

In the Circuit Court
For the Eleventh Judicial Circuit
McLean County, Illinois

DIANE BENJAMIN)
)
 Plaintiff)
)
 vs) 15-MR-763
)
 CITY OF BLOOMINGTON)
 Defendant)
 and)
 CENTRAL ILLINOIS ARENA MANAGEMENT)
 Intervening Party)
)
)

4th Amended
COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

Now comes Plaintiff, Diane Benjamin, pro se, who prays this Court render a declaratory judgment and grant injunctive relief under the Freedom of Information Act (“FOIA”), 5 ILCS 140/1, et seq. For this Complaint, Plaintiff states and alleges as follows:

1. Plaintiff – Diane Benjamin. The plaintiff is an Illinois resident, and resides in the County of McLean.
2. Defendant is the City of Bloomington, a public body as the term is defined in 5 ILCS 140/2(a) and the Central Illinois Arena Management by motion to intervene
3. According to Illinois Freedom of Information law: (5 ILCS 140/1.2)

Presumption. All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.
4. On January 5, 2015, Plaintiff served a FOIA request on Defendant office of the City of Bloomington seeking copies of public record. A true and correct copy of the request is attached hereto and incorporated as Exhibit A. (Non-applicable parts are crossed out)

5. On January 20, 2015, Plaintiff received through email a response to Exhibit A. The request was denied. The response is attached hereto and incorporated herein as Exhibit B. (Non-applicable parts are crossed out)
6. Section 11(a) of the Act [5 ILCS 140/11(a) provides that:

“Any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief.”
7. Section (5 ILCS 140/1) (from Ch. 116, par. 201) provides that:

“The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.”
8. (5 ILCS 140/7(2))

A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act.
9. Pursuant to Section 11(h) of the Act [5 ILCS 140/11(h)] Plaintiff is requesting that these proceedings take precedence on the docket over all other causes except those the court considers to be of greater importance, and be assigned a hearing and trial at the earliest practicable date and expedited in every way.

Count One

(Violation of the Illinois Freedom of Information Act, 5 ILCS 140/7(2), *et seq.*)

10. Plaintiff reaffirms paragraphs 1-9 as though fully restated herein.
11. Plaintiff is being denied her legal right to inspect public records by defendant failure to produce the records requested on January 5, 2015. See Exhibit A
12. The City of Bloomington built the US Cellular Coliseum with taxpayer funds. The City is the owner of the property for the benefit of Bloomington taxpayers.
13. The City paid for general furniture and fixtures before the Coliseum opened, including the

Micros Point of Sale Equipment. See Exhibit D attached.

14. The concession reports requested under FOIA reside on this City owned equipment housed at the Coliseum.
15. Central Illinois Arena Management was hired to manage the arena. The contract between the City and Central Illinois Arena Management is titled **Management Agreement**. See Exhibit C attached.
16. By signing the Management Agreement, Central Illinois Arena Management assumed the governmental function of management of the taxpayer owned arena on behalf of the City of Bloomington and the taxpayers of Bloomington.
17. Page 1 of the Management Contract clearly states CIA (CIAM) “is the sole and exclusive agent to provide comprehensive services” for the development of the Coliseum. (Exhibit C)
18. Page 16 of the Management Contract (Exhibit E attached) lists the required percentage of gross concession sales Central Illinois Arena Management is required to pay to the Coliseum Fund.
19. The City of Bloomington has admitted the concession reports requested by this FOIA are not in their possession.
20. Page 16 of the Management contract (Exhibit E) also requires a 15% commission be paid on catering. The concession reports requested will list “backstage catering”. Without City oversight, the citizens have no guarantee this commission was received.
21. Without City oversight of the reports requested by FOIA, citizens have no guarantee money due to them was accounted for accurately and theft of taxpayer money did not occur. City officials, specifically the City Manager (David Hales), failed in his fiduciary duty to

taxpayers.

According to 720 ILCS 5/33-3 (from Ch. 38, par. 33-3)

Sec. 33-3. Official misconduct.

(a) A public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he or she commits any of the following acts:

(1) Intentionally or recklessly fails to perform any mandatory duty as required by law

22. According to page 18, section 8.1 of the Management Agreement (Exhibit F), the City could

have reviewed and copied the requested reports at any time with appropriate notice:

CIA (CIAM) shall give the City's authorized representatives access to such books and records maintained at the Coliseum during reasonable business hours upon reasonable advance notice as often as the City shall deem reasonable necessary or appropriate.

23. Since the request for the documents was denied, the City chose not to exercise their rights

under the contract to inspect, obtain, and review them. By not reviewing the documents

the City failed to fulfill its fiduciary duty to citizens to protect taxpayer dollars.

24. 5 ILCS (140/7.2) deems public records in the hands of a subcontractor are still considered a public record of the public body.

25. All revenue earned at the US Cellular Coliseum belongs to taxpayers since the arena is owned by the City of Bloomington. CIAM is required to provide a complete account of revenues and expenses under the FOIA law.

26. Without the City of Bloomington's review of these documents, taxpayers have no assurance that proper payments were made to the Coliseum Fund which is jointly held by the City and the Management Company.

27. The Coliseum issued quarterly profit and loss reports that were widely reported in the media. Without seeing actual concession sales reports, the percentage paid to the city and reported as revenue could not be verified. The annual **audited** profit and loss figures also did not include a review of concession payments, therefore the results can't be reported as

truth.

28. Concession Sales are not included in the outside audit performed every year of the Coliseum. Taxpayer money was not afforded the care and oversight citizens rightfully expect in the accounting of their money.
29. The requested records do not fall under any category listed “Exempt” in the Freedom of Information Law. Pursuant to Illinois FOIA law, all “public records” are open to the public, to claim any exemption the defendants must provide “clear and convincing evidence.
30. The requested records were created on equipment belonging to the City of Bloomington on behalf of the City of Bloomington. Since CIAM is no longer the managing agent of the Coliseum, the City should have direct access to these concession reports.
31. If the records do not exist on the Micros equipment for 2014 and other years, public records as defined in 5 ILCS 140 have been destroyed. The State Records Act states:

(5 ILCS 160/1.5)
Sec. 1.5. Purpose. Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois (i) that government records are a form of property whose ownership lies with the citizens and with the State of Illinois; (ii) that those records are to be created, maintained, and administered in support of the rights of those citizens and the operation of the State; (iii) that those records are, with very few exemptions, to be available for the use, benefit, and information of the citizens; and (iv) that those records may not be disposed of without compliance to the regulations in this Act.
(Source: P.A. 92-866, eff. 1-3-03.)
32. If the requested concession reports do not exist in an unaltered state, the City of Bloomington failed to comply with the State Records Act and therefore failed in their fiduciary duty to citizens. Documents altered by CIAM to hide non-exempt information violates the rights of citizens to complete access to public documents.
33. The FOIA request also asked for payroll information. Citizens have a right to know how much money the top managers paid themselves. Since all revenue generated at the

Coliseum is for the benefit of the taxpayers of Bloomington, citizens deserve to know how that money was spent.

34. Commissions and management fees paid to CIAM from taxpayers are public information.

Taxpayers have a right to know the salaries paid to Central Illinois Arena Management employees and management.

35. Contracts can not be enforced if the language violates the law. The payroll and concession reports are deemed public records under ILCS 140/1 *et seq.* Therefore any claims to confidentiality are invalid.

36. Plaintiff has no adequate remedy at law.

Wherefore, Plaintiff prays this court:

- 1) Declare the City of Bloomington to be in violation of the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*; and
- 2) Enjoin the City of Bloomington and Central Illinois Arena Management from continuing to withhold access to any and all non-exempt public records responsive to Plaintiff's FOIA requests and further enjoin both to provide copies of any and all records responsive to Plaintiff's FOIA requests without further delay, and
- 3) Enjoin the City of Bloomington to prepare, forthwith, an affidavit declaring that they will provide complete access to Plaintiff and further declaring that any and all non-exempt public records responsive to the request will be made available to Plaintiff in an unaltered state with no information redacted, and
- 4) Order the City of Bloomington to prepare, forthwith, an affidavit identifying with specificity any and all public records responsive to Plaintiff's FOIA requests that are claimed to be subject to legal exemption from disclosure and further identifying with specificity the reason(s) for any such claim of exemption; and
- 5) Declare the City of Bloomington acted willfully, intentionally, and in bad faith in failing to secure public records and in failing to provide responsive documents to Plaintiff's FOIA requests; and Order the City of Bloomington to pay civil penalty of not less the \$2500 nor more than \$5000 for each occurrence, as outline in 5 ILCS 140/11(j) as the Court finds just and equitable; and
- 6) Order the City of Bloomington to pay a civil penalty of not less the \$2,500 nor more than \$5,000 for each occurrence, as outlined in 5 ILCS (140/11(j) as the court finds just and equitable.
- 7) Award Plaintiff reasonable fees and all cost/fees incurred in litigating this suit as the Court finds just and equitable.

Dated August 31, 2016

Respectfully submitted,

Diane Benjamin, *pro se*

27248 E 1100 North Rd
Ellsworth, IL. 61737
Tel: (309) 724-8520
Plaintiff