

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

JAMIE KALVEN,)
)
 Plaintiff,)
)
 v.)
)
 THE CITY OF CHICAGO, THE)
 CHICAGO POLICE DEPARTMENT,)
 JODY WEIS, in his official capacity)
 as Superintendent of Police,)
)
 Defendants.)

2014 DEC 22 11:11:30
CLERK

090851396

COMPLAINT

Plaintiff JAMIE KALVEN, by counsel, for his complaint against the Defendants THE CITY OF CHICAGO, CHICAGO POLICE DEPARTMENT, and Police Superintendent Jody Weis alleges as follows:

INTRODUCTION

1. This is a complaint for injunctive relief under the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 140/1 *et seq.* In violation of FOIA, the CITY OF CHICAGO (“City”), CHICAGO POLICE DEPARTMENT (“CPD”), and Superintendent WEIS have refused to produce records regarding charges of official misconduct against Chicago police officers and the City’s investigations of those charges. Charges that police officers committed official misconduct in the course of their public duties and the City’s response to those charges fall within both the letter and spirit of FOIA, because they are subject to its express terms and are of profound public interest. There are no FOIA exemptions which should allow the Defendants to keep these documents hidden from the public. JAMIE KALVEN requests that this Court enter

judgment in his favor, and order the Defendants to produce the requested records and award attorneys' fees pursuant to 5 ILCS 140/11.

JURISDICTION AND VENUE

2. Jurisdiction and venue properly lie in the Circuit Court of Cook County, Illinois under 5 ILCS 140/11, because the City of Chicago and the CPD are public bodies located in Cook County.

PARTIES

3. Plaintiff, Jamie Kalven, is an award-winning independent journalist in Chicago. He has spent years documenting police abuse in Chicago, including allegations against a number of the officers listed in his FOIA requests. He has reported extensively on individual instances of abuse and also on the systemic problems that facilitate and encourage police abuse in Chicago.

4. The Defendant City of Chicago is a public body as defined in 5 ILCS 140/2(a), and is the public body in possession of the records at issue in this case.

5. The Defendant Chicago Police Department is a Department within the City of Chicago that maintains public records for the City. The CPD is a public body, as defined in 5 ILCS 140/2(a). The CPD possesses and controls the records at issue in this case.

6. Defendant Jody Weis is the Superintendent of the CPD for the City of Chicago. Plaintiff sues Defendant Weis in his official capacity as police Superintendent for the City.

BACKGROUND

7. In FOIA, the General Assembly declared that the public policy of Illinois is to enable citizens to monitor their government as part of their duties as citizens. The General Assembly has enshrined in our law that: “all persons are entitled to full and complete information regarding the affairs of government....” 5 ILCS 140/1. This information “is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.” *Id.*

8. Consistent with the public policy of Illinois, FOIA requires that “all public records” be open to the public, with the exception of certain limited exemptions explicitly created by the legislature. 5 ILCS 140/3, 7.

9. Police officers wield extraordinary powers. For many citizens, they are the public face of civic authority. Their role is vital and unique in our society. The public entrusts them with the power to arrest and detain persons against their will, the power to use force, even the power to kill.

10. The awesome powers given to police officers create a special responsibility to the public and the expectation of public monitoring. That is why Illinois courts have repeatedly held that “[t]he conduct of a policeman on duty is legitimately and necessarily an area upon which public interest may and should be focused.” *See e.g., Cassidy v. American Broadcasting Companies, Inc.*, 60 Ill.App.3d 831, 839 (1978). As the Illinois Supreme Court has long recognized, a police officer’s performance of his or her “duties are peculiarly ‘governmental’ in

character and highly charged with the public interest.” *Coursey v. Greater Niles Tp. Pub. Corp.*, 40 Ill.2d 257, 265 (1968).

MR. KALVEN’S INVESTIGATION OF PATTERNS OF POLICE ABUSE

11. In 2005 and 2006, Jamie Kalven published a series of 17 articles titled “Kicking the Pigeon.” See “Kicking the Pigeon,” available at http://www.viewfromtheground.com/wp-content/media/ktp/kicking_the_pigeon.pdf. These articles reported on a federal civil rights case—*Bond v. Utreras*—arising from patterns of police abuse in Chicago public housing that Mr. Kalven had long observed and sought to document.

12. Mr. Kalven’s journalistic inquiry focused on the conditions that enabled certain Chicago police officers to abuse some of Chicago’s most vulnerable residents with impunity.

13. In 2007, Mr. Kalven sought leave to intervene in the *Bond* case to seek access to complaints of official misconduct against the five Chicago police officers charged with the abuse of the plaintiff, the City’s investigations of those complaints, and certain lists of Chicago police officers who accumulated repeated complaints of official misconduct. Mr. Kalven sought access to those documents to further his reporting; the documents would enable him to inquire into the City’s practices and systems for investigating police abuse.

14. On July 2, 2007, Federal District Court Judge Joan Humphrey Lefkow granted Mr. Kalven’s request, holding that “[w]ithout such information, the public would be unable to supervise the individuals and institutions it has entrusted with the extraordinary authority to arrest and detain persons against their will. With so much at stake defendants simply cannot be permitted to operate in secrecy.” *Bond v. Utreras*, No. 04 C 2617, 2007 WL 2003085 at *3 (N.D.Ill. July 2, 2007) (reversed on other grounds).

15. The City appealed Judge Lefkow's Order, and requested a stay of the Court's Order pending appeal. The City's requests provoked massive public outcry. Both Chicago daily newspapers published editorials calling for release of the documents at issue. On appeal, Mr. Kalven's position was joined by 28 aldermen—a majority of City Council—and was supported in an *amicus* brief by major national and local media organizations (among them the *New York Times*, *Chicago Tribune*, *Chicago Sun-Times*, Associated Press, and Copley and Gannett chains).

16. On November 10, 2009, the United States Court of Appeals for the Seventh Circuit ruled that Mr. Kalven lacked standing to intervene in the *Bond* case to seek the requested documents. *Bond v. Utreras*, 585 F.3d 1061 (7th Cir. 2009). The Court of Appeals noted that nothing about the federal case prevents Mr. Kalven from seeking the same documents directly from the City under the Illinois Freedom of Information Act. *Id.* at 1076, n.10.

MR. KALVEN'S FREEDOM OF INFORMATION REQUESTS

17. On November 16, 2009, Mr. Kalven submitted two Freedom of Information requests to the City. The documents requested by Mr. Kalven include Complaint Register files ("CRs") and lists of Chicago police officers who have accumulated repeated complaints of official misconduct ("Repeater Lists").

18. CR files contain charges of official misconduct against Chicago police officers and the investigation of those charges by the City.

19. The Repeater Lists identify Chicago police officers with the most complaints of official misconduct, the nature of the complaints against them, and the outcome of the City's investigations of those complaints. All of the information in the Police Department's Repeater

Lists is also contained in CR files and various databases controlled and maintained by the City that store information about complaints of official misconduct against Chicago police officers.

20. Request Number 1, given FOIA File # 09-1960 by the City, sought certain Repeater Lists maintained by the City. It also requested closed CR files documenting official misconduct complaints against 17 Chicago police officers who were repeatedly charged with police abuse, including the five officers charged with having abused the plaintiff in *Bond v. Utreras*. A copy of Mr. Kalven's first request is attached as Exhibit 1.

21. Mr. Kalven's second request, Request Number 2, given FOIA File #09-1961 by the City, asked for certain CR files investigating charges of excessive force, illegal search, false arrest, burglary, theft, robbery, and extortion committed by Chicago police officers in the course of their official duties. The requested CR files would provide a window for the public on the ways the City addresses, or fails to address, charges of official police misconduct. A copy of Mr. Kalven's second FOIA Request is attached as Exhibit 2.

22. The requested documents are "public records" as defined by 5 ILCS 140/2(c). The City prepared the requested documents. The City also possesses, uses, maintains and controls the requested documents.

23. The Chicago Police Department prepared the requested CR files, uses the CRs, and maintains the CRs in the ordinary course of its public business.

24. The Chicago Police Department has also prepared and created databases which store information from CR files in electronic form. The Police Department maintains and controls those databases in the ordinary course of its public business.

25. The Chicago Police Department prepared, created, and generated each of the Repeater Lists requested by Mr. Kalven from its electronic databases described in the preceding paragraph. The Chicago Police Department provided a copy of the repeater lists to its lawyers and agents in the City of Chicago's Department of Law. The Chicago Police Department possesses and controls the requested repeater lists.

26. The Chicago Police Department also continues to maintain and control its databases which store the information in the requested repeater lists. The Police Department, through a few computer key strokes, may reprint copies of those lists.

27. The requested documents are critical to enable the public to fulfill its duty to monitor our government. The public has a profound interest in monitoring the conduct of its police officers. Additionally, the public has a right to know how allegations of misconduct are being investigated and addressed, or not addressed, by the Defendants.

28. For example, the requested Repeater Lists and the CR files provide critical public information about how the Defendants have addressed, or failed to address, possible *patterns* of police abuse.

29. Publicly available data from Repeater Lists from the *Bond* case reveal that less than 5% of Chicago police officers between 2001 and 2006 had each accumulated 11 or more complaints of official misconduct. Nonetheless, the odds were less than 0.2% that a complaint against those officers with repeated complaints would lead to a suspension of a week or more.

30. 75% of the officers who amassed 11 or more official misconduct complaints in that five year period never suffered any penalty or punishment whatsoever by the Defendants.

31. Certain officers who had earned 50 or more complaints of official misconduct during this five year period were never identified for discipline or monitoring of any kind by the Defendants.

32. Illinois FOIA does not permit the Defendants to hide this information from the public. The Freedom of Information Act provides, "The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." 5 ILCS 140/7(1)(b). Police officers are "public officials" who have no right to privacy in the performance of their official duties. *Cassidy v. American Broadcasting Companies, Inc.*, 60 Ill.App.3d 831, 839 (1978).

33. Complaints of official misconduct against police officers and the Defendants' investigation of those complaints are public information under the Illinois FOIA and do not fall within any recognized exemption. Investigations into official police misconduct "do not concern [the officer's] personal affairs. What he does in his capacity as a [law enforcement officer] is not his private business. Whether he used excessive force or otherwise committed misconduct during an investigation or arrest is not his private business. Internal-affairs files that scrutinize what a police officer did by the authority of his or her badge do not have the personal connotations of an employment application, a tax form, or a request for medical leave." *Gekas v. Williamson*, 393 Ill.App.3d 573, 583 (2009).

DENIAL AND APPEAL

34. By two letters dated November 23, 2009, the Defendants, through their Freedom of Information Officer Matthew E. Sandoval #12963, sought an extension of seven additional working days to respond to Mr. Kalven's FOIA requests. In the Defendants' form letters,

Officer Sandoval checked off every possible reason for delay. The checked boxes included claims that “the requested records are stored in whole or in part at other locations than the office having charge of the requested records;” and “there is need for consultation, which shall be concluded with all practicable speed, with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request.” Copies of the Defendants’ Notices of Delay of Response to FOIA Request are attached as Exhibit 3.

35. On December 8, 2009, the Defendants, through FOIA Officer Matthew Sandoval, denied Mr. Kalven’s FOIA requests in their entirety as “unduly burdensome.” A copy of Officer Sandoval’s letter denying Mr. Kalven’s requests is attached as Exhibit 4.

36. Officer Sandoval cites three reasons for his determination that Mr. Kalven’s request is unduly burdensome.

37. First, with respect to the Repeater lists, Sandoval writes, “[I]t is unclear as to whether you are seeking every list ever compiled for litigation purposes, or if your request is limited to just those lists produced by the City of Chicago’s Law Department in the cases you reference.” As is clear on its face, Mr. Kalven’s request is limited to the cases he specifically referenced. *See* Exhibit 1.

38. Officer Sandoval then states that even if Mr. Kalven’s request were limited to the designated Lists, it “would be unduly burdensome in that you are seeking certain records maintained by a separate public body, namely the Law Department...” The requested documents remain in the possession and under the control of the Chicago Police Department. *See* paras. 23-

26, above. The fact that the CPD also provided copies of those documents to its lawyers does not alter that basic fact.

39. Third, Officer Sandoval complains that Mr. Kalven's requests for CR files require the production of hundreds of multi-page files.

40. Mr. Kalven's FOIA requests impose no undue burden on the City. Any burden on the City in producing documents in the City's possession and under its control is outweighed by the paramount public interest in the records, more fully described in paragraphs 9, 10, 27-32, above.

41. On December 9, Mr. Kalven appealed the City's denial of his FOIA requests to Defendant Jody Weis, the Superintendent of the Chicago Police Department. He caused his appeal to be served on the Office of the Superintendent by hand delivery on that date. A copy of Mr. Kalven's appeal to the Superintendent is attached as Exhibit 5.

42. Under 5 ILCS 140/10(a), the Defendants were required to determine whether the documents requested by Mr. Kalven were open for inspection on or before December 18, 2009, seven working days after having been served with Mr. Kalven's appeal. FOIA does not allow for additional delays.

43. Notwithstanding the plain requirements of 5 ILCS140/10(a), the Defendants, through James P. McCarthy, Attorney-at-Law, sent Mr. Kalven's counsel a letter seeking seven additional working days to decide Mr. Kalven's appeal. A copy of Mr. McCarthy's letter is attached as Exhibit 6.

44. The Defendants' request for an additional extension constitutes a failure to act under 5 ILCS 140/10(a), and serves as a constructive denial of Mr. Kalven's appeal.

45. As of the date of the filing of this Complaint, the Defendants continue to refuse to allow Mr. Kalven access to any of the requested records.

46. Mr. Kalven has exhausted his administrative remedies as required by FOIA as a condition precedent to bringing this suit.

47. Mr. Kalven's efforts to pursue and exhaust all administrative remedies are further documented in his letter addressed to Mr. McCarthy, dated December 21, 2009. A copy of Mr. Kalven's letter is attached as Exhibit 7.

CLAIM FOR RELIEF UNDER FREEDOM OF INFORMATION ACT

48. Plaintiff realleges and incorporates herein paragraphs 1 through 47 above.

49. The requested documents are "public records" as defined by 5 ILCS 140/2(c).

50. Defendants City of Chicago, Chicago Police Department, and Weis wrongfully withheld "public records" from Mr. Kalven, in violation of 5 ILCS 140/3.

51. Plaintiff's requests were proper under the FOIA because they sought public records prepared and possessed by the City of Chicago and the Chicago Police Department, public bodies, as defined by 5 ILCS 140/2(a).

52. The requested public records are not exempt from disclosure.

53. Defendants' violation of FOIA harmed Plaintiff in that he was denied his legal right to inspect public records.

WHEREFORE, Plaintiff prays that the Court enter judgment in Plaintiff's favor and:

- A. Order the Defendants to immediately release to Plaintiff for inspection and copying the documents listed in Plaintiff's FOIA requests, attached as Exhibits 1 and 2;
- B. Award Plaintiff costs, expenses, and reasonable attorneys' fees pursuant to 5 ILCS 140/11(i); and
- C. Grant such other and further relief as this Court deems equitable and just.

Respectfully submitted,



One of Plaintiff's Attorneys

Date: December 22, 2009

Craig B. Futterman, Counsel for Plaintiff
Kathleen B. Rubenstein, Senior Law Student
EDWIN F. MANDEL LEGAL AID CLINIC
University of Chicago Law School
6020 S. University
Chicago, Illinois 60637
(773) 702-9611
Attorney # 91074

Jon Loevy
Samantha Liskow
LOEVY AND LOEVY
312 N. May Street
Chicago, Illinois 60607
(312) 243-5900
Attorney # 41295