



## E-Notice

**2015-CH-03179**

CALENDAR: 07

To: Matthew Vincent Topic  
matt@loevy.com

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# NOTICE OF ELECTRONIC FILING

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

**BETTER GOVERNMENT ASSOC. vs. IL. OFFICE OF COMPTROLLER  
2015-CH-03179**

The transmission was received on 02/24/2015 at 1:21 PM and was ACCEPTED with  
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**CHANCERY\_ACTION\_COVER\_SHEET (CHANCERY DIVISION)**

**COMPLAINT**

Filer's Email: matt@loevy.com  
Filer's Fax: (312) 243-5902  
Notice Date: 2/24/2015 2:06:09 PM  
Total Pages: 10

**DOROTHY BROWN**  
**CLERK OF THE CIRCUIT COURT**  
COOK COUNTY  
RICHARD J. DALEY CENTER, ROOM 1001  
CHICAGO, IL 60602

(312) 603-5031  
courtclerk@cookcountycourt.com

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

BETTER GOVERNMENT ASSOC.

v.

IL. OFFICE OF COMPTROLLER

Plaintiff

Defendant



No.

ELECTRONICALLY FILED

2/24/2015 1:01 PM

2015-CH-03179

CALENDAR: 07

CIRCUIT COURT OF

COOK COUNTY, ILLINOIS

CHANCERY DIVISION

CLERK DOROTHY BROWN

CHANCERY DIVISION CIVIL COVER SHEET  
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the line in front of the appropriate category which best characterizes your action being filed.

0005 ☐ Administrative Review0001 ☐ Class Action0002 ☐ Declaratory Judgment0004 ☐ Injunction0007 ☒ General Chancery0010 ☐ Accounting0011 ☐ Arbitration0012 ☐ Certiorari0013 ☐ Dissolution of Corporation0014 ☐ Dissolution of Partnership0015 ☐ Equitable Lien0016 ☐ Interpleader0017 ☐ Mandamus0018 ☐ Ne Exeat0019 ☐ Partition0020 ☐ Quiet Title0021 ☐ Quo Warranto0022 ☐ Redemption Rights0023 ☐ Reformation of a Contract0024 ☐ Rescission of a Contract0025 ☐ Specific Performance0026 ☐ Trust Construction0027 ☐ Foreign Transcript0085 ☐ Petition to Register Foreign Judgment☐ Other (specify) \_\_\_\_\_By: /s/ MATTHEW VINCENT TOPIC

Attorney

Pro Se

Atty. No.: 41295Name: Matthew Vincent TopicAtty. for: BETTER GOVERNMENT ASSOC.Address: 312 N May Street, Suite 100City/State/Zip: Chicago, IL 60607Telephone: (312) 243-5900

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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

BETTER GOVERNMENT ASSOCIATION, )  
)  
Plaintiff, )  
)  
v. )  
)  
ILLINOIS OFFICE OF THE )  
COMPTROLLER )  
)  
)  
Defendant. )

**COMPLAINT**

NOW COMES Plaintiff, BETTER GOVERNMENT ASSOCIATION, by its undersigned attorneys, LOEVY & LOEVY, and brings this Freedom of Information Act suit to require Defendant ILLINOIS OFFICE OF THE COMPTROLLER to produce records that would identify state employees protected from termination during the gubernatorial transition and communications about such hiring and firing decisions. In support of its Complaint, BETTER GOVERNMENT ASSOCIATION alleges:

**INTRODUCTION**

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is 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"). 5 ILCS 140/1.

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. *Id.*

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. 5 ILCS 140/1.2.

4. Under the Illinois Constitution, FOIA, and the Local Records Act, 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 without exception. Ill. Const. Article VII § 1(c); 5 ILCS 140/2.5; 50 ILCS 205/3a.

5. 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.”

6. Defendant IOC has violated FOIA by refusing to produce records that would identify state employees protected from termination during the gubernatorial transition and communications about such hiring and firing decisions.

### **PARTIES**

7. 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.

8. Defendant ILLINOIS OFFICE OF THE COMPTROLLER is a public body located in Illinois.

### **BGA'S FOIA REQUEST AND IOC'S DENIAL**

9. On January 29, 2015, BGA requested from IOC:

(1) A copy of a list or lists of "protected" state employees. Please note: I understand there exists a list (either digitally or paper) of approximately 230 state employees who are not to be terminated by the Rauner administration.

(2) Copies of any and all emails between the comptroller office's Nancy Kimme, state lawmakers and Gov. Rauner or members of his transition team that references the above mentioned list, or decisions to hire or fire any state worker, from Jan. 1, 2015 to present.

A true and correct copy of the request is attached as Exhibit A.

10. IOC denied the request, claiming that no lists of protected employees exist and that communications about hiring and firing decisions are exempt because "any such communications are exempt personnel matters, and are being withheld under 5 ILCS 140/7(1)(c). These records are further withheld under §7(1)(a) as exempt records of disciplinary action prohibited from disclosure under the Personnel Records Review Act, 820 ILCS 40/7, and §7(1)(f) as exempt preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated." A true and correct copy of the response is attached as Exhibit B.

11. Upon information and belief, IOC does possess a list or lists of protected employees and possessed the list or lists at the time of the request. In the alternative, upon information and belief, IOC possesses other records that would show the list of employees protected from termination. Illinois courts, federal courts, and the Illinois Attorney General have all found that compiling information into a different format to respond to a FOIA request is required under FOIA, and therefore, even if no single list of protected employees exists, the records showing the protected employees should have been produced.

12. The express language of FOIA Section 7(1)(c) states that “the disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.” As such, the Section 7(1)(c) exemption does not apply to communications about which workers to hire or fire.

13. The Personnel Records Review Act provision cited by IOC does not “specifically prohibit” any records from disclosure, as required for FOIA Section 7(1)(a) to apply. Rather, it specifically contemplates the disclosure of records under FOIA after the employee is provided notice. 820 ILCS 40/7(4). Among other caselaw establishing this point, the Illinois Appellate Court has held in a lawsuit brought by BGA against former governor Blagojevich that the Section 7(1)(a) exemption requires a specific prohibition in another statute.

14. FOIA Section 7(1)(f) does not apply to the decisions on whom an agency is permitted to hire or fire, and the exemption is limited to the expression of opinions during the give-and-take of deliberations involving policy decisions.

15. Communications about which employees to hire and fire are “records relating to the obligation, receipt, and use of public funds of the State,” and thus “are public records subject to inspection and copying by the public” without exception. 5 ILCS 140/2.5.

#### **COUNT I – VIOLATION OF FOIA**

16. The above paragraphs are incorporated by reference.

17. IOC is a public body under FOIA.

18. The requested records exist and are not exempt under FOIA.

19. IOC has willfully and intentionally violated FOIA by failing to produce the records requested by BGA.

**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 IOC has violated FOIA;
- iii. order IOC to produce the requested record under FOIA;
- iv. enjoin IOC from withholding non-exempt public records under FOIA;
- v. award BGA reasonable attorneys' fees and costs;
- vi. order IOC to pay civil penalties for willfully and intentionally violating FOIA in bad faith; and
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,



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Attorneys for Plaintiff  
BETTER GOVERNMENT ASSOCIATION

Matthew Topic  
LOEVY & LOEVY  
312 North May St., Suite 100  
Chicago, IL 60607  
312-243-5900  
matt@loevy.com  
Atty. No. 41295



Andrew Schroedter <aschroedter@bettergov.org>

## FOIA Request

Andrew Schroedter <aschroedter@bettergov.org>  
To: FOIA@mail.ioc.state.il.us  
Cc: "Hahn, Bradley C." <Hahnbc@mail.ioc.state.il.us>

Thu, Jan 29, 2015 at 1:28 PM

Dear FOIA Officer,

Pursuant to the Illinois Freedom of Information Act I am requesting:

+ A copy of a list or lists of "protected" state employees. Please note: I understand there exists a list (either digitally or paper) of approximately 230 state employees who are not to be terminated by the Rauner administration.

+ Copies of any and all emails between the comptroller office's Nancy Kimme, state lawmakers and Gov. Rauner or members of his transition team that references the above mentioned list, or decisions to hire or fire any state worker, from Jan. 1, 2015 to present.

I am making this request on behalf of the Better Government Association (BGA). The BGA is a registered non-profit organization in the State of Illinois.

The principal purpose of this request is to access and disseminate information concerning news and current or passing events and for articles of opinion or features of interest to the public regarding the health, safety and welfare or the legal rights of the general public. The information sought will not be used for sale, resale, or solicitation or advertisement for sales or services.

This request is not made for commercial or personal purposes. More information about the BGA is available on the BGA website, [www.bettergov.org](http://www.bettergov.org), and on file with the Illinois Secretary of State. I ask that you waive fees as the law allows. I ask that you convey this information electronically via email.

Please call or email with any questions. I look forward to your response within five business days as required by law.

Regards,

Andrew Schroedter

EXHIBIT A

ELECTRONICALLY FILED  
2/24/2015 1:01 PM  
2015-CH-03189  
FOIA GE 6 of 6



Senior Investigator  
Better Government Association  
223 W. Jackson Blvd; #900  
Chicago, IL 60606  
(p) 312-821-9035  
aschroedter@bettergov.org  
www.bettergov.org

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2015-CH-03179  
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Andrew Schroedter <aschroedter@bettergov.org>

## FOIA Request

Osgood, Robert P <OsgooRP@mail.ioc.state.il.us>

Thu, Feb 5, 2015 at 3:27 PM

To: "aschroedter@bettergov.org" <aschroedter@bettergov.org>

Mr. Schroedter:

The Comptroller's Office does not possess anything responsive to your request for *a copy of a list or lists of "protected" State employees...who are not to be terminated by the Rauner Administration.*

The Comptroller's Office is denying your request for *emails between the Comptroller's Office's Nancy Kimme, State lawmakers and Gov. Rauner or members of his transition team that references the above-mentioned list, or decision to hire or fire any State worker.* Any such communications are exempt personnel matters, and are being withheld under 5 ILCS 140/7(1)(c). These records are further withheld under §7(1)(a) as exempt records of disciplinary action prohibited from disclosure under the Personnel Records Review Act, 820 ILCS 40/7, and §7(1)(f) as exempt *preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated.*

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You have the right to have the denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Attorney General, 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing

Public Access Counselor

Office of the Attorney General

500 S. Second St.

Springfield, Illinois 62706

Fax: (217) 782-1396

Email: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial, 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC. You also have the right to seek a judicial review of your denial by filing a lawsuit in the State Circuit Court, 5 ILCS 140/11.

Truly yours,

EXHIBIT B

## Robert P. Osgood

*Staff Attorney*

Illinois Office of the Comptroller

325 W. Adams St.

Springfield, Illinois 62704

*Tel.:* (217) 558-5159

*Fax:* (217) 558-5123

[OsgooRP@mail.ioc.state.il.us](mailto:OsgooRP@mail.ioc.state.il.us)

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2120 - Served  
2220 - Not Served  
2320 - Served By Mail  
2420 - Served By Publication  
☒ SUMMONS

2121 - Served  
2221 - Not Served  
2321 - Served By Mail  
2421 - Served By Publication  
☐ ALIAS - SUMMONS

(2/18/11) CCG N001

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

BETTER GOVERNMENT ASSOC.

(Name all parties)

v.

IL. OFFICE OF COMPTROLLER

No. 2015-CH-03179

Defendant Address:

IL. OFFICE OF COMPTROLLER  
JAMES R. THOMPSON CENTER  
100 WEST RANDOLPH STREET. SUITE 15-500  
CHICAGO, IL 60607

Summons

To each Defendant: ☒ SUMMONS ☐ ALIAS - SUMMONS

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

☒ Richard J. Daley Center, 50 W. Washington, Room 802, Chicago, Illinois 60602

☐ District 2 - Skokie  
5600 Old Orchard Rd.  
Skokie, IL 60077

☐ District 3 - Rolling Meadows  
2121 Euclid  
Rolling Meadows, IL 60008

☐ District 4 - Maywood  
1500 Maybrook Ave.  
Maywood, IL 60153

☐ District 5 - Bridgeview  
10220 S. 76th Ave.  
Bridgeview, IL 60455

☐ District 6 - Markham  
16501 S. Kedzie Pkwy.  
Markham, IL 60426

☐ Child Support  
28 North Clark St., Room 200  
Chicago, Illinois 60602

You must file within 30 days after service of this Summons, not counting the day of service.

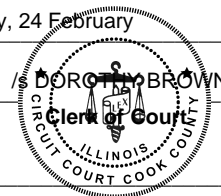
IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: 41295  
Name: MATTHEW VINCENT TOPIC  
Atty. for: BETTER GOVERNMENT ASSOC.  
Address: 312 N MAY STREET, SUITE 100  
City/State/Zip: CHICAGO, IL 60607  
Telephone: (312) 243-5900

WITNESS, Tuesday, 24 February, 2015



Date of service: \_\_\_\_\_

(To be inserted by officer on copy left with defendant or other person)

Service by Facsimile Transmission will be accepted at: \_\_\_\_\_  
(Area Code) (Facsimile Telephone Number)

/s DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS