoz <[Romie.Munoz@illinois.gov](mailto:Romie.Munoz@illinois.gov)>  
**Subject:** Re: FOIA Request (IAC) - 3-28-2016

Dear Mr. Kraft,

The Illinois Arts Council Agency's (IACA) Director of Administration, Romie Munoz, forwarded your FOIA request to me. The IACA makes every effort to provide accurate information as quickly as possible. However, at this time we are in need of an extension to respond. Due to budget preparation, along with limited staff resources, we will be unable to meet the required turnaround time.

Thank you for your interest in the Illinois Arts Council Agency.

Sincerely,

*Shirley R. Madigan*  
Chairman, Illinois Arts Council Agency

**From:** John Kraft [<mailto:john@illinoisleaks.com>]

**Sent:** Monday, March 28, 2016 9:23 AM

**To:** IAC Info

**Subject:** FOIA Request (IAC) - 3-28-2016

In accordance with the Freedom of Information Act I am requesting the following. If you are not the FOIA officer please forward to the FOIA officer as required by statute.

1. **Copy of all expense reimbursements to Board Members for the past 2 years.**
2. **Copy of meeting minutes for the past 2 years.**
3. **Copy of the current annual meeting schedule.**
4. **Copy of the complete compensation package of all employees (by-name).**

**Electronic copies are requested.**

**This is not a commercial request.**

This is also a request for fee waiver, should any fees be imposed, as this information bears on the public business of the City of Benton and will be used to inform citizens of the actions of their public officials and of their rights and responsibilities.

*I qualify as both media and non-profit under the definitions in Section 2 (c-10) ("Commercial purpose"), Section 2 (f) ("News media"), Section 2 (g) ("Recurrent requester"), and Section 2 (h) ("Voluminous request") of the Freedom of Information Act, for the purposes of being exempt to the provisions of Section 3.1 (Requests for commercial purposes), Section 3.2 (Recurrent requesters), Section 3.6 (Voluminous requests), and Section 6 (Authority to charge fees).*

Thanks,  
John Kraft  
7060 Illinois Highway 1  
Paris, Illinois 61944

[john@illinoisleaks.com](mailto:john@illinoisleaks.com)

## Exhibit 2



190 SOUTH LASALLE STREET, SUITE 1500  
CHICAGO, ILLINOIS 60603  
312.263.7668

**Via electronic mail**

April 25, 2016

Shirley R. Madigan  
Illinois Arts Council Agency  
Shirley.Madigan@illinois.gov

**Re: FOIA Request of John Kraft, Edgar County Watchdogs**

Dear Ms. Madigan:

This law firm represents Edgar County Watchdogs, Inc., a member of which, John Kraft, sent a Freedom of Information Act ("FOIA") request to your office by electronic mail on March 28, 2016. That request sought copies of:

1. All expense reimbursements to Board Members for the past 2 years.
2. Meeting minutes for the past 2 years.
3. The current annual meeting schedule.
4. The complete compensation package of all employees (by name).

On March 30, 2016, you sent Mr. Kraft an email stating that your office would "be unable to meet the required turnaround time." Mr. Kraft responded that same day with an email asking whether you were stating that you needed an additional five days. On April 1, you responded with an email stating that you "would like an additional 5 day extension."

Mr. Kraft and Edgar County Watchdogs have received nothing from you or the Agency since then.

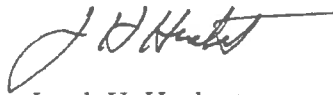
As you should know, 5 ILCS 140/3(e) entitles a public body to, at most, one extension of five business days to respond to a FOIA request, unless the person making the request agrees to a longer extension, which Mr. Kraft and Edgar County Watchdogs have not done. Accordingly, your office was required to either produce the records Mr. Kraft requested or deny his request by April 11, 2016, at the latest.

Although Mr. Kraft and Edgar County Watchdogs do not agree to any extension beyond the single five-day extension authorized by FOIA, we will expect to receive all records responsive to Mr. Kraft's request by Friday, April 29, 2016. If you believe that is not possible, please contact me directly before that date to discuss this matter. You may contact me by phone at 312.263.7668, extension 219, or by email at [jhuebert@libertyjusticecenter.org](mailto:jhuebert@libertyjusticecenter.org).

Shirley R. Madigan  
April 25, 2016  
Page 2

Our hope is that this matter can be resolved without court intervention. The Liberty Justice Center stands ready, however, to initiate legal proceedings to ensure that the Agency complies with its obligations under FOIA.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. H. Huebert", with a long horizontal flourish extending to the right.

Jacob H. Huebert  
Senior Attorney

# Exhibit 3

Dear Mr. Kraft:

Thank you for writing to the Illinois Arts Council Agency (IACA) with your request of information pursuant to the Illinois Freedom of Information Act, 5 ILCs 140/1 et seq. The IACA makes every effort to provide accurate information as quickly as possible.

On Monday, March 28, 2016, you requested the following from our Agency:

1. A copy of all expense reimbursements to Board Members for the past 2 years.  
**IACA enabling legislation states 'No member may receive compensation for his services...'**
2. A copy of meeting minutes for the past 2 years.  
**Limited resources have necessitated the IACA convene only one board meeting in the past two years. The minutes are attached.**
3. A copy of the current annual meeting schedule.  
**The IACA Board meeting schedule is set (for the upcoming calendar year) at the first board meeting of the fiscal year. That meeting has not been held for the current fiscal year due to lack of appropriation.**
4. A copy of the complete compensation package of all employees (by-name).  
**The IACA is unable to comply with this request. It is unduly burdensome because it is unclear, categorical, and overly broad. The information that you are requesting may be kept by another agency such as the Illinois Comptroller's Office or the Department of Central Management Services.**

Please contact my assistant Pam Thomas at 312-814-6794 if you need further information.

Sincerely,

*Shirley R. Madigan*  
Chairman, Illinois Arts Council Agency

## Exhibit 4





190 SOUTH LASALLE STREET, SUITE 1500  
CHICAGO, ILLINOIS 60603  
312.263.7668

**Via electronic mail**

April 29, 2016

Shirley R. Madigan  
Illinois Arts Council Agency  
Shirley.Madigan@illinois.gov

**Re: FOIA Request of John Kraft, Edgar County Watchdogs**

Dear Ms. Madigan:

On April 25, 2016, this firm sent you a letter regarding a Freedom of Information Act ("FOIA") request that our client, John Kraft of Edgar County Watchdogs, Inc., submitted to the Illinois Arts Council Agency ("IACA") on March 28, 2016. Mr. Kraft's request sought copies of:

1. All expense reimbursements to Board Members for the past 2 years.
2. Meeting minutes for the past 2 years.
3. The current annual meeting schedule.
4. The complete compensation package of all employees (by name).

Although the deadline for your response was April 11, 2016 (including a five-day extension), you did not provide any responsive records or deny Mr. Kraft's request until April 27, 2016.

It appears that you have denied the first and fourth parts of Mr. Kraft's request, although your letter of April 27 does not explicitly say so, nor does it satisfy FOIA's requirement that a notice of denial include "a *detailed* factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial," nor does it satisfy FOIA's requirement that any notice of denial advise the requester of his right to seek review by the Public Access Counselor, a court, or both. *See* 5 ILCS 140/9 (emphasis added).

In response to the first part of Mr. Kraft's request, you stated: "IACA enabling legislation states 'No member may receive compensation for his services . . .,'" apparently quoting 20 ILCS 3915/2 and implying that this means that IACA could have no records responsive to this portion of Mr. Kraft's request. But Mr. Kraft did not seek records reflecting "compensation" – rather, he sought records of "expense reimbursements," which the statute explicitly authorizes in the same sentence that you partially quoted in your letter.

Accordingly, please clarify whether IACA has any records of expense reimbursements to Board Members from the past two years.

In response to the fourth part of Mr. Kraft's request, you stated:

The IACA is unable to comply with this request. It is unduly burdensome because it is unclear, categorical, and overly broad. The information that you are requesting may be kept by another agency such as the Illinois Comptroller's Office or the Department of Central Management Services.

IACA is not entitled to deny this portion of Mr. Kraft's request on the basis that it is "unduly burdensome," however, because it did not timely respond to his request. Under 5 ILCS 140/3(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 [5 ILCS 140/3(g)]." 5 ILCS 140/3(f). Moreover, even if IACA could assert this exemption, Mr. Kraft would be entitled to an opportunity to narrow his request, which you have not provided. *See* 5 ILCS 140/3(g).

Your letter partially denying Mr. Kraft's request also states that the fourth part of his request is "unclear." To the contrary, however, the request is clear: Mr. Kraft seeks records of all compensation – wages and benefits – paid to IACA's employees in the past two years.

Accordingly, we expect IACA to fulfill its obligation to provide records responsive to the fourth part of Mr. Kraft's request.

Although Mr. Kraft and Edgar County Watchdogs do not agree to any extension beyond the single five-day extension authorized by FOIA, we expect to receive the clarification requested above and all records responsive to Mr. Kraft's request by Thursday, May 5, 2016. If you believe you cannot meet that deadline, please contact me directly either by phone (312.263.7668 x219) or email ([jhuebert@libertyjusticecenter.org](mailto:jhuebert@libertyjusticecenter.org)). Please send all further communications regarding this FOIA request, including any responsive records, directly to me.

We continue to hope to resolve this matter without court intervention.

Very truly yours,



Jacob H. Huebert  
Senior Attorney