

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

_____)
BETTER GOVERNMENT ASSOCIATION,)
)
Plaintiff,)
v.)
)
CHICAGO TRANSIT AUTHORITY,)
)
Defendant.)
_____)

2014 JUN 16 09:50
 CALENDAR/SOON* 0:
 TIME 00:00
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FILED - CH
 CLERK OF THE CIRCUIT COURT
 CHANCERY DIVISION

2014 JUN 16 PM 12:55

DOROTHY BROWN
 CLERK

COMPLAINT

NOW COMES Plaintiff, BETTER GOVERNMENT ASSOCIATION (“BGA”), by and through its undersigned attorneys, and for its Complaint against Defendant, CHICAGO TRANSIT AUTHORITY (“CTA”), states as follows:

1. This is an action brought under the Freedom of Information Act (“FOIA”), 5 ILCS 140/1 *et seq.*, to (a) order Defendant to produce the public record requested by BGA pursuant to FOIA; (b) order Defendant’s denial of BGA’s FOIA request a bad faith denial and a willful and intentional violation of FOIA; (c) order Defendant to pay a civil penalty of not less than \$2,500 for its bad faith denial and intentional violation; and (d) award the BGA its attorney fees and costs in filing and litigating this suit.
2. FOIA makes clear that 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.” 5 ILCS 140/1. Accordingly, “each public body shall promptly provide, to any person who submits a request, a copy of any public record” that is not exempt. 5 ILCS 140/3(b). Exemptions to disclosure are “limited exceptions” to be read

narrowly. 5 ILCS 140/1. “All 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

3. Plaintiff is the BETTER GOVERNMENT ASSOCIATION, a nonpartisan, not-for-profit Illinois corporation located at 223 W. Jackson Blvd., Suite 900, Chicago, Illinois 60606.
4. Defendant is the CHICAGO TRANSIT AUTHORITY, located at 567 W. Lake Street, Chicago, Illinois 60661.
5. Defendant is a public body subject to FOIA.

FACTUAL BACKGROUND

A. BGA’s FOIA Request and Defendant’s Denial

6. On January 16, 2014, the BGA submitted a FOIA request to Defendant via email, asking for a copy of the file photo of CTA employee Charlie Ashley Robinson-Westbrook. (Ex. 1, 1/16/14 Request).
7. Photographs are an integral part of the BGA’s investigative reporting practices, and are an essential means of conveying information, humanizing investigative reports, and attracting readers.
8. On January 24, 2014, Defendant’s Freedom of Information Officer, Brigett Bevan, responded to the request via letter attached to email and informed the BGA that Defendant was extending the time to respond to the request by 5 business days pursuant to 5 ILCS 140/3(e). (Ex. 2, 1/24/14 Response).

9. On January 31, 2014, Defendant's FOIA Officer Bevan emailed a letter denying BGA's FOIA request. (Ex. 3, 1/31/14 Denial).
10. Defendant's denial letter listed three specific exemptions under the Act to support its denial.
11. First, Defendant claimed that the requested photo was exempt as "private information" under Section 7(1)(b). (*Id.*). Defendant's letter claimed that the "likeness of Charlie Ashley Robinson-Westbrook contained in her employee identification photo uniquely identifies Charlie Ashley Robinson-Westbrook" and therefore qualified as "private information" under the Act. (*Id.*).
12. Second, Defendant claimed that the photo was exempt under Section 7(1)(c) as "personal information contained within public records the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." (*Id.*). The letter provided that under the Act, "an 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" and claimed that producing the requested photo would meet this standard. (*Id.* (quoting 5 ILCS 140/7(1)(c))).
13. Third, Defendant claimed the requested photo was exempt under Section 7(1)(v) because release of the photo "could reasonably be expected to jeopardize the effectiveness of one of CTA's important security measures," as "CTA's employee identification cards are one of CTA's security measures used to protect CTA's facilities from unauthorized persons" and claimed the release of the photo "could

allow for the creation of duplicate, fraudulent CTA employee identification cards and impact the security of CTA's facilities." (*Id.*).

14. Defendant's denial of BGA's request on each of these three bases violates FOIA.
15. First, "private information" exempted by Section 7(1)(b) is defined by the Act as "unique 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." 5 ILCS 140/2(c-5). This list provides the specific categories of information—those generally not known or accessible by the public—that qualify as "private information." The extensive list gives no indication that basic identifying information about a public employee, for example the employee's name or likeness, qualifies as private information.
16. Furthermore, FOIA makes clear that "public records" under the Act includes "all records, reports, forms, writings . . . *photographs* . . . and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c) (emphasis added).
17. Second, "personal information" exempt under Section 7(1)(c) applies to information "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," defined as "the disclosure of information that is *highly personal or objectionable to a reasonable person.*" 5 ILCS 140/7(1)(c) (emphasis added).

18. Basic identifying information such as a person's name or likeness is not "highly personal," nor could disclosure be "objectionable to a reasonable person."
19. Indeed, at the time of Defendant's denial, photos of Robinson-Westbrook, along with her name and information regarding her position at the CTA, were *publicly available on the Internet* via her LinkedIn profile. As of this filing, Robinson-Westbrook's name, CTA position, and photo are currently available to the public via LinkedIn.
20. Finally, Section 7(1)(v), referenced in Defendant's denial without explanation of the exemption, addresses "vulnerability assessments, security measures, and response policies or plans," not employee photographs. 5 ILCS 140/7(1)(v). Further, it only exempts that information when "designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community." *Id.*
21. Moreover, such defense or security measures are exempt "only to the extent that disclosure could *reasonably* be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public." 5 ILCS 140/7(1)(v) (emphasis added).
22. Defendant offers no explanation as to how producing an employee photo, readily accessible on the Internet, could "reasonably be expected to jeopardize the effectiveness" of CTA security, as Defendant suggests. (Ex. 3, 1/31/14 Denial).

B. Defendant's Denial was in Bad Faith and was a Willful and Intentional Violation of FOIA

23. The Act explicitly includes "photographs" as one category of public documents subject to FOIA. 5 ILCS 140/2(c).

24. The Act makes clear that exemptions to disclosure are “limited exceptions,” 5 ILCS 140/1, and that “[a]ny 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. To meet this requirement, a notice of denial based on exemption must include “a detailed factual basis and a citation to supporting legal authority.” 5 ILCS 140/9(b).
25. Yet Defendant denied BGA’s FOIA request for an employee file photo based on nothing more than unsupported and untenable broadening of the claimed exemptions, with no support other than quoted language from the exemptions themselves. Defendant provided no plausible explanation of *why* the photo constitutes “private information”; *how* it constitutes “personal information” disclosure of which is “objectionable to a reasonable person”; or *how* disclosure could “reasonably be expected to jeopardize the effectiveness” of defense or security measures. Instead, Defendant simply claimed these things to be true.
26. Because Defendant’s refusal to produce the requested record is clearly unjustified by the text of the statute, and Defendant’s denial failed to meet the explicit requirement that the denial be supported with “clear and convincing evidence” of an applicable exemption including “a detailed factual basis and a citation to supporting legal authority,” Defendant’s denial was in bad faith, and was therefore a willful and intentional violation of FOIA.

CLAIM FOR RELIEF UNDER FOIA

27. The above paragraphs are incorporated by reference.
28. Defendant is a public body subject to the requirements of FOIA.
29. The BGA submitted a written request properly seeking public records under FOIA.

30. The record sought by the BGA in the request is subject to disclosure under FOIA.
31. Defendant denied BGA's request for records, claiming exemptions under FOIA.
32. Defendant's denial violates FOIA because Defendant's claimed exemptions do not apply to an employee file photo for the reasons provided above.
33. Defendant's denial was in bad faith and was a willful and intentional violation of FOIA.

WHEREFORE, BGA prays that this Court enter an order (a) requiring Defendant to produce the public record requested by the BGA; (b) declaring Defendant's denial to be in bad faith and a willful and intentional violation of FOIA; (c) ordering Defendant to pay a civil penalty of not less than \$2,500 for its violation; (d) awarding the BGA its attorney fees and costs in filing and litigating this suit; and (e) awarding any other appropriate relief.

Respectfully submitted,



Dated: June 16, 2014

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Chicago, IL 60654
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Firm ID No. 90443

Attorneys for Plaintiff Better Government Association

Exhibit 1



Patrick Rehkamp <prehkamp@bettergov.org>

FOIA REQUEST

1 message

Patrick Rehkamp <prehkamp@bettergov.org>
To: FOIA <foia@transitchicago.com>

Thu, Jan 16, 2014 at 10:45 AM

Freedom of Information Officer
Chicago Transit Authority
567 W. Lake St.
Chicago, Illinois 60661

Re: Freedom of Information Act

Jan. 16, 2014

To Whom It May Concern:

Pursuant to the Illinois Freedom of Information Act I request:

1. A copy of the file photo of Charlie Ashley Robinson-Westbrook. If possible please provide in JPEG format.

Moreover, as you know, the Illinois Freedom of Information Act requires that all non-exempt portions of any partially exempt record must be disclosed. Further, the Act requires that your office respond to this request within five working days after receipt. Since I work for a nonprofit organization, I ask you waive the processing fees. Electronic correspondence is highly preferred and may be sent to the account shown below. Please note this may be used for a news story.

If you have any questions about this request please call me.

Sincerely,

Patrick Rehkamp

Better Government Association

223 W. Jackson Blvd., Suite 900

Chicago, IL 60606

Phone: 312.386.9201

prehkamp@bettergov.org

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Patrick Rehkamp, CFE

Senior Investigator

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www.bettergov.org



CTA FOIA 1-16-14.doc

114K

Exhibit 2



CHICAGO TRANSIT AUTHORITY

567 West Lake Street
Chicago, Illinois 60661-1498
TEL 312 664-7200
www.transitchicago.com

January 24, 2014

Via Electronic Mail

Patrick Rehkamp
Better Government Association
223 West Jackson Boulevard
Chicago, Illinois 60606
prehkamp@bga.org

Re: Freedom of Information Act Request

Dear Mr. Rehkamp,

This letter responds to your Freedom of Information Act ("FOIA") request to the Chicago Transit Authority ("CTA") seeking for a copy of file photo of Charlie Ashley Robinson-Westbrook.

Under the Freedom of Information Act, a public body may extend the time to respond to a FOIA request by up to 5 business days, excluding weekends and state holidays, for a limited number of reasons. 5 ILCS 140/3(e). We are extending the time to respond to your request by 5 business days for the following reasons:

- The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 of this Act or should be revealed only with appropriate deletions. *See* 5 ILCS 140/3(e)(v); and
- There is a need for consultation, which shall be conducted with all practicable speed, with two or more components of CTA, having a substantial interest in the determination or in the subject matter of the request. *See* 5 ILCS 140/3(e)(vii).

CTA will respond to your request as soon as possible. Please contact me if you have any questions regarding this FOIA request.

Sincerely,

A handwritten signature in cursive script that reads "Brigett Bevan".
Brigett Bevan
Freedom of Information Officer

Exhibit 3



January 31, 2014

Via Electronic Mail

Patrick Rehkamp
Better Government Association
223 W. Jackson Blvd., Suite 900
Chicago, IL 60606
prekhamp@bettergov.org

Re: Freedom of Information Act Request

Dear Mr. Rehkamp,

This letter responds to your Freedom of Information Act ("FOIA") request to the Chicago Transit Authority ("CTA") seeking "a copy of the file photo of Charlie Ashley Robinson-Westbrook." You note in your request that the records being sought in your request may be used for a news story.

Your request is denied on several grounds.

First, your request is denied pursuant to Section 7(1)(b) of FOIA. 5 ILCS 140/7(1)(b). Section 7(1)(b) of FOIA exempts from public disclosure "private information", unless disclosure is required by another provision of FOIA, a state or federal law or a court order. Id. Section 2(c-5) of FOIA provides the definition of "private information" for purposes of Section 7(1)(b) of FOIA. 5 ILCS 140/2(c-5). Section 2(c-5) states that "private information" means "*unique 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). In this instance, you are seeking CTA's "file photo" of Charlie Ashley Robinson-Westbrook, which would be Ms. Robinson-Westbrook's employee identification photo. The likeness of Charlie Ashley Robinson-Westbrook contained in her employee identification photo uniquely identifies Charlie Ashley Robinson-Westbrook and even more so than her employee identification number, which is one of the unique identifiers listed in Section 2(c-5) of FOIA. Id. Furthermore, since you are specifically requesting CTA's file photo of this Ms. Robinson-Westbrook, there is no way to separate the photograph from the identity of the person depicted in the photograph. Therefore, your request is denied, because it requests the "private information" of Ms. Robinson-Westbrook.

Secondly, your request is denied pursuant to Section 7(1)(c) of FOIA. 5 ILCS 140/7(1)(c). Section 7(1)(c) of FOIA exempts from public disclosure "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 that information." 5 ILCS 140/7(1)(c). For purposes of Section 7(1)(c) of FOIA, an "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." Id. However, "the disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." Id. In this instance, the photograph responsive to your request is the identification photo that Ms. Robinson-Westbrook provided to CTA in connection with her employment. By providing this image to CTA, Ms. Robinson-Westbrook did not consent to it being published beyond CTA, and its public disclosure without her consent would be objectionable to a reasonable person and an unwarranted invasion into her personal privacy. Furthermore, there has been no demonstration, whatsoever, that there is any legitimate public interest in the public disclosure of Ms. Robinson-Westbrook's CTA employment identification photograph, let alone a public interest that would outweigh Ms. Robinson-Westbrook's right to privacy in her likeness contained the photo. Finally, CTA's employee identification photo of Ms. Robinson-Westbrook does not bear on Ms. Robinson-Westbrook's performance of her public duties for CTA at all. Therefore, your request is also denied pursuant to Section 7(1)(c) of FOIA. 5 ILCS 140/7(1)(c).

Finally, your request is also denied pursuant to Section 7(1)(v) of FOIA. 5 ILCS 140/7(1)(v). CTA's employee identification cards are one of CTA's security measures used to protect CTA's facilities from unauthorized persons. The public disclosure of a current employee's identification photo could allow for the creation of duplicate, fraudulent CTA employee identification cards and impact the security of CTA's facilities. Thus, the public release of the requested photo, or any current employee's identification photo, could reasonably be expected to jeopardize the effectiveness of one of CTA's important security measures. Therefore, your request is also denied under Section 7(1)(v) of FOIA.

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

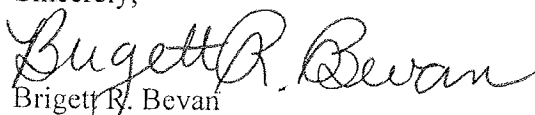
Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review of your denial by filing a lawsuit in the Circuit Court of Cook County, Illinois. 5 ILCS 140/11.

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 letter. 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.

Please contact me if you have any questions regarding this response.

Sincerely,


Brigett R. Bevan
Freedom of Information Officer