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Case No.

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## COMPLAINT

Plaintiff Chicago Tribune Company (“Tribune”) brings this Complaint pursuant to the Illinois Freedom of Information Act against Defendant City of Chicago Police Department (“CPD”) for CPD’s willful failure to disclose public records as required by law.

## NATURE OF THE ACTION

1. This is a complaint under the Illinois Freedom of Information Act (“FOIA”), 5 ILCS §140/1 *et seq.* In violation of FOIA, CPD has refused to produce public records requested by Tribune, consisting of emails relating to the shooting death of Laquan McDonald written or received by several CPD employees between Oct. 20, 2014 and April 30, 2015.

2. Tribune first requested these records on December 17, 2015. CPD delayed processing the Request for months, interposing groundless claims of “burdensomeness” and improperly narrowing its search for responsive records, but ultimately collected and promised to produce 375 emails for production on March 22, 2016. Still, CPD did not produce any records, and has failed to do so for over eight months.

3. Accordingly, Tribune seeks an injunction commanding CPD to conduct an adequate search for and disclose, promptly and without improper redactions, the requested emails. Tribune also seeks an order awarding the Tribune its attorneys' fees and costs.

## **PARTIES**

4. Tribune is a major daily newspaper and media outlet with the highest circulation of any daily publication in the Midwest, as well as national and international readership. Timely access to public records is critical to Tribune's mission to keep the public apprised of developments and concerns about government operations. In particular, Tribune has devoted significant resources to leading coverage of the Chicago Police Department and high-profile officer-involved shootings.

5. CPD is a subsidiary body of the City of Chicago and is a "public body" as that term is defined in 5 ILCS §140/2(a).

## **JURISDICTION AND VENUE**

6. Jurisdiction is granted to this Court under Section 11(a) of FOIA, 5 ILCS 140/11(a).

7. Venue is proper in Cook County under Section 11(c) of FOIA, 5 ILCS 140/11(c), because the City of Chicago and CPD are located in Cook County.

## **FACTUAL BACKGROUND**

### **The Illinois FOIA**

1. When it enacted FOIA, the Illinois General Assembly declared 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." 5 ILCS 140/1.

2. FOIA imposes a mandatory statutory duty on public agencies like CPD to "make available to any person for inspection or copying all public records." 5 ILCS 140/3.

3. FOIA recognizes that the value of public records are time-sensitive. 5 ILCS 140/1 ("It is a fundamental obligation of government to . . . provide public records as expediently and efficiently as possible"). Accordingly, FOIA imposes strict timelines on record requests,

requiring public bodies to promptly comply with or deny record requests within five business days. *Id.* §140/3(d). Under limited conditions, including where timely compliance would unduly burden the public body, the public body may (upon timely notice to the requestor) extend its time for responding for “not more than five business days.” *Id.* §140/3(e).

4. FOIA forbids public bodies from interposing objections to FOIA requests on the basis that compliance would be burdensome, unless it responds within five business days and provides an explanation for why the request is properly considered voluminous, and an opportunity for the requestor to narrow the request. 5 ILCS 140/3.6. The refusal to provide records on the basis of burdensomeness, however, is itself a denial of that FOIA request. 5 ILCS 140/3(g).

5. In further recognition of the time-sensitive nature of FOIA requests, and the potential for strategic and dilatory noncompliance by public agencies, FOIA expressly forbids agencies from failing to comply with these deadlines on the basis that they failed to adequately staff FOIA offices or adequately allocate resources for compliance with FOIA requests:

The General Assembly recognizes that this Act imposes fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements. The General Assembly declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding.

*Id.* §140/1.

6. FOIA requires broad governmental transparency, providing that “[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying.” 5 ILCS 140/1. Accordingly, FOIA requires agencies to conduct an adequate search reasonably calculated to return responsive records. *See, e.g. BlueStar Energy Servs., Inc. v. Illinois Commerce Comm’n*, 374 Ill. App. 3d 990, 996 (1st Dist. 2007).

7. Public agencies bear the burden to justify *any* withholding of public records, and if exemptions are invoked, they must be construed against the agency. 5 ILCS 140/1 (“Restrictions on access to information, to the extent permitted by this Act, 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 any or all of the people.”).

8. Any public body denying a FOIA request must do so in writing, and this writing must include “the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial.” *Id.* §140/9(a). If the public body fails to respond in writing as FOIA requires, it “may not treat the request as unduly burdensome. . . .” *Id.* §140/3(d).

9. To dissuade noncompliance by public bodies with the public’s right to government information, and to ensure that the public fully enforces that right, FOIA provides that requestors must be awarded their reasonable attorney’s fees where litigation becomes necessary to vindicate their right of timely access to government information. 5 ILCS 140/11(i).

10. FOIA also punishes agency noncompliance with the public’s FOIA rights through the imposition of mandatory statutory penalties, which must be awarded when a public body “willfully and intentionally fail[s] to comply” with FOIA “or otherwise act[s] in bad faith.” 5 ILCS 140/11(j).

### **The Request**

11. On December 17, 2015, as part of Tribune’s continuing investigation into the shooting death of Laquan McDonald and the CPD’s response, Tribune reporter Stacy St. Clair submitted a FOIA request to CPD, seeking the emails of CPD employees that contained keywords suggesting relevance to the shooting death of Laquan McDonald. Specifically, the

Request sought "all email sent by, received by, or copied on" the accounts of twenty CPD employees, between October 20, 2014 and April 30, 2015, that contained any form of the following keywords: "video," "audio," "election," "mayor," "Burger King," "Dunkin Donuts," "arrest," "Pulaski," "Laquan," "McDonald," "Van Dyke," "Vandyke," "dashcam," "dash-cam," "in-car videos," and "in car videos," as well as "all other correspondence, including but not limited to memos" sent or received by the twenty named individuals. (The "Request," a true and correct copy of which is appended hereto as Exhibit A.)

12. On January 8, 2016, CPD purported to deny the Request as unduly burdensome, but provided no explanation for its claim that the Request was unduly burdensome or any indication as to the number of responsive records CPD believed to exist. (The "First Denial," a true and correct copy of which is appended hereto as Exhibit B.)

13. Ms. St. Clair followed up by email on Friday, January 22 with CPD FOIA Officer Oscar Zuniga, requesting a log of emails that would indicate the volume and burdensomeness of processing the Request, for use in potentially narrowing the Request. Following a telephone conversation with Ms. St. Clair on January 26, 2016, CPD agreed to consider revised search terms discussed by Ms. St. Clair and Officer Zuniga, which excluded the terms "Dunkin Donuts," "arrest," "Pulaski," and to provide a log if it still deemed such a request unduly burdensome.

14. On February 2, 2016, CPD confirmed receipt of the Request with narrowed search terms.

15. On February 24, 2016, CPD denied the narrowed request as unduly burdensome, but provided logs of emails from which Ms. St. Clair could further narrow the Request.

16. On February 25, 2016, Ms. St. Clair submitted a second narrowed Request, seeking 375 emails based on the email logs provided by CPD, and emphasizing the importance

of timely production of the narrowed subset of records responsive to the Request. (The "Second Narrowed Request," a true and correct copy of which is appended hereto as Exhibit C.)

17. On February 29, 2016, CPD confirmed receipt of the Second Narrowed Request by email, stating that CPD would "work on it as soon as we can" and would "keep in touch."

18. On March 17, 2016, CPD Sgt. Landon Wade placed a telephone call to Ms. St. Clair, stating that the 375 emails responsive to the Second Narrowed Request had been printed out, redacted, and were awaiting final approval for release.

19. On March 21, 2016, Sgt. Wade informed Ms. St. Clair by email that she would receive the 375 emails responsive to the Second Narrowed Request the following morning. (The "Narrowed Production Agreement," a true and correct copy of which is appended hereto as Exhibit D.)

20. No emails were provided to Ms. St. Clair on March 22, 2016, and she followed up that day by email to ascertain the status of the production. She received no response. The next week, on March 29, Ms. St. Clair followed up again by email to ascertain the status of the records production. Again she received no records, and no response.

21. CPD continued to withhold the requested records. On April 6, May 6, and November 15, Ms. St. Clair followed up again by telephone (only to discover that CPD's voice mailbox was full) and by email to ascertain the status of the records production.

22. Ms. St. Clair received no response until November 21, 2016, when Sgt. Daniel O'Brien contacted her, informing her that two FOIA officers were not "with the FOIA Section any longer," and promised to "attempt to get . . . a response without too much further delay." (A true and correct copy of this correspondence is appended hereto as Exhibit E).

23. CPD continues to withhold records responsive to the Second Narrowed Request, and has provided no responsive records in response to the Request.

### **CPD's Willful Noncompliance With FOIA**

24. Tribune is aware, from its reporting and FOIA requests to other public bodies, that CPD improperly denies FOIA requests in a routine, perfunctory fashion. CPD also routinely violates FOIA's statutory deadlines, and Tribune has been obliged to file several lawsuits in recent years simply to obtain compliance with its rights under FOIA.

25. Here, CPD simply declined to produce public records, even after it located and redacted a substantial set of them.

26. That denial is consistent with a retaliatory motivation against Ms. St. Clair, whose unrelated request was the basis for a separate lawsuit by the Tribune against CPD, in which CPD was compelled to produce responsive records it withheld without any basis. That lawsuit was filed on March 24, 2016, three days after Sgt. Wade promised by email to produce the 375 emails responsive to the Second Narrowed Request. CPD did not respond to a single follow-up email from Ms. St. Clair after the unrelated lawsuit was filed.

27. CPD also failed to conduct an adequate search for those emails, and improperly interposed a burdensomeness objection in connection with its refusal to conduct a search for records responsive to the Request. Tribune knows from similar FOIA requests that requests like the Second Narrowed Request yield approximately 1,300 pages in total, and there is no indication that records yielded by an adequate search responsive to the Request would return an unmanageable yield.

### **COUNT I** **Violation of Illinois FOIA**

28. Tribune incorporates by references paragraphs 1 through 27 of this Complaint.

29. Tribune seeks disclosure of the records sought by Ms. St. Clair in the Request and the Second Narrowed Request (together, the "FOIA Requests").

30. The documents sought by the FOIA Requests are public records within the meaning of 5 ILCS 140/2(c) and subject to disclosure by the CPD under FOIA.

31. This court has jurisdiction "to enjoin [the CPD] from withholding public records and to order the production of any public records improperly withheld from the person seeking access." 5 ILCS 140/11(d).

32. CPD has failed to adequately search for records responsive to the FOIA Requests.

33. CPD has failed to produce records responsive to the FOIA Requests.

34. CPD's non-compliance is willful and intentional within the meaning of 5 ILCS 140/11(j).

35. Tribune is entitled to recover its reasonable attorneys' fees pursuant to 5 ILCS 140/11(i).

### **PRAYER FOR RELIEF**

WHEREFORE, Tribune requests that this Court:

- (1) Enter an injunction ordering CPD to promptly produce the records requested by the FOIA Requests;
- (2) Award Tribune its attorneys' fees and costs in prosecuting this action;
- (3) Award Tribune civil penalties pursuant to 5 ILCS 140/11(j); and
- (4) Award Tribune any other appropriate relief.

December 5, 2016

Respectfully submitted,

CHICAGO TRIBUNE COMPANY

By:

  
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