

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

BETTER GOVERNMENT ASSOCIATION, )  
)  
Plaintiff, )  
)  
v. )  
)  
ELK GROVE VILLAGE, )  
)  
Defendant. )

2014CH11816  
CALENDAR/ROOM 03  
TIME 00:00  
General Chancery

**COMPLAINT**

NOW COMES Plaintiff, BETTER GOVERNMENT ASSOCIATION, by its undersigned attorneys, LOEVY & LOEVY, and brings this suit to overturn Defendant ELK GROVE VILLAGE's refusal to produce records related to the cost of "dignitary protection" training and video of a recent village board meeting. In support of its Complaint, BETTER GOVERNMENT ASSOCIATION alleges:

**INTRODUCTION**

1. Pursuant to the fundamental philosophy of the American constitutional form of government, the General Assembly has declared it to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act ("FOIA").

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.

3. All public records 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. All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public.

5. If the court determines that a public body willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith, the court shall impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence.

6. Under FOIA Section 11(h), "except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way."

7. Defendant ELK GROVE VILLAGE has willfully and intentionally violated FOIA and acted in bad faith by refusing to produce records related to the cost of "dignitary protection" training and video of a recent village board meeting because ELK GROVE VILLAGE does not approve of what it (incorrectly) perceives to be the purpose of BGA's request.

#### **PARTIES**

8. Plaintiff BETTER GOVERNMENT ASSOCIATION ("BGA") is a nonpartisan, Illinois non-profit corporation, whose mission is to educate the public about waste, inefficiencies, and corruption in government by acting as a watchdog agency uncovering and exposing this type of activity; to promote respect for the law; and to support public officials in

the rightful performance of their duties. BGA was founded in 1923 to protect the integrity of the political process in Chicago.

9. Defendant ELK GROVE VILLAGE is a public body located in Cook County, Illinois.

#### **BGA'S FOIA REQUEST AND ELK GROVE VILLAGE'S BAD FAITH DENIAL**

10. On July 1, 2014, BGA requested the following records from ELK GROVE VILLAGE: “[1.] The entire unedited video of the village board meeting that took place on June 17, 2014 (From what I understand, the video and audio on the village’s web site is an edited version). [2.] Any and all documents, including but not limited to emails relating to village officials editing any portion of that video/audio from June 17, 2014. [3.] Documents sufficient to show when, why, where and how much village police officers underwent dignitary protection training since Jan. 1, 2011, and how much this cost. To be clear, this specialty training relates to police protection for government officials and dignitaries.” (Exhibit A)

11. ELK GROVE VILLAGE denied BGA’s requests in full. (Exhibit B)

12. As an initial matter, ELK GROVE VILLAGE claimed “this request amounts to a personal vendetta by an individual police officer who was denied reimbursement for his private automobile wheel damaged on a Village roadway,” and that the request was “ironic” and an attempt to “endanger the safety and welfare of the citizens and fellow Police Officers.”

13. ELK GROVE VILLAGE’s assertion is baseless, offensive, and completely irrelevant to BGA’s request, and demonstrates that ELK GROVE VILLAGE’s denial was willful, intentional, and in bad faith. While ELK GROVE VILLAGE is completely wrong about the purpose of BGA’s request, the express language of FOIA and several reported court decisions make clear that the purpose of a request is irrelevant to whether records are exempt.

14. With regard to BGA's request for dignitary training records, ELK GROVE VILLAGE claimed that release of dignitary protection training records would somehow disclose unique or specialized investigative techniques that would result in demonstrable harm under Section 7(1)(d)(v) and would endanger the life or safety of law enforcement personnel or any other person under Section 7(1)(d)(vi).

15. In an attempt to support this position, ELK GROVE VILLAGE claimed that the release of information showing the extent and cost of this training would be "tantamount to affirming that security measures are in place," which would, in some unspecified manner, result in the harm alleged in ELK GROVE VILLAGE's denial.

16. BGA did not seek the specific content of any training nor any specific security or investigative measures, but only the extent to which such training occurred and at what cost to taxpayers. As such, the asserted exemptions clearly do not apply and ELK GROVE VILLAGE's assertion of those exemptions was a willful, intentional, and bad faith violation of FOIA.

17. Further, ELK GROVE VILLAGE has ignored the plain language of FOIA, which states: "All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public." 5 ILCS 140/2.5 (emphasis added). For this further reason, ELK GROVE VILLAGE's denial was a willful, intentional, and bad faith violation of FOIA.

18. With regard to BGA's request for video and any emails regarding editing, ELK GROVE VILLAGE refused to produce the requested video, improperly directing BGA to its website instead, and claimed that the video was not edited.

19. In addition, in yet another act of bad faith in response to BGA's request, ELK GROVE VILLAGE threatened BGA with unfounded legal action, claiming that "[a]ny statement

or suggestion that the Village of Elk Grove or any of its officials or employees have edited, or attempted to have edited, any portion of any meeting is false. Accordingly, publication of such a defamatory falsehood, by the BGA or anyone else, would be at the publisher's legal peril."

20. In fact, the online video appears to have been edited at least through the addition of graphics and combining of multiple camera angles.

21. Regardless, BGA is entitled under FOIA to a copy of the video, including the raw video of each camera and a copy of the video that is viewable on the ELK GROVE VILLAGE website, because public bodies do not satisfy FOIA by directing requesters to information posted online. *See* 5 ILCS 140/3(b) ("Subject to the fee provisions of Section 6 of this Act, each public body shall promptly provide, to any person who submits a request, a copy of any public record required to be disclosed by subsection (a) of this Section and shall certify such copy if so requested.").

#### **COUNT I – VIOLATION OF FOIA**

22. The above paragraphs are incorporated by reference.
23. ELK GROVE VILLAGE is a public body under FOIA.
24. The records sought in BGA's request are non-exempt public records.
25. ELK GROVE VILLAGE has not produced the requested records.
26. ELK GROVE VILLAGE's violations were willful, intentional, and in bad faith.

**WHEREFORE**, BGA asks that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;
- ii. declare that ELK GROVE VILLAGE has violated FOIA;

- iii. order ELK GROVE VILLAGE to produce the requested records under FOIA;
- iv. enjoin ELK GROVE VILLAGE from withholding non-exempt public records under FOIA;
- v. award BGA reasonable attorneys' fees and costs;
- vi. award civil penalties of between \$2,500 and \$5,000 for each willful and intentional failure to comply with FOIA and any other act of bad faith in responding to BGA's request; and
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,



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Attorneys for Plaintiff  
BETTER GOVERNMENT ASSOCIATION

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## FOIA request

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Robert Herguth <rherguth@bettergov.org>  
To: foia@elkgrove.org

Tue, Jul 1, 2014 at 4:19 PM

Dear FOIA officer,

This is Bob Herguth at the Better Government Association with a request for documents under the Illinois Freedom of Information Act.

Specifically, under FOIA, I am requesting copies of the following:

- + The entire unedited video and audio of the village board meeting that took place June 17, 2014. (From what I understand, the video and audio on the village's web site is an edited version.)
- + Any and all documents, including but not limited to emails, relating to village officials editing any portion of that video/audio from June 17, 2014.
- + Documents sufficient to show when, why, where and how village police officers underwent dignitary protection training since Jan. 1, 2011, and how much this cost. To be clear, this specialty training relates to police protection for government officials and dignitaries.

Please note this information is for a possible news story. As such, I ask that all fees be waived as the law allows.

I ask that this information be conveyed electronically, to this email address: rherguth@bettergov.org. Or, in the case of the video and audio, if email is not possible a disk is acceptable, and to save on postage I am able to pick it up.

I ask that you please contact me with any questions. My direct line is (312) 821-9030.

I appreciate your consideration.

Sincerely,  
Bob Herguth  
Better Government Association

EXHIBIT A

Mayor  
CRAIG B. JOHNSON  
Village Clerk  
JUDITH M. KEEGAN  
Village Manager  
RAYMOND R. RUMMEL



Village Trustees  
NANCY J. CZARNIK  
PATTON L. FEICHTER  
JEFFREY C. FRANKE  
SAMUEL L. HISSNER  
JAMES P. PETRI  
CHRIS PROCHNO

July 8, 2014

Mr. Robert Herguth  
Better Government Association  
Response via email

Re: Request for Production of Records

Dear Mr. Herguth:

Please be advised that the Village Clerk has requested that the undersigned, Village Attorney for the Village of Elk Grove Village, respond to your Request for Production of Records received by the Village on July 1, 2014.

First, I would like to render my personal opinion that this request amounts to a personal vendetta by an individual police officer who was denied reimbursement for his private automobile wheel rim damaged on a Village roadway. How ironic is it that an individual sworn to protect the public, would attempt to indirectly, and possibly directly, make public, information that could endanger the safety and welfare of the citizens and fellow Police Officers he is sworn to protect.

Your request: *Documents sufficient to show when, why, where and how much village police officers underwent dignitary protection training since Jan 1, 2011, and how much this cost. To be clear, this specialty training relates to police protection for government officials and dignitaries.*

Our response: the State Legislature has provided specific exemptions which afford the Village the ability to exempt information that would endanger the well being of its residents, including residents and Village staff attending Village Board meetings, elected officials, as well as the general public.

Therefore, your Request for Production of Records is denied as the information requested is exempt from disclosure pursuant to 5 ILCS 140/7-1-(d) (v) and 140/7-1-(d) (vi) which states in part that records that would do the following shall be exempt from inspection and copying:

140/7-1-(d) (v) disclose unique or specialized investigative techniques other than those generally used and know or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request.

140/7-1-(d) (vi) endanger the life or physical safety of law enforcement personnel or any other person.

**EXHIBIT B**



In conclusion, let me state that by providing information regarding costs in and of itself is tantamount to affirming that such security measures are in place – an affirmation which will not be given or otherwise acknowledged.

Your Request: *The entire unedited video of the village board meeting that took place on June 17, 2014 (From what I understand, the video and audio on the village's web site is an edited version).*

and

Your Request: *Any and all documents, including but not limited to emails, relating to village officials editing any portion of that video/audio from June 17, 2014.*

Our Response: The video and audio on the website are unedited. You may view them on the website.

With respect to your insinuation that Village officials edited portions of the June 17, 2014 meeting before disseminating same, please be advised that the Village did NOT in that instance nor at any time prior thereto edit the video or audio of that board meeting, nor were any requests made to edit the video or audio of that board meeting.

Any statement or suggestion that the Village of Elk Grove or any of its officials or employees have edited, or attempted to have edited, any portion of any meeting is false. Accordingly, publication of such a defamatory falsehood, by the BGA or anyone else, would be at the publisher's legal peril.

Sincerely,



George B. Knickerbocker  
Village Attorney

