

**STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
COUNTY OF McLEAN**

DIANE BENJAMIN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF BLOOMINGTON, )  
 )  
 Defendant; )  
 )  
 and )  
 )  
 CENTRAL ILLINOIS ARENA )  
 MANAGEMENT, INC., )  
 )  
 Intervening Party. )

No. 15 MR 763

**McLEAN COUNTY  
FILED  
NOV 16 2016  
CIRCUIT CLERK**

**ORDER**

THIS CAUSE comes before the Court for hearing on the Motions to Dismiss the Plaintiff's 4<sup>th</sup> Amended Complaint for Declaratory Judgment and Injunctive Relief, filed by the Defendant, City of Bloomington (hereafter City), and the Intervener, Central Illinois Management (hereafter CIAM). Plaintiff appeared in person, pro se; Defendant, City appeared by counsel, Gregory Moredock; and the Intervener, CIAM appeared by counsel, William Mueller and Nathan Hinch. The Court, having considered the motions, memorandum filed by the City, as well as the oral arguments of the parties, hereby finds and orders as follows:

1. In January of 2015, Plaintiff filed a Freedom of Information Act (FOIA) request with the City. Relevant to this litigation are her requests for (1) "[a]ll complete

Coliseum micros reports for fiscal year 2014” and (2) “[d]etailed payroll for the Coliseum for calendar year 2014.”

2. Both Defendant City and Intervener CIAM have filed a Motion to Dismiss under 735 ILCS 5/2-619, arguing that the claim relating to Plaintiff’s request for the micros reports is moot.

3. On August 23, 2016, the City released the Coliseum micros reports for fiscal years 2013, 2014, and 2015 by posting them on its website; a copy of the reports was also personally provided to Plaintiff. Plaintiff has acknowledged that she received those documents, but argues she is missing information and/or the information was not provided in the format she thought she would receive, i.e. per event. Plaintiff wants the Court to rely on the hearsay statement of an unidentified person that the reports can be produced in a different format.

4. Plaintiff did not request the fiscal year 2014 micros reports of the Coliseum in any particular format. According to the City’s counsel of record, an officer of the court, a complete set of the requested micros reports were provided, in the only format they are able to produce.

5. Based upon the foregoing, the Court finds that Plaintiff has been provided with the micros reports she requested, and accordingly, the portion of her Complaint related to these reports is moot. The Motions to Dismiss related to the micros reports is allowed.

6. Intervener CIAM also seeks to dismiss the portion of Plaintiff’s 4<sup>th</sup> Amended Complaint related to the Coliseum payroll records for calendar year 2014 under

section 2-619. At the hearing on the Motions to Dismiss, Plaintiff indicated she is now seeking only the gross salary information of John Butler and Bart Rogers.

7. As noted by Plaintiff during the hearing on the Motions to Dismiss, Intervener CIAM previously raised the same argument as to the 3<sup>rd</sup> Amended Complaint. As noted by the Court at the hearing on August 23, 2016, the argument was raised under 2-615 in CIAM's Motion to Dismiss, and under 2-619 in the supporting memoranda. The Court analyzed the argument under both sections. The basis for the denial under 2-619 was CIAM's failure to procure any supporting submissions, such as an affidavit.

8. In its renewal of its argument, CIAM now attaches the affidavit of John Butler. This affidavit stands unrefuted by Plaintiff, and it establishes, among other things: (1) CIAM is a privately owned corporation; (2) all CIAM shareholders, past and present, have been private individuals; (3) no governmental entity, official or employee has ever selected any of CIAM's directors; (4) CIAM is a private, for profit company, which provides management, event booking, food and beverage services and related services and produces for public entertainment venues; (5) CIAM had broad and exclusive authority, control and power in the management of the U.S. Cellular Coliseum, pursuant to their management agreement with the City; (6) all Coliseum workers were employed by CIAM, who had sole authority to select, hire, terminate and discipline all personnel; and (7) CIAM processed its own payroll, utilizing its own federal employee identification number, and filing its own tax returns.

9. Factors in determining whether an entity is performing a governmental function or is a subsidiary of a public body are (1) whether the entity has legal existence independent of government resolution; (2) the nature of the functions performed by the

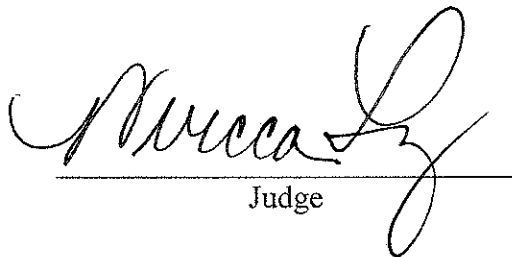
entity; and (3) the degree of governmental control exerted over the entity. *Better Government Association v. Illinois High School Association, et al.*, 2016 IL APP (1<sup>st</sup>) 151356.

10. Here, CIAM is a private company with private, non-public owners. It was not created by any state statute or directive of any governmental body. None of their employees were employees of any public body. They had complete charge of the day to day operations of the Coliseum, selecting vendors, contractors, performers, etc. Finally, they have their own legal existence, separate and apart from any governmental entity. As such, the Court finds the payroll records sought by Plaintiff are not covered under the Freedom of Information Act. CIAM is not a subsidiary of a public body, nor is it performing any governmental function. CIAM's 2-619 Motion to Dismiss directed to the requested payroll records is allowed.

11. The Court does not address the arguments made under section 2-615 of the Code of Civil Procedure as the 2-619 arguments are dispositive. Plaintiff's 4<sup>th</sup> Amended Complaint, filed September 1, 2016, is dismissed in its entirety with prejudice.

SO ORDERED.

Enter: November 16, 2016

  
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Judge