



## E-Notice

**2015-CH-06646**

CALENDAR: 09

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 ASSOCIATION vs. CHICAGO POLICE DEPARTMENT**  
**2015-CH-06646**

The transmission was received on 04/22/2015 at 9:29 AM and was ACCEPTED with the Clerk of the Circuit Court of Cook County on 04/22/2015 at 10:43 AM.

**CHANCERY\_ACTION\_COVER\_SHEET (CHANCERY DIVISION)**

**COMPLAINT**

Filer's Email: matt@loevy.com  
Filer's Fax: (312) 243-5902  
Notice Date: 4/22/2015 10:43:43 AM  
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 ASSOCIATION
v.
CHICAGO POLICE DEPARTMENT
Plaintiff
Defendant

} No.

ELECTRONICALLY FILED
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2015-CH-06646
CALENDAR: 09
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 Review
0001 [ ] Class Action
0002 [ ] Declaratory Judgment
0004 [ ] Injunction

- 0007 [x] General Chancery
0010 [ ] Accounting
0011 [ ] Arbitration
0012 [ ] Certiorari
0013 [ ] Dissolution of Corporation
0014 [ ] Dissolution of Partnership
0015 [ ] Equitable Lien
0016 [ ] Interpleader
0017 [ ] Mandamus
0018 [ ] Ne Exeat

- 0019 [ ] Partition
0020 [ ] Quiet Title
0021 [ ] Quo Warranto
0022 [ ] Redemption Rights
0023 [ ] Reformation of a Contract
0024 [ ] Rescission of a Contract
0025 [ ] Specific Performance
0026 [ ] Trust Construction
0027 [ ] Foreign Transcript
0085 [ ] Petition to Register Foreign Judgment
[ ] Other (specify) \_\_\_\_\_

By: /s MATTHEW VINCENT TOPIC
Attorney Pro Se

Atty. No.: 41295
Name: LOEVY & LOEVY
Atty. for: BETTER GOVERNMENT ASSOCIATION
Address: 312N MAY 100
City/State/Zip: CHICAGO, IL 60607
Telephone: (312) 243-5900

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

BETTER GOVERNMENT ASSOCIATION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CHICAGO POLICE DEPARTMENT, )  
 )  
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 CHICAGO POLICE DEPARTMENT to respond to BGA’s FOIA requests. 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. Each public body shall, promptly, either comply with or deny a request for public records within five business days after its receipt of the request, unless the time for response is properly extended. 5 ILCS 140/3(d).

5. Defendant CHICAGO POLICE DEPARTMENT has violated FOIA by failing to respond to BGA's FOIA requests or produce responsive non-exempt records.

### **PARTIES**

6. 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.

7. Defendant CHICAGO POLICE DEPARTMENT is a public body located in Cook County, Illinois.

### **BGA'S FOIA REQUESTS AND CHICAGO POLICE DEPARTMENT'S FAILURE TO RESPOND**

8. On February 26, 2015, BGA requested various records from CHICAGO POLICE DEPARTMENT related to missed court dates by CHICAGO POLICE DEPARTMENT officers who are paid with tax dollars to, among other things, show up in court to testify in cases in which they are potential witnesses.

ELECTRONICALLY FILED  
4/22/2015 9:29 AM  
2015-CH-06646  
PAGE 3 of 9

9. In response to the February 26 request, on March 11, 2015, CHICAGO POLICE DEPARTMENT conceded that it has responsive information, but refused to provide detailed information on the basis that it did not have the information in the exact format requested by BGA and would have to conduct individual database searches to compile the information, and produced only a single page of records and pointed BGA to a general order about court dates available on the CHICAGO POLICE DEPARTMENT website. A true and correct copy of CHICAGO POLICE DEPARTMENT's response letter is attached as Exhibit A hereto.

10. On March 23, 2015, BGA made, and CHICAGO POLICE DEPARTMENT received, a further request in an email replying to CHICAGO POLICE DEPARTMENT's March 11 response, a true and correct copy of which is attached as Exhibit B hereto:

Please provide me with the entire database referenced in your response, in Excel format. If there are fields you contend are exempt, you may leave the column heading and redact the entries. Please also inform me of the make and model of the database and any software used to query the database along with a listing of the individual data fields and copies of the 10 recent reports generated from that database. If necessary, please consider this to be both a request for records sufficient to show that information and a request under FOIA Section 5.

11. CHICAGO POLICE DEPARTMENT did not respond to the March 23 request within five business days.

12. After an exchange of emails regarding the March 23 request in which BGA repeated what it had requested, on April 9, 2015, BGA sent and CHICAGO POLICE DEPARTMENT received an email setting forth the correspondence history and reiterating again what BGA sought in the March 23 request. A true and correct copy of the April 9, 2015 email is attached as Exhibit C hereto.

13. CHICAGO POLICE DEPARTMENT has not provided any further response regarding the February 26 or March 23 requests and has not responded to BGA's April 9 email.

ELECTRONICALLY FILED  
4/22/2015 9:29 AM  
2015-CH-06646  
PAGE 4 of 9

14. In October 2014, BGA filed suit against CHICAGO POLICE DEPARTMENT for failing to respond to BGA’s FOIA requests in pending case 2014 CH 16844.

15. CHICAGO POLICE DEPARTMENT is the subject of at least four other pending lawsuits by other plaintiffs in which CHICAGO POLICE DEPARTMENT failed to respond to FOIA requests in a timely manner.

16. Records obtained from the Illinois Attorney General indicate that on at least 62 occasions in the first nine months of 2014, CHICAGO POLICE DEPARTMENT was the subject of an Attorney General Public Access Bureau review for failure to respond to FOIA requests in a timely manner.

17. The requirements of FOIA Section 3(d) are so sufficiently clear that CHICAGO POLICE DEPARTMENT’s failures to comply with the requirements are willful and intentional violations of FOIA and acts of bad faith.

**COUNT I – VIOLATION OF FOIA**

18. The above paragraphs are incorporated by reference.

19. CHICAGO POLICE DEPARTMENT is a public body under FOIA.

20. CHICAGO POLICE DEPARTMENT has willfully and intentionally violated FOIA by not responding to BGA’s FOIA requests and by withholding responsive non-exempt records.

**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;

ELECTRONICALLY FILED  
4/22/2015 9:29 AM  
2015-CH-06646  
PAGE 5 of 9

- ii. declare that CHICAGO POLICE DEPARTMENT has violated FOIA;
- iii. order CHICAGO POLICE DEPARTMENT to produce the requested records redacting only the material that is exempt;
- iv. enjoin CHICAGO POLICE DEPARTMENT from withholding non-exempt public records under FOIA;
- v. order CHICAGO POLICE DEPARTMENT to pay civil penalties;
- vi. award BGA reasonable attorneys' fees and costs;
- vii. order CHICAGO POLICE DEPARTMENT to undergo supplemental FOIA training and to undertake Court-supervised remedial efforts to correct its failure to respond to FOIA requests as required; and
- viii. 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



**Rahm Emanuel**  
Mayor

**Department of Police · City of Chicago**  
3510 S. Michigan Avenue · Chicago, Illinois 60653

**Garry F. McCarthy**  
Superintendent of Police

March 11, 2015

Robert Herguth  
rherguth@bettergov.org

Re: NOTICE OF RESPONSE TO FOIA REQUEST  
REQUEST DATE: February 26, 2015  
FOIA FILE NO.: 15-1079

Dear Mr Herguth:

The Chicago Police Department is in receipt of your Freedom of Information Act (FOIA) request. In it, you ask to be provided with the following:

- 1) Copies of documents sufficient to show how often officers have missed job-related court appearances since Jan 1 2013
- 2) Copies of documents sufficient to show which officers missed their court appearances, on what dates, for what reasons, for what cases and the resulting implication to the cases since Jan 1 2013
- 3) Copies of documents sufficient to show how many criminal, misdemeanor and traffic cases were dismissed because of officers missing court dates, within the same time frame
- 4) Copies of any policies relating to officers making job-related court appearance, as well as any and all related studies, complaints, disciplinary action and metrics, during the same time frame
- 5) An existing file with some or all of this information within the same time frame

Your request was reviewed by the undersigned. Records responsive to part 1 of your request are being provided in the attached email. (See sheet titled "Summary of Court Deviation")

In regards to parts 2 and 5 of your request, The Chicago Police Department maintains a database which houses each individual officer's court absence but does not maintain the specific information in the specific format you are seeking. Each officer from more than twenty-five units would need to be queried. There is currently no aggregate information to fulfill this portion of your request. Section 5 ILCS 140/1 provides this act *"is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained or prepared by such public body at the time when this Act becomes effective, except as otherwise required by applicable local, State or federal law."* Therefore, there are no responsive records.

In regards to part 3 of your request, the Chicago Police Department does not track and store court dispositions and therefore has no responsive records.

Exhibit A

ELECTRONICALLY FILED  
4/22/2015 9:29 AM  
2015-CH-06646  
PAGE 6 of 9



Regarding part 4 of your request, please refer to Chicago Police Department General Order G08-02 "Court Attendance and Responsibilities" which is publicly available and accessible online at the following link:

<http://directives.chicagopolice.org/directives>

If you require additional assistance, please contact this office at (312)745-5308, or by mail at the below listed address:

Chicago Police Department  
Attention Freedom of Information  
Legal Affairs Unit  
3510 S. Michigan Ave  
Chicago, IL 60653

Sincerely,

P.O. Sanders #13769  
Freedom of Information Officer  
Department of Police  
Office of Legal Affairs

ELECTRONICALLY FILED  
4/22/2015 9:29 AM  
20150421-06646  
PAGE 7 of 9

You have a right to review by the Illinois Attorney General's Public Access Counselor (PAC). You can file a Request for review by writing to:

Public Access Counselor  
Office of the Attorney General  
500 S. 2<sup>nd</sup> Street  
Springfield, Illinois 62706  
Phone: 312-814-5526 or 1-877-299-FOIA (1-877-299-3642)  
Fax: 217-782-1396 E-mail: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)

When filing a Request for Review, you must include a copy of the original FOIA request and this denial letter. You may seek judicial review of a denial under 5 ILCS 140/11 by filing a lawsuit in the State Circuit Court.

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**Re: FOIA 15-1079**

1 message

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**Robert Herguth** <rherguth@bettergov.org>  
To: FOIA <foia@chicagopolice.org>

Mon, Mar 23, 2015 at 3:46 PM

Dear FOIA officer,

Please provide me with the entire database referenced in your response, in Excel format. If there are fields you contend are exempt, you may leave the column heading and redact the entries. Please also inform me of the make and model of the database and any software used to query the database along with a listing of the individual data fields and copies of the 10 recent reports generated from that database. If necessary, please consider this to be both a request for records sufficient to show that information and a request under FOIA Section 5.

Thank you,

Bob Herguth

Better Government Association

[312-821-9030](tel:312-821-9030)

On Wed, Mar 11, 2015 at 3:08 PM, FOIA <foia@chicagopolice.org> wrote:

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering that message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this document is strictly prohibited.

ELECTRONICALLY FILED  
4/22/2015 9:29 AM  
2015-CH-06646  
PAGE 8 of 8

Exhibit B



Robert Herguth <rherguth@bettergov.org>

## Follow up on FOIA request made March 23 in response to partial denial of FOIA 15-1079

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

Thu, Apr 9, 2015 at 10:28 AM

This is in reference to my FOIA request that was made in response to your partial denial of FOIA number 15-1079.

I made my initial request on Feb 26, 2015, for various records about missed court dates. It was assigned CPD FOIA number 15-1079. For parts 2 and 5 of that request, CPD claimed in its March 11 response to me by email bearing subject line "FOIA 15-1079" that it did not have the records in the format I requested and would not perform database queries to provide me the records. On March 23, I responded to the email containing the Feb 26 response as part of the same email chain having subject line "FOIA 15-1079" with the following FOIA request:

*Please provide me with the entire database referenced in your response, in Excel format. If there are fields you contend are exempt, you may leave the column heading and redact the entries. Please also inform me of the make and model of the database and any software used to query the database along with a listing of the individual data fields and copies of the 10 recent reports generated from that database. If necessary, please consider this to be both a request for records sufficient to show that information and a request under FOIA Section*

5.  
I have not received a response to the March 23 request. I sent another response email to follow up on April 7 as part of the same email chain having subject line "FOIA 15-1079." CPD responded on April 8 at 6:13 AM saying "The last request was on March 10, 2015 which was withdrew Which one are you referring to?" I responded at 7:32AM "The one pasted below - referring to the database on officers missing court." All of this was on the same email chain with subject line "FOIA 15-1079."

Thank you,  
Bob Herguth  
Better Government Association  
[312-821-9030](tel:312-821-9030)

ELECTRONICALLY FILED  
4/22/2015 9:29 AM  
2015-CH-06646  
PAG 09/10

2120 - Served

2121 - Served

2220 - Not Served

2221 - Not Served

2320 - Served By Mail

2321 - Served By Mail

2420 - Served By Publication

2421 - Served By Publication

SUMMONS

ALIAS - SUMMONS

(2/18/11) CCG N001

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

BETTER GOVERNMENT ASSOCIATION

No. 2015-CH-06646

(Name all parties)

v.

CHICAGO POLICE DEPARTMENT

Defendant Address:

CHICAGO POLICE DEPARTMENT  
3510 SOUTH MICHIGAN AVENUE  
CHICAGO, IL 60653

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: LOEVY & LOEVY  
Atty. for: BETTER GOVERNMENT ASSOCIATION  
Address: 312N MAY 100  
City/State/Zip: CHICAGO, IL 60607  
Telephone: (312) 243-5900

WITNESS, Wednesday, 22 April, 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)