

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

MATTHEW CHAPMAN,)	
)	
Plaintiff,)	Case No. 15 CH 17497
)	
v.)	
)	
CITY OF CHICAGO DEPARTMENT OF INNOVATION AND TECHNOLOGY,)	
)	
Defendant.)	

**DEFENDANT'S
CROSS-MOTION FOR SUMMARY JUDGMENT
AND AMENDED RESPONSE TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

The City of Chicago Department of Innovation and Technology ("DoIT"), by its Corporation Counsel Stephen R. Patton, hereby moves this Honorable Court for the entry of an order granting it summary judgment pursuant to 735 ILCS 5/2-1005. In support of this motion, and as its amended response to the motion for summary judgment previously filed by Plaintiff, DoIT states as follows:

UNDISPUTED FACTS

On August 11, 2015, plaintiff sent a request to DoIT under the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*, asking that DoIT:

Please attach in a standard text format information would contain phone numbers dialed between the dates of 11/24/14 and 12/04/14 for the location of 121 N. LaSalle St. #507, Chicago, IL 60602 (mayor's office).

(Complaint, ¶ 9, and its Ex. A.)¹ On August 24, 2015, DoIT responded and provided plaintiff with a log of the approximately 40 phone numbers dialed between those dates. (Complaint, ¶ 10, and its Ex. B). As DoIT explained, the produced records were generated from the City's billing system, and, as such, did not include incoming calls, or calls to internal City phones (i.e., '744' numbers), because the City does not maintain records of calls made or received other than billing records. (Complaint, its Ex. B.)

As DoIT explained in its response, certain phone numbers are exempt from production under FOIA Sections 7(1)(b) and 7(1)(c). As discussed further below, home and personal phone numbers are exempt under Section 7(1)(b), and non-publically listed numbers and work-issued cell phone numbers are exempt under Section 7(1)(c). *Id.* DoIT further explained that it would be extremely burdensome to review each of the calls appearing in the log to determine whether it involved a home, non-public, or personal or work-issued cell phone number, because making such a determination would require the use of a reverse directory and/or telephoning the number in question, and even that effort would identify only the individuals called. DoIT further asserted that, in many cases, further investigation would be required to determine whether the numbers were personal, home, or other non-public numbers. *Id.*

In preparing this motion for summary judgment, DoIT and its counsel became aware that, in its August 24, 2015 response, DoIT had inadvertently misidentified the universe of responsive numbers. DoIT identified approximately 130 additional phone numbers dialed from the phones

¹ Paragraph 9 of plaintiff's Complaint contains a typo – it states that the request sought numbers dialed from November 24, 2014 through December 14, 2014. However, plaintiff's original request, which is attached to his Complaint as Ex. A, cuts the search off at December 4, 2014.

within Suite 507 of City Hall, bringing the total to 171. DoIT has produced these additional records to plaintiff herewith, and attaches the complete set of responsive records hereto as Ex. A.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Outboard Marine Corp v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (Ill. 1992). However, unlike other civil actions, a decision to grant or deny summary judgment in a FOIA suit does not necessarily hinge on the existence of a genuine issue of material fact. *Hemenway v. Hughes*, 601 F.Supp. 1002, 1004 (D.D.C. 1985). Summary judgment is proper in a FOIA action when the public body demonstrates that it has fully discharged its obligations under the Act. *Miller v. United States Dept. of State*, 779 F.2d 1378, 1382 (8th Cir. 1985). Moreover, summary judgment should be encouraged where it will avoid the expense of unnecessary trials and ease congestion of trial calendars. *Fooden v. Board of Governors*, 48 Ill. 2d 580, 586 (1971), cert. denied, 408 U.S. 943 (1972). This interest is especially compelling in FOIA litigation since public tax monies are being spent in the defense of such actions.

ARGUMENT

I. CERTAIN RESPONSIVE PHONE NUMBERS ARE EXEMPT FROM DISCLOSURE PURSUANT TO SECTIONS 7(1)(B) AND 7(1)(C) OF FOIA.

Section 7(1)(b) of FOIA exempts "private information, unless disclosure is required by another provision of this Act, a State or federal law or court order." Private information is defined as:

[U]nique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, *home or personal telephone numbers*, and personal email addresses. Private information also

includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

5 ILCS 140/2(c-5) (emphasis added).

Further, Section 7(1)(c) of FOIA exempts other non-publically listed numbers. That section exempts:

Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information.

Exempt under this section are phone numbers whose "owners" have chosen to make them non-public, or "unlisted." The public release of such information in response to a FOIA request, after the number's owner has chosen to make his phone listing private, would constitute an unwarranted invasion of personal privacy, which is not outweighed by any sufficient public interest in its release.

Additionally, the Illinois Attorney General's Office Public Access Counselor ("PAC") has established that City-issued cell phone numbers are exempt from disclosure pursuant to 5 ILCS 140/7(1)(c), because the disclosure of these numbers would constitute a clearly unwarranted invasion of personal privacy. As the PAC reasoned, certain City employees are issued cell phones so they may be on call during non-work hours or while away from their offices. Disclosure of these numbers could subject staff to excessive phone calls from the public at all times of day. Further, if staff were forced to turn off their cell phones to reduce such intrusion, they may not be readily available to attend to the business of the public body, defeating

the purpose of issuing them cell phones. (*See* 2010 PAC 8685, issued September 30, 2010, attached hereto as Ex. B.)

Thus, the only phone numbers which are *not* exempt under FOIA are those that are publically listed and are not home telephone numbers, personal telephone numbers, or work-issued cell phone numbers. In other words, FOIA only compels the production of listed numbers belonging to businesses, governmental agencies and other entities, and only those numbers which are not work-issued cell phones.

II. DOIT HAS USED ALL REASONABLE EFFORTS TO DETERMINE WHETHER EACH RESPONSIVE NUMBER IS EXEMPT.

As DoIT's August 24, 2015 response to plaintiff's FOIA request, DoIT produced a log of responsive numbers with the last four digits redacted for each. As DoIT explained in its accompanying response letter, it would be extremely burdensome to determine to whom or to what entity each number belonged, in order to determine whether that number was exempt. As a result, DoIT asserted that compliance with plaintiff's request was overly burdensome pursuant to Section 3(g) of FOIA. On those grounds – rather than provide no numbers at all – DoIT redacted the last four digits of all phone numbers provided.

On this Court's urging, during the course of this litigation, DoIT has explored all available and feasible options to determine whether a number is unlisted and, if not, to whom or to what entity each number belongs. First, DoIT compared the list of responsive records with a database of City-issued cell phones, and in doing so identified one such number. Because that phone number is exempt pursuant to Section 7(1)(c) of FOIA, it has been produced to plaintiff (and attached as Ex. A) in redacted form – with the last four digits removed. Next, DoIT and its counsel conducted online research on each remaining responsive phone number – in other words,

they “googled” each number to determine whether that number was publically listed, and, if so, to whom it belonged. This resulted in the identification of 57 out of the 137 responsive numbers as non-exempt – such as businesses, law firms, governmental agencies, restaurants and hotels. These 57 numbers are included in the numbers produced to plaintiff (and attached as Ex. A), in unredacted form. In other instances, these online searches resulted in confirmation that a phone number was, in fact, a home or personal number belonging to an individual, and therefore exempt pursuant to Section 7(1)(b) of FOIA. These numbers are produced to plaintiff herewith in redacted form.

What remained were numbers with no “web presence” – in other words, the numbers are not publically listed, and the searchable internet does not contain any reflection of those numbers as associated with any businesses, governmental agencies or other entities. In order to further determine to whom these numbers belonged, DoIT and its counsel worked with the staff of Mayor Emanuel to identify numbers known to them. This effort resulted in the confirmation of several numbers as home and personal numbers, and these numbers have been produced to plaintiff herewith in redacted form.

Last, DoIT explored the possibility of a “reverse lookup” directory which could reveal the owner of each remaining number. As explained in the attached affidavit of Kevin Kirby, the DoIT Manager of Telecommunications, the only such services available to DoIT are online reverse look-up tools, which would reveal to DoIT only the telecommunications provider of these non-publically listed lines. (Affidavit of Kevin Kirby, attached hereto as Ex. C, at ¶ 9.) Only that telecommunications provider – and not DoIT – may identify the actual owner of the line if it is not publically listed. *Id.*

Thus, based on the use of all available tools, DoIT has determined that each number it has redacted is either unlisted, or is listed but is a home or personal number, or a City-issued cell phone number.

In order for a party to prevail in a motion for summary judgment in a FOIA case, “the defending agency has the burden of showing that its search was adequate and that any withheld documents fall within an exemption to the FOIA.” *BlueStar Energy Services, Inc. v. Illinois Commerce Commission*, 871 N.E.2d 880, 887 (1st Dist. 2007). Further, summary judgment is proper in a FOIA action when the public body demonstrates that it has fully discharged its obligations under the Act. *Miller*, 779 F.2d at 1382. Here, DoIT has used all available tools to confirm that the numbers redacted are exempt under Sections 7(1)(b) and (c) of FOIA. Because DoIT’s search and efforts have been more than adequate, and its obligations have been properly discharged, summary judgment in favor of DoIT is appropriate.

WHEREFORE, defendant DoIT respectfully requests that this Court enter an order granting summary judgment in its favor and denying plaintiff’s motion for summary judgment, or for such other relief as this Court deems just and appropriate.

Respectfully submitted,

CITY OF CHICAGO

Stephen R. Patton, Corporation Counsel

BY: Amber Achilles Ritter

Amber Achilles Ritter, Chief Assistant Corporation Counsel
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30 N. LaSalle #1720
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(312) 744-0741

Dialed Number
3123681900
312506
7735346455
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202422
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3102755200
773316
773426
5057474912
7086450555
708388
708388
708388
7737834855
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Ex. A

Dialed Number
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7082726000
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773710
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3122223238
312634
312634
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312634
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Dialed Number
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**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

September 30, 2010

Lara Shayne
Assistant General Counsel
Chicago Public Schools
125 S. Clark St., Suite 700
Chicago, Illinois 60603

RE: FOIA Pre-Authorization Request 2010 PAC 8685

Dear Ms. Shayne:

We have reviewed the Chicago Public Schools ("CPS") pre-authorization request and associated documents to determine whether Section 7(1)(c) of the Freedom of Information Act ("FOIA") was properly asserted to withhold requested information. 5 ILCS 140/7(1)(c). Specifically, on July 14, 2010, Hunter Clauss submitted a FOIA request to CPS seeking "[a] list of all Chicago Public Schools-issued cell phone numbers, the name of the person it is given to, and the person's title."

On August 3, 2010, we determined that further inquiry was warranted, and requested that CPS provide us with a detailed explanation as to why it contended that the requested information was exempt under Section 7(1)(c). After careful review, we approve of the use of Section 7(1)(c) to withhold the cell phone numbers from public disclosure. We, however, conclude that the names and titles of CPS employees are not exempt from disclosure.

Section 7(1)(c) exempts from inspection and copying the following: "personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . . 'Unwarranted invasion of personal privacy' means the disclosure of information that is highly personal or objectionable to reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." 5 ILCS 140/7(1)(c).

Disclosing the cell phone numbers under the circumstances in this case would result in a clearly unwarranted invasion of personal privacy. CPS issues cell phones to its staff for use at work and during non-work hours. A critical reason for issuing cell phones is to keep the staff on call while they are not working. Disclosure of the numbers, however, could subject the staff to excessive phone calls from the public at all times of the day, even when they are at home and not working.

Ex.B

Furthermore, if the employees are forced to turn off their phones while they are not at work to reduce intrusion into their lives, they would not be readily available in the event CPS management contacts them for a work emergency. The result would be to impair CPS's ability to access critical staff during emergencies, and would defeat the primary purpose in issuing the cell phones.

Finally, the public can contact CPS staff through their office landlines and through contact information posted on the CPS's website. Thus, we conclude that the public's interest in disclosure of the cell phone numbers does not outweigh the personal privacy interests at stake in this case.

The names and titles of those CPS employees who have been issued cell phones, however, are not exempt from disclosure under Section 7(1)(c). The public's legitimate interest in this information outweighs personal privacy rights. The public has a right to know the names of public employees and their titles. Accordingly, we conclude that CPS may not assert Section 7(1)(c) to withhold the names and titles of those employees to whom CPS issues cell phones.

Thank you for your attention to this matter. If you have any questions or concerns, please feel free to contact me at (312) 814-5044. This correspondence shall serve to close this case.

Sincerely,

Cara Smith
Public Access Counselor

By:



Sunil Bhawe
Assistant Attorney General

cc: Hunter Clauss
Chicago Public Radio
848 E. Grand Ave.
Chicago, Illinois 60611-3509

Cassandra Daniels
FOIA Officer
Chicago Public Schools
125 S. Clark St., 7th Floor
Chicago, Illinois 60603

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

MATTHEW CHAPMAN,

Plaintiff,

v.

CITY OF CHICAGO DEPARTMENT
OF INNOVATION AND TECHNOLOGY,

Defendant.

No. 15 CH 17497

Honorable Judge Cohen

AFFIDAVIT OF KEVIN KIRBY

I, Kevin Kirby, do solemnly affirm and certify, under the penalties provided under Section 1-109 of the Illinois Code of Civil Procedure, that if called as a witness, I would testify that the following facts are true and correct to the best of my knowledge and belief and are based on my personal knowledge:

1. I, Kevin Kirby, am employed by the City of Chicago Department of Innovation and Technology ("DoIT").
2. I am the Manager of Telecommunications, and have held that position since November 2012.
3. The duties and responsibilities of the DoIT Manager of Telecommunications include managing the City of Chicago's Telephone Systems and Enterprise Voice Solutions.
4. The Mayor's Office currently uses AT&T Centrex (Central Exchange) Service for their Voice Services.
5. Centrex is a Hosted Service, by AT&T, where the Phone Systems, themselves, reside in AT&T Central Offices – i.e., the Centrex Phone Systems are not actually on the premises of the City of Chicago. AT&T owns and manages all of the Centrex

Ex. C.

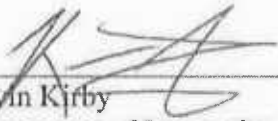
Communications Equipment and Software – and, simply sells Centrex to their customers as a service.

6. DoIT is able to run an outbound Call Detail Report of all outbound Long Distance telephone numbers that were dialed – from the requested Mayor’s Office Centrex Telephone Lines – and, is also able to compile the external (i.e., off-network) outbound Local telephone numbers that were dialed utilizing the monthly billing data AT&T provides the City, each month (for each billing cycle), in one large “Flat File.” All external outbound numbers dialed (for both Long Distance and Local Calls) were compiled – using all data available to the City – in response to Plaintiff’s August 11, 2015 FOIA request.
7. The City of Chicago does not have access to records of internal calls that were made from one City Centrex Line to another City Centrex Line – as, those internal Centrex-to-Centrex calls (that do not leave the Centrex System) are non-billable, and, therefore do not show up on any of the AT&T provided records/reports.
8. DoIT maintains a list of City of Chicago issued cellular lines. DoIT has the capability of cross-referencing these numbers with a list of phone numbers dialed by a City of Chicago Centrex phone line to determine which numbers dialed, if any, are City of Chicago issued cell phone numbers.
9. Using an online reverse look-up tool, DoIT has the ability to identify the telecommunications provider of non-publically listed lines. Only the telecommunications provider may identify the actual owner of the line if it is not publically listed.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER AFFIANT SAYETH NOT.

By:


Keyin Kirby
Department of Innovation and Technology
City of Chicago