

COMPLAINT

INTRODUCTION

2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of information

relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of the people. 5 ILCS 140/1.

3. Under FOIA Section 1.2, “[a]ll 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.” 5 ILCS 140/1.2.

PARTIES

4. Plaintiff EDGAR COUNTY WATCHDOGS is a non-profit news media organization located in Paris, Illinois.

5. Defendant VILLAGE OF FRANKFORT POLICE DEPARTMENT (“FRANKFORT PD”) is a public body located in Will County, Illinois.

DECEMBER 1, 2021 FOIA REQUEST

6. On December 1, 2021, ECW submitted a FOIA request to FRANKFORT PD for the following records: [1] “Copy of Police Report #F1-21-0000939-001”; [2] “Copy of all other police reports, incident reports, or any other reports for the address of 20671 Holland Harbor Drive, Frankfort IL 60423, from June 1 through June 30, 2021”; [3] “Copy of the names of all officers, and any other personnel, including medical or ambulance, who responded to that address between June 1 and June 30, 2021”; and [4] “Copy of the 911 call which may have generated the need for Police Report #F1-21-0000939-001.” Ex 1.

7. On December 6, 2021, FRANKFORT PD denied the request in its entirety by purporting to cite Section 7(1)(c) of FOIA. Ex 2.

8. On December 6, 2021, ECW followed up with FRANKFORT PD and asked to provide the non-exempt materials. Ex. 3.

9. On December 10, 2021, FRANKFORT PD stated that it is following its “guidelines on how we handle this type of report” and refused to produce any non-exempt materials. Ex. 4.

10. FRANKFORT PD did not provide any clarity about what guidelines it relied on to deny the request.

11. Further, FRANKFORT PD’s “guideline” is not a statutory basis to deny ECW’s FOIA request.

12. Section 7(1)(c) 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. 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)(c).

13. In violation of Section 9(a) of FOIA, FRANKFORT PD has not provided a “detailed factual basis” for the application of Section 7(1)(c).

14. Instead, FRANKFORT PD relied on what they purported to be Section 7(1)(c) of FOIA and an unidentified “guideline” to deny the request in its entirety.

15. FRANKFORT PD has not proved that the records responsive to the request are exempt.

16. As of the date of this filing, FRANKFORT PD has produced no responsive records and has not complied with FOIA.

COUNT I – FAILURE TO PRODUCE RECORDS

17. The above paragraphs are incorporated by reference.

18. FRANKFORT PD is a public body under FOIA.

19. The records sought in the FOIA request are non-exempt public records.

20. FRANKFORT PD has violated FOIA by failing to produce the records responsive to the request.

COUNT II – FAILURE TO PERFORM AN ADEQUATE SEARCH

21. The above paragraphs are incorporated by reference.

22. FRANKFORT PD is a public body under FOIA.

23. FRANKFORT PD bears the burden of proving beyond material doubt that it performed an adequate search for responsive records.

24. FRANKFORT PD has failed to come forward with sufficient evidence to carry this burden.

25. FRANKFORT PD has violated FOIA by failing to adequately search for records responsive to the request.

COUNT III – WILLFUL AND INTENTIONAL VIOLATION OF FOIA

26. The above paragraphs are incorporated by reference.

27. FRANKFORT PD is a public body under FOIA.

28. The records sought in the FOIA request are non-exempt public records.

29. FRANKFORT PD has willfully and intentionally or otherwise in bad faith violated FOIA.

WHEREFORE, ECW asks that the Court:

- i. declare that FRANKFORT PD has violated FOIA;
- ii. order FRANKFORT PD to conduct an adequate search for records responsive to the request;
- iii. order FRANKFORT PD to produce the records responsive to the request;

- iv. enjoin FRANKFORT PD from withholding non-exempt public records under FOIA;
- v. order FRANKFORT PD to pay civil penalties;
- vi. award Plaintiff reasonable attorneys' fees and costs; and
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ Josh Loevy

Attorneys for Plaintiff
EDGAR COUNTY WATCHDOGS

Matthew Topic, ARDC #6290922
Josh Loevy, ARDC #6327897
Merrick Wayne, ARDC #6330610
Shelley Geiszler, ARDC #6335917
LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900
foia@loevy.com

Cynthia Reilly

From: Kirk Allen [REDACTED]
Sent: Thursday, December 2, 2021 6:53 AM
To: John Kraft; Cynthia Reilly; Kevin Keegan; Adam Nielsen; Donna Roesel
Subject: Re: FOIA Request (Wesley Township) 12 1 2021

CAUTION: This e-mail originated outside of the Village's email system.

DO NOT click links or open attachments unless you confirm the incoming address of the sender and know the content is safe.

Subject line is [REDACTED]

[Get Outlook for Android](#)

From: John Kraft [REDACTED]
Sent: Wednesday, December 1, 2021 9:13:02 PM
To: creilly@frankfortil.org <creilly@frankfortil.org>; kkeegan@frankfortil.org <kkeegan@frankfortil.org>; anielsen@frankfortil.org <anielsen@frankfortil.org>; droesel@frankfortil.org <droesel@frankfortil.org>
Subject: FOIA Request ([REDACTED]) 12 1 2021

On behalf of the Edgar County Watchdogs, Inc., and in accordance with the Freedom of Information Act I am requesting the following.

If you are not the FOIA officer, you are required to immediately forward this request to the appropriate FOIA officer as required by statute [5 ILCS 140/3(c)].

I am requesting the following information under the Freedom of Information Act:

This FOIA request involves the activities of an elected state officer at the following address:

Senator Michael Hastings
20671 Holland Harbor Drive
Frankfort, Illinois 60423

1. **Copy of Police Report # F1-21-0000939-001.**
2. **Copy of all other police reports, incident reports, or any other reports for the address of 20671 Holland Harbor Drive, Frankfort, IL. 60423, from June 1 through June 30, 2021.**
3. **Copy of the names of all officers, and any other personnel, including medical or ambulance, who responded to that address between June 1 and June 30, 2021.**
4. **Copy of the 911 call which may have generated the need for Police Report # F1-21-0000939-001.**

Thanks in advance.


Electronic copies are requested.
This is not a commercial request.

I, and the organizations I represent (Edgar County Watchdogs, Inc, and American Watchdogs, Inc), qualify as both media and nonprofit under the definitions in Section 2 (c-10) ("Commercial purpose"), and the principal purpose of the request is to access and disseminate information concerning news and current or passing events, or for articles of

opinion or features of interest to the public.; Section 2 (f) ("News media") as an Investigative Reporter for the Edgar County Watchdogs, an online news site, and am engaged in making news reels and other motion picture for public viewing, and as a news service to provide news and data to news organization(s) and nonprofits; 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).

This is also a request for fee waiver, should any fees be imposed, as this information bears on the public business of this public body and will be used to inform citizens of the actions of their public officials and employees, of their rights and responsibilities, of news and current or passing events, and for articles of opinion or features of interest to the public. The principal purpose of this request is to access and disseminate information regarding the health, safety, and welfare or the legal rights of the general public and is not for the principal purpose of gaining a personal or commercial benefit.

Thanks,
John Kraft





Keith Ogle
Village President

VILLAGE OF FRANKFORT

EST • 1855

POLICE DEPARTMENT

20602 Lincoln-Way Lane • Frankfort, IL 60423
Administrative Office (815) 469-9435
Fax (815) 469-7997



Leanne Chelepis
Chief of Police

December 6, 2021

Mr. John Kraft
Mr. Kirk Allen
Edgar County Watchdogs, Inc.

RE: REQUEST UNDER THE FREEDOM OF INFORMATION ACT
Request from: John Kraft / Kirk Allen Edgar County Watchdogs, Inc.
Date of Request: December 2, 2021
Date Response Due: December 9, 2021

Dear Mr. Kraft and Mr. Allen,

On December 2, 2021, the Frankfort Police Department received your attached request for records under the Freedom of Information Act (Act) (5ILCD 140/1 et seq.)

You requested the following records:

1. Copy of Police Report #F1-21-0000939-001.
2. Copy of all other police reports, incident reports, or any other reports for the address of 20671 Holland Harbor Dr., Frankfort, IL 60423 from June 1 through June 30, 2021.
3. Copy of the names of all officers, and any other personnel, including medical or ambulance, who responded to that address between June 1 and June 30, 2021.
4. Copy of the 911 call which may have generated the need for Police Report #F1-21-0000939-001.

Section 7(1)(c) of the Freedom of Information Act (5 ILCS 140/7) exempts the following record from public inspection or copying:

“Reports of incident for which there are no arrests and where disclosure would constitute an unwarranted invasion of personal privacy, such as minor domestic or neighbor issues.”

The Frankfort Police Department believes the records you have requested are exempt from disclosure under Section 7(1)(c) of the Act as this report falls within these criteria.

Consequently, your request for records under the Freedom of Information Act is denied. Cindy Reilly, Freedom of Information Officer, Frankfort Police Department, 20602 Lincoln-Way Lane, Frankfort, Illinois 60423, is the person responsible for the denial.

With this denial, the Frankfort Police Department informs you of your right to review under the Act (5 ILCS 140/9.5 (a)) by the Public Access Counselor. If you choose, you must file your request for review including your original FOIA request and this denial letter with the Counselor within sixty (60) calendar days of the date of this letter with:

Public Access Counselor
Office of the Public Access Counselor
Office of the Attorney General of the State of Illinois
500 South 2nd Street
Springfield, IL 62706
(312) 814 5526 or (877) 299-3642
(TTY) (877) 844-5461
(FAX) (217) 782-1396
(EMAIL) publicaccess@atg.state.il.us

Additionally, the Frankfort Police Department informs you of your right to a Judicial Review of the Village's denial of your request for records under Section 11 of the Freedom of Information Act (5 ILCS 140/11) by filing a lawsuit in the State Circuit Court.

For your convenience, a copy of the Freedom of Information Act is available for public inspection during normal business hours at:

Village of Frankfort
Administrative Office
423 West Nebraska Street
Frankfort, Illinois 60423

Village of Frankfort
Police Department
20602 Lincoln Way Lane
Frankfort, Illinois 60423

FRANKFORT POLICE DEPARTMENT



By: Cindy Reilly
One of its Freedom of Information Officers

Enclosure: FOIA Request

RESPONSE TO INFORMATION REQUESTED

- ☐ Compliance with request
- ☐ Unable to comply within five (5) business days due to the following reason(s):
- ☐ Request is unduly burdensome and the request needs to be narrowed.
 - ☐ There is a need for consultation prior to release of requested records.
 - ☐ Other: _____
- ☐ Partial compliance: Pursuant to the Illinois Freedom of Information Act 5ILCS140/8, certain material contained within the original request has been deleted or omitted because the material was found to be exempt as per state statute.
- ☒ Request was denied/partially denied:

PURPOSE OF DENIAL OR PARTIAL COMPLIANCE

☐ **Private information.** 5ILCS140/7(1)(b)

"Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal finance information, password or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home addresses and personal license plates.

☒ Information considered "unwarranted invasion of privacy"/objectionable. 5 ILCS 140/7(1)(c)

☐ Information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal institutions. 5ILCS140/7(1)(d)(iv)

☐ The record(s) requested are currently under investigation by this agency 5ILCS140/7(1)(d)(vii)

☐ The request is too broad and compliance would disrupt the duly undertaken work of the Police Department.

RIGHT TO APPEAL

Pursuant to the Freedom of Information Act, a person who believes that a violation of the Act by a public body has occurred may file a request for the review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. The request for review must be in writing, must be signed by the requestor, and must include a summary of the facts supporting the allegation. Send requests to the Public Access Bureau, 500 S. 2nd Street, Springfield, IL 62706. The Public Access Bureau can be reached at (217) 558-0486. Additionally, the Village of Frankfort informs you of your right to a Judicial Review of the Village's denial of your request for records under Section 11 of the Freedom of Information Act (5 ILCS 140/11) by filing a lawsuit in the State Circuit Court.

A fee to cover the cost of copying records, but not to include the cost of an employee's time to research and copy the records, may be charged at the following rates: The first 50 pages of black and white 8 1/2 x 11, 8 1/2 x 14 size paper are free; documents over 50 pages are 10 cents per page. Color copies are 18 cents per page. Pages larger than 11 x 17 are \$3.00 per page. CDs and DVDs are \$2.00. Certified copies are an additional \$1.00 per document. Copies of crash reports are \$5.00 and copies of crash reconstruction reports are \$20.00. Printed photographs are \$1.00 each.

12.6.21

Date of Compliance with Request

Cindy Ray

Signature of Person Completing Request

Cost due for information / records: \$ _____

Signature of Requestor (if received in person)

Subject: RE: Freedom of Information Request



John Kraft [REDACTED]
to Cynthia Rellly, Kirk Allen

Mon, Dec 6, 4:39 PM (17 hours ago)

You are viewing an attached message. Loevy & Loevy Mail can't verify the authenticity of attached messages.

Under Section 7, you "may" redact what you believed qualifies under subparagraph 7(1)(c) and "shall" provide the remainder of the record(s). That is the requirement you must comply with in order to redact any portion of the requested records.

(5 ILCS 140/7) (from Ch. 116, par. 207)

(Text of Section from P.A. 101-652)

Sec. 7. Exemptions.

(1) When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. Subject to this requirement, the following shall be exempt from inspection and copying:

Please provide the requested records.

Thanks,
John Kraft
[REDACTED]



FRANKFORT followup denial: Freedom of Information Request

From: Cynthia Reilly <CREilly@frankfortil.org>
Sent: Friday, December 10, 2021 3:25:02 PM
To: John Kraft [REDACTED]
Subject: RE: Freedom of Information Request

Mr. Kraft,

We are following our guidelines on how we handle this type of report. If you like, you may contact the Attorney General's Office for a review of this request.

Thank You,
Cindy Reilly

From: John Kraft [REDACTED]
Sent: Monday, December 6, 2021 4:39 PM
To: Cynthia Reilly <CREilly@frankfortil.org>; Kirk Allen <Kirk@illinoisleaks.com>
Subject: RE: Freedom of Information Request

CAUTION: This e-mail originated outside of the Village's email system.
DO NOT click links or open attachments unless you confirm the incoming address of the sender and know the content is safe.

Under Section 7, you "may" redact what you believed qualifies under subparagraph 7(1)(c) and "shall" provide the remainder of the record(s). That is the requirement you must comply with in order to redact any portion of the requested records.

(5 ILCS 140/7) (from Ch. 116, par. 207)
(Text of Section from P.A. 101-652)
Sec. 7. Exemptions.

(1) When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. **The public body shall make the remaining information available for inspection and copying.** Subject to this requirement, the following shall be exempt from inspection and copying:

Please provide the requested records.

Thanks,

Exhibit 4

John Kraft

[REDACTED]

From: Cynthia Reilly <CREilly@frankfortil.org>

Sent: Monday, December 06, 2021 4:27 PM

To: John Kraft <[REDACTED]>; Kirk Allen <[REDACTED]>

Subject: Freedom of Information Request

Attached please find the response to your FOIA request. If you have any questions, please do not hesitate to contact me.

Thank You,

Cindy Reilly

Frankfort Police Department

[20602 Lincoln Way Lane](#)

[Frankfort, IL 60423](#)

Admin. Office: 815-469-9435

Fax: 815-469-7997

creilly@frankfortil.org

