

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

THOMAS SOULE,)	
Plaintiff,)	
)	
v.)	No. _____
)	
UNITED STATES DEPARTMENT OF JUSTICE,)	
Defendant.)	

COMPLAINT

Thomas Soule, by counsel, respectfully seeks relief from the failure of the United States Department of Justice (“DOJ”) to comply with his request under the Freedom of Information Act 5 U.S.C. §551 *et seq.* (“the FOIA”), for these reasons:

PARTIES, JURISDICTION AND VENUE

1. Thomas Soule resides in Palatine, Illinois.
2. Mr. Soule is employed by the law firm of Ruberry Stalmack & Garvey LLC, which keeps its office in Chicago, Illinois.
3. Mr. Soule made his request under the FOIA as a part of his work for Ruberry Stalmack & Garvey LLC, and specifically as counsel to the plaintiffs in a case entitled *Itasca Golf Investors LLC et al v. Seames et al*, No. 2021 L 960 (Ill. 18th Jud. Cir. Ct. (DuPage Co.)).
4. The United States Department of Justice is an agency (as that term is defined by 5 U.S.C. §551(1)) of the Federal Government that is subject to the FOIA.
5. The DOJ, among other things, operates the Offices of United States Attorneys across the nation, including the Office of the United States Attorney for the Northern District of Illinois, which keeps its office at 219 South Dearborn Street, Fifth Floor, Chicago, Illinois.
6. This Court has jurisdiction pursuant to 28 U.S.C. §1331, and also under 5 U.S.C. §552(a)(4)(B), which provides that,

[on] complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action....

7. This Court is a proper venue for this litigation, pursuant to 5 U.S.C. §552(a)(4)(B), *supra*.

FACTS

8. On November 24, 2021, the Office of the United States Attorney for the Northern District of Illinois wrote to the Mayor of Itasca, Illinois, Jeff Pruyn, and his counsel. In that letter, written by Patrick Johnson (an Assistant U.S. Attorney and the deputy chief of the office’s Civil Division), Mr. Pruyn was “[informed] that the U.S. Attorney’s Office for the Northern District of Illinois has initiated an investigation of the Village of Itasca for compliance with the requirements of Title II of the Americans with Disabilities Act of 1990,” in relation to a zoning application made by Haymarket DuPage LLC, which wanted to open and operate a treatment center in Itasca. (Exhibit A.)

9. On November 13, 2023, Mr. Soule submitted a FOIA request to the Executive Office of United States Attorneys (“EOUSA”), electronically. This request was assigned a file number – “Request No. EOUSA-2024-000356.” (*See* Exhibit B.)

10. In his request, Mr. Soule sought documents from the EOUSA, as follows:

Please produce all documents relating to a proposal by Haymarket DuPage LLC to open and operate a treatment center at 860 West Irving Park Road, Itasca, Illinois (within the Northern District of Illinois), including but not limited to

(1) all documents relating to the Department of Justice’s investigation of the Village of Itasca, Illinois regarding the denial of a zoning application to Haymarket DuPage for the proposed treatment center (as announced by the U.S. Attorney for the Northern District of Illinois on November 24, 2021 in the attached letter); and

(2) all documents relating to the investigation of claims that the Village of Itasca violated any federal or state laws or regulations (including but not limited to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.), the Fair Housing Act (42 U.S.C. §3601 et seq.), the Rehabilitation Act (29 U.S.C. §701 et seq.), and any implementing regulations); and

(3) all documents relating to any further investigation of individuals or entities involved in efforts to prevent either (a) Haymarket DuPage’s acquisition of 860 West Irving Park Road, Itasca, Illinois, or (b) the approval of Haymarket DuPage’s zoning application for a treatment center at that location; and

(4) all documents relating to any investigation into the involvement of either (a) Mark Seames (661 Country Club Drive, Itasca, Illinois) or (b) Martin Jones (623 Country Club Drive, Itasca, Illinois) in the matter of the proposed treatment center as to any potential violations of federal or state laws or regulations committed by either or both of them.

11. On December 1, 2023, the EOUSA responded to Mr. Soule’s FOIA request by stating that “a search for records located in the United States Attorney’s Office for the Northern District of Illinois has revealed no responsive records regarding the above subject.” (Exhibit C.)

12. On December 8, 2023, Mr. Soule wrote to Bobak Talebian, the director of the DOJ’s Office of Information Policy, in order to lodge an administrative appeal of the denial of his FOIA request. (Exhibit D.) He also submitted his appeal electronically. This appeal was assigned a file number – “Appeal No. A-2024-00452.” (*See* Exhibit E.)

13. As of the filing of this complaint, the appeal is still listed as being “in progress” on the “FOIA STAR” website maintained by the DOJ’s Office of Information Policy. (Exhibit F.)

14. On March 8, 2024, Mr. Soule wrote to Mr. Talebian, saying the following:

On December 8, 2023, I lodged an administrative appeal as to a Freedom of Information Act request that I submitted to the Executive Office for U.S. Attorneys on November 13, 2023 (Request No. EOUSA- 2024-000356 // Appeal No. A-2024-00452). The letter I submitted with the appeal – both by mail and by electronic submission through the FOIA STAR program – is attached for your reference.

According to official guidance from the Office of Information Policy, “[absent] ‘unusual circumstances,’ the FOIA provides that agencies should make a determination with respect to an appeal within twenty working-days of its receipt by the agency. 5 U.S.C. §552(a)(6)(A)(ii).” As of today, the appeal that I lodged has been pending for 91 calendar days (or for 61 business days, excluding the four holidays that have occurred between then and now).

Please write to me immediately to explain the delay, and to advise as to when a decision on my appeal would be issued.

(Exhibit G.)

15. As of the filing of this complaint, neither Mr. Talebian, nor anyone else from his office, nor the DOJ generally, has responded to Mr. Soule’s March 8, 2024 letter.

COUNT ONE – VIOLATION OF THE FOIA

16. Paragraphs 1 through 15 are incorporated herein, by this reference.

17. As noted in Mr. Soule’s March 8, 2024 letter (Exhibit G), 5 U.S.C. §552(a)(6)(A)(ii) specifically provides that

[each] agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall... make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal.

18. The Office of Information Policy did not make a request to Mr. Soule for information or clarification as to his request, such that the twenty-day period would be tolled under the provisions of 5 U.S.C. §552(a)(6)(A)(ii).

19. Under 5 U.S.C. §552(a)(6)(C), “[any] person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph.”

20. Given the date of the appeal by Mr. Soule (December 8, 2023), the twenty-day period, during which the DOJ had to make a determination on his appeal, has expired. As such, he has exhausted his administrative remedies, and therefore may seek relief from this Court.

21. Mr. Soule sincerely believes that the DOJ, and its offices, possess information responsive to his FOIA request, in that the November 24, 2021 letter from the Office of the U.S. Attorney for the Northern District of Illinois (Exhibit A) demanded the production of documents from the Village of Itasca. As noted in Mr. Soule’s letter of December 8, 2023 (Exhibit D), “Mr. Johnson’s letter... demanded the production of twenty-two categories of documents in the Village’s possession, relating to the application of Haymarket DuPage for a special use permit or a planned development permit, within 30 days of the letter. Presuming for current purposes that the Village of Itasca complied with this request and produced documents, the U.S. Attorney’s Office for the Northern District of Illinois possesses documents that are responsive to my FOIA request.”

22. Mr. Soule’s request, and his appeal, were both submitted to the DOJ through procedures that it established for handling FOIA requests and appeals.

23. Mr. Soule’s FOIA request reasonably describes the records to be produced, such that the DOJ and its employees can locate the requested records with reasonable effort.

24. Mr. Soule is therefore entitled to a production of agency records from the DOJ, which has been improperly withheld.

25. Under 5 U.S.C. §552(a)(4)(B), Mr. Soule is entitled to a *de novo* review by this Court of the matters discussed herein, and ultimately to a judgment in his favor.

26. Under 5 U.S.C. §552(a)(4)(B), Mr. Soule is entitled to “reasonable attorney fees and other litigation costs reasonably incurred,” if he substantially prevails.

WHEREFORE, Thomas Soule respectfully requests judgment in his favor and against the United States Department of Justice, and specifically seeks an order (A) directing the DOJ to produce documents responsive to Mr. Soule’s FOIA request forthwith, (B) directing the DOJ to pay Mr. Soule’s reasonable attorney’s fees and litigation costs, and (C) providing for any other proper relief.

Respectfully submitted,

/s/ Edward F. Ruberry
Edward F. Ruberry

Edward F. Ruberry
Ruberry Stalmack & Garvey LLC
300 South Wacker Drive, Suite 3250
Chicago, Illinois 60606
(312) 466-8050
ed.ruberry@ruberry-law.com



U.S. Department of Justice

EXHIBIT A

United States Attorney
Northern District of Illinois

Patrick W. Johnson
Assistant United States Attorney
Deputy Chief, Civil Division

Dirksen Federal Courthouse
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604

Phone (312) 353-5327

November 24, 2021

By Electronic, Regular, and Certified Mail

Jeff Pruyn
Itasca Village Mayor
550 West Irving Park Rd.
Itasca, Illinois 60143
mayor@itasca.com

Charles E. Hervas
Hervas, Condon & Bersani, P.C.
333 Pierce Road, Suite 195
Itasca, Illinois 60143
[REDACTED]

Re: Investigation of Compliance with the Americans with Disabilities Act by the
Village of Itasca, Illinois

Messrs. Pruyn and Hervas:

We are writing to inform you that the U.S. Attorney's Office for the Northern District of Illinois has initiated an investigation of the Village of Itasca for compliance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA").¹ Among other things, the ADA prohibits discrimination against individuals with disabilities, including individuals with substance use disorder.

Pursuant to our authority under the ADA, the investigation is related to the zoning application of Haymarket DuPage LLC ("Haymarket DuPage") filed with the Village of Itasca to use property to operate a treatment center for individuals with substance use and behavioral health disorders. Specifically, Haymarket DuPage's application was considered in Plan Commission Case No. PC 19-014, which sought approval for a planned development by special use in order to permit a mixed-use residential and healthcare facility and other accessory uses in the B-2 Community Business District at 860 W. Irving Park Road. The Itasca Plan Commission recommended on September 22, 2021 that the Haymarket DuPage application be denied, and the Itasca Village Board denied the application on November 2, 2021.

¹ See 42 U.S.C. §§ 12131-12134, and its implementing regulations, 28 C.F.R. Part 35. The text of the ADA, the Department of Justice's regulations, and many technical assistance publications can also be accessed at www.ADA.gov.

We ask that you provide the following information within thirty (30) calendar days of the date of this letter. If any of the information requested is not available in writing, please provide corresponding documents, written policies, or other written material that addresses the substance of the information requested. This request falls within DOJ's federal law enforcement authority. Such authority creates exceptions to statutes that may otherwise limit disclosure of private information.

Information Requested

1. The name, address, and telephone number of the individual to whom this office should direct any future questions and correspondence. Please indicate if this person has authority to negotiate a settlement of this matter.
2. Other than the Village's current Zoning Map and Bylaws, produce any previous zoning maps and bylaws in effect since 2016.
3. Any lists or other documents that contain the address and/or location of any business or organization in the Village that provides diagnosis, treatment, recovery support, or any other services to individuals suffering from substance use or mental health disorders.
4. Copies of any applications for site plan approval, special use permits, plan developments, certificates of completion, certificates of occupancy, rezoning, variances, amendments to the Village's Zoning Bylaws or Zoning Map, or similar applications to use land in the Village to provide diagnosis, treatment, recovery support, or any other services to individuals suffering from substance use or mental health disorders since 2005. For each such application, provide a statement of whether the application was approved or denied, the zoning district where the entity sought to locate, the date of such approval or denial, and the reasons for approval or denial.
5. State whether the Village has had any pre-application meetings or inquiries since 2005 (that did not result in an application) about using land in the Village to provide diagnosis, treatment, recovery support, or any other services to individuals suffering from substance use or mental health disorders. If so, identify when, where, and with whom those meetings occurred, and describe the type of facility being discussed and the outcome of those discussions.
6. Copies of any applications for site plan approval, special use permits, plan developments, certificates of completion, certificates of occupancy, rezoning, variances, amendments to the Village's Zoning Bylaws or Zoning Map, or similar applications to use land in the Village by or concerning any Healthcare Facility as defined under the Itasca Zoning Ordinance since 2005. For each such application, provide a statement of whether the application was approved or denied, the zoning district where the entity sought to locate, the date of such approval or denial, and the reasons for approval or denial.
7. Identify Village policies or procedures for requesting a reasonable accommodation to the Village's Zoning Ordinance pursuant to the federal Fair Housing Act or the Americans with Disabilities Act, and produce all documents that contain or are sufficient to show these policies or procedures.

8. All communications² and documentation related to the Village's 2019 decision to classify Haymarket DuPage as a planned development for purposes of zoning proceedings rather than a healthcare facility.
9. All communications related to Haymarket DuPage between the Village of Itasca, its employees, representatives, or counsel (collectively, the "Village")³ and either of the following two interested parties in the Haymarket DuPage Plan Commission hearing: (1) Itasca Fire Protection District, including its employees, representatives, or counsel (collectively, the "Fire Department"); or (2) Itasca School District No. 10, its employees, representatives, or counsel (collectively, "School District"). Responsive documents or communications that are publicly available on the Village website or that Haymarket DuPage was copied on need not be produced.
10. State whether there were any meetings or verbal communications related to Haymarket DuPage between the Village and either of the two interested parties listed in item 9 above that occurred outside of the hearing process and outside the presence of Haymarket DuPage. If so, for each such meeting or communication, provide the date and location, identify the participants, and produce any recordings, documents, or notes.
11. All internal communications of the Village and documentation created by the Village related to Haymarket DuPage.
12. All communications and documentation related to Haymarket DuPage between the Village and Sarah Ketchum, including both consulting firms she worked for (The Kenrich Group LLC, which has been acquired by HKA Global, Inc.), or their counsel. Responsive documents and communications that are publicly available on the Village website or that Haymarket DuPage was copied on need not be produced.
13. All communications and documentation between the Village and Lissa Druss, directly or through counsel, related to Haymarket DuPage. Responsive documents and communications that are publicly available on the Village website or that Haymarket DuPage was copied on need not be produced.
14. All communications and documentation between the Village and North DuPage Special Education Cooperative representatives or counsel related to Haymarket DuPage.
15. All communications and documentation between the Village and Lake Park High School District 108 representatives or counsel related to Haymarket DuPage.
16. All communications and documentation between the Village and Superior Ambulance Service representatives or counsel related to Haymarket DuPage.

² "Communications" in the requests in this letter means correspondence, notes, records, letters, memoranda, reports, emails (both work and personal), and texts (both work and personal), instant messages, posts on messaging apps, and other documents (including transcriptions, logs, and audio and video recordings).

³ "Employees" and "representatives" used throughout this letter shall include both current and former employees/representatives. "Representatives" includes any staff or experts hired or retained in connection with the Haymarket DuPage zoning hearing before the Plan Commission.

17. State whether the Village has ever hired an expert to evaluate the economic impact of an application for a special use permit or a planned development since 2005. If so, produce all communications and documentation relating to any such expert and the work performed by the expert.
18. All communications and documentation relating to any application for a special use permit to operate a business, service, or organization that is nonprofit and exempt from paying property taxes, including but not limited to (1) American Academy of Pediatrics; (2) Gift of Hope Organ and Tissue; and (3) National Safety Council.
19. Identify all applications for a special use permit or a planned development since 2005 in which the Village requested that the applicant submit an economic impact statement as part of the application process. For each such application, produce all communications and documentation relating to the economic impact statement.
20. Identify all applications for a special use permit or a planned development since 2005 where the Fire Department participated by submitting documentation or statements to the Plan Commission. For any such application, produce all communications and documentation relating to the Fire Department's participation.
21. All documentation and information provided by the Fire Department to the Illinois State Fire Marshal related to mutual aid given to or received from other communities for the years 2014 to the present. State whether the Village ever asked for this information in connection with the Haymarket DuPage hearing.
22. Identify all applications for a special use permit or a planned development since 2005 where the School District participated by submitting documentation or statements to the Plan Commission. For any such application, produce all communications and documentation relating to the School District's participation.

We have attempted to limit the areas of inquiry to expedite the initial phase of this investigation, and we are willing to work with you to minimize any burdens that would be imposed upon you or your staff in providing this information.

In addition to providing us with the requested information, we invite you to provide us with any other information that you believe is relevant to our inquiry. We may want to interview certain Village employees, agents, or officials as well. We will let you know as soon as possible of any need to interview such persons.

Finally, we request that the Village maintain any and all records, documents, files, or tapes that could be relevant to this investigation in their current form. To the extent that such records are contained in a computer system, computer files should not be altered or destroyed pending completion of our investigation.

If you have any questions, please do not hesitate to contact me at (312) 353-5327 or patrick.johnson2@usdoj.gov.

Very truly yours,

JOHN R. LAUSCH, Jr.
United States Attorney

By: s/ Patrick W. Johnson
PATRICK W. JOHNSON
Assistant United States Attorney

Requester Details

To modify request details please update your requester profile or contact the our office for assistance.

Thomas Soule
 Ruberry Stalmack & Garvey LLC
 330 South Wacker Drive Suite 3250
 Chicago, IL 60606
 Phone (312) 466-7217
 tom.soule@ruberry-law.com

Requester Default Category: Law Office

Request Details

Date Requested 11/13/2023
 Status Closed

General Information

Action Office

Request Type

Delivery Mode

Request Information

Date Range for Record Search:
 From(mm/dd/yyyy) To (mm/dd/yyyy)

Description of Records Sought

Supporting Documents [Add Attachment](#)

Fee Information

Willing Amount (\$)

Fee Waiver Requested [Add Attachment](#)

Fee Waiver Request Reason

Cost Details :

Total Cost \$0.00
 Cost Incurred \$0.00
 Amount Paid \$0.00
 Balance Amount \$0.00
 Payment Status No Charges
 Willing to Pay All Fees

Expedite Information

Expedite Requested [Add Attachment](#)

Expedite Reason



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 5.400, 3CON Building
175N Street, NE
Washington, DC 20530

(202) 252-6020

EXHIBIT C

December 1, 2023

VIA E-mail

Thomas Soule
Ruberry Stalmack & Garvey LLC
330 South Wacker Drive Suite 3250
Chicago, IL 60606
tom.soule@ruberry-law.com

Request Number: EOUSA-2024-000356
Date of Receipt: November 13, 2023
Subject of Request: Ithaca Village/USAO-ILN

Dear Thomas Soule:

In response to your Freedom of Information Act and/or Privacy Act request, the following checked paragraph(s) apply:

1. A search for records located in EOUSA has revealed no responsive records regarding the above subject.
2. A search for records located in the United States Attorney's Office for the Northern District of Illinois has revealed no responsive records regarding the above subject.
3. After an extensive search, the records which you have requested cannot be located.
4. Records that might have been responsive to your request were destroyed pursuant to the agency's record retention and disposition schedules approved by the National Archives and Records Administration.
5. Please note that your original letter was split into separate files ("requests"), for processing purposes, based on the nature of what you sought. Each file was given a separate Request Number (listed below), for which you will receive a separate response:

This is the final action on this above-numbered request. If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90

days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may contact our FOIA Public Liaison at the Executive Office for United States Attorneys (EOUSA) for any further assistance and to discuss any aspect of your request. The contact information for EOUSA is 175 N Street, NE, Suite 5.400, Washington, DC 20530; telephone at 202-252-6020. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin Krebs", is written over a light pink rectangular background.

Kevin Krebs
Assistant Director

December 8, 2023

EXHIBIT D

Via electronic submission and certified mail

Bobak Talebian
Director, Office of Information Policy
U.S. Department of Justice
441 G Street NW, 6th Floor
Washington DC 20530

Re: Freedom of Information Act Appeal (Request No. EOUSA-2024-000356)

Dear Mr. Talebian:

I am writing to lodge an administrative appeal as to a Freedom of Information Act request that I submitted to the Executive Office for U.S. Attorneys on November 13, 2023 (Request No. EOUSA-2024-000356). In that request, I asked for the production of

all documents relating to a proposal by Haymarket DuPage LLC to open and operate a treatment center at 860 West Irving Park Road, Itasca, Illinois (within the Northern District of Illinois), including but not limited to (1) all documents relating to the Department of Justice's investigation of the Village of Itasca, Illinois regarding the denial of a zoning application to Haymarket DuPage for the proposed treatment center (as announced by the U.S. Attorney for the Northern District of Illinois on November 24, 2021 in the attached letter); and (2) all documents relating to the investigation of claims that the Village of Itasca violated any federal or state laws or regulations (including but not limited to the Americans with Disabilities Act (42 U.S.C. §12101 *et seq.*), the Fair Housing Act (42 U.S.C. §3601 *et seq.*), the Rehabilitation Act (29 U.S.C. §701 *et seq.*), and any implementing regulations); and (3) all documents relating to any further investigation of individuals or entities involved in efforts to prevent either (a) Haymarket DuPage's acquisition of 860 West Irving Park Road, Itasca, Illinois, or (b) the approval of Haymarket DuPage's zoning application for a treatment center at that location; and (4) all documents relating to any investigation into the involvement of either (a) Mark Seames (661 Country Club Drive, Itasca, Illinois) or (b) Martin Jones (623 Country Club Drive, Itasca, Illinois) in the matter of the proposed treatment center as to any potential violations of federal or state laws or regulations committed by either or both of them.

On December 1, 2023, Kevin Krebs of the EOUSA's staff wrote to me, in the attached letter, to say that "[a] search for records located in the United States Attorney's Office for the Northern District of Illinois has revealed no responsive records regarding the above subject." I respectfully submit that the EOUSA is incorrect.

Bobak Talebian
December 8, 2023
Page 2

As you can see from the attached letter from AUSA Patrick Johnson to Jeff Pruyn, the Mayor of Itasca, dated November 24, 2021, the U.S. Attorney for the Northern District of Illinois

initiated an investigation of the Village of Itasca for compliance with the requirements of Title II of the Americans with Disabilities Act of 1990... Pursuant to our authority under the ADA, the investigation is related to the zoning application of Haymarket DuPage LLC ("Haymarket DuPage") filed with the Village of Itasca to use property to operate a treatment center for individuals with substance use and behavioral health disorders.

Mr. Johnson's letter then demanded the production of twenty-two categories of documents in the Village's possession, relating to the application of Haymarket DuPage for a special use permit or a planned development permit, within 30 days of the letter.

Presuming for current purposes that the Village of Itasca complied with this request and produced documents, the U.S. Attorney's Office for the Northern District of Illinois possesses documents that are responsive to my FOIA request. Such documents should be produced, under FOIA, without further unnecessary delay.

The FOIA liaisons for the EOUSA and the Civil Division, as well as Mr. Johnson, are being copied on this letter to bring this matter to their attention, and so that they may provide assistance to me, and you, regarding this appeal.

Please do not hesitate to have your office contact me if you have any questions or concerns. Thank you very much.

Very truly yours,



Thomas E. Soule

Enclosures

CC: Kenneth Hendricks – FOIA & Privacy Office Chief, Civil Division
(by e-mail to civil.routing.FOIA@usdoj.gov)

Arla Witte-Simpson – FOIA Public Liaison, Executive Office for U.S. Attorneys
(by mail to 175 N Street NE, Suite 5.400, Washington, DC 20530)

Patrick Johnson – Assistant U.S. Attorney, Northern District of Illinois
(by e-mail to patrick.johnson2@usdoj.gov)



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

*Suite 5.400, 3CON Building
175N Street, NE
Washington, DC 20530*

(202) 252-6020

December 1, 2023

VIA E-mail

Thomas Soule
Ruberry Stalmack & Garvey LLC
330 South Wacker Drive Suite 3250
Chicago, IL 60606
tom.soule@ruberry-law.com

Request Number: EOUSA-2024-000356
Date of Receipt: November 13, 2023
Subject of Request: Ithaca Village/USAO-ILN

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Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin Krebs", is written over a light pink rectangular background.

Kevin Krebs
Assistant Director



U.S. Department of Justice

*United States Attorney
Northern District of Illinois*

*Patrick W. Johnson
Assistant United States Attorney
Deputy Chief, Civil Division*

*Dirksen Federal Courthouse
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604*

Phone (312) 353-5327

November 24, 2021

By Electronic, Regular, and Certified Mail

Jeff Pruyn
Itasca Village Mayor
550 West Irving Park Rd.
Itasca, Illinois 60143
mayor@itasca.com

Charles E. Hervas
Hervas, Condon & Bersani, P.C.
333 Pierce Road, Suite 195
Itasca, Illinois 60143
[REDACTED]

Re: Investigation of Compliance with the Americans with Disabilities Act by the
Village of Itasca, Illinois

Messrs. Pruyn and Hervas:

We are writing to inform you that the U.S. Attorney's Office for the Northern District of Illinois has initiated an investigation of the Village of Itasca for compliance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA").¹ Among other things, the ADA prohibits discrimination against individuals with disabilities, including individuals with substance use disorder.

Pursuant to our authority under the ADA, the investigation is related to the zoning application of Haymarket DuPage LLC ("Haymarket DuPage") filed with the Village of Itasca to use property to operate a treatment center for individuals with substance use and behavioral health disorders. Specifically, Haymarket DuPage's application was considered in Plan Commission Case No. PC 19-014, which sought approval for a planned development by special use in order to permit a mixed-use residential and healthcare facility and other accessory uses in the B-2 Community Business District at 860 W. Irving Park Road. The Itasca Plan Commission recommended on September 22, 2021 that the Haymarket DuPage application be denied, and the Itasca Village Board denied the application on November 2, 2021.

¹ See 42 U.S.C. §§ 12131-12134, and its implementing regulations, 28 C.F.R. Part 35. The text of the ADA, the Department of Justice's regulations, and many technical assistance publications can also be accessed at www.ADA.gov.

We ask that you provide the following information within thirty (30) calendar days of the date of this letter. If any of the information requested is not available in writing, please provide corresponding documents, written policies, or other written material that addresses the substance of the information requested. This request falls within DOJ's federal law enforcement authority. Such authority creates exceptions to statutes that may otherwise limit disclosure of private information.

Information Requested

1. The name, address, and telephone number of the individual to whom this office should direct any future questions and correspondence. Please indicate if this person has authority to negotiate a settlement of this matter.
2. Other than the Village's current Zoning Map and Bylaws, produce any previous zoning maps and bylaws in effect since 2016.
3. Any lists or other documents that contain the address and/or location of any business or organization in the Village that provides diagnosis, treatment, recovery support, or any other services to individuals suffering from substance use or mental health disorders.
4. Copies of any applications for site plan approval, special use permits, plan developments, certificates of completion, certificates of occupancy, rezoning, variances, amendments to the Village's Zoning Bylaws or Zoning Map, or similar applications to use land in the Village to provide diagnosis, treatment, recovery support, or any other services to individuals suffering from substance use or mental health disorders since 2005. For each such application, provide a statement of whether the application was approved or denied, the zoning district where the entity sought to locate, the date of such approval or denial, and the reasons for approval or denial.
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6. Copies of any applications for site plan approval, special use permits, plan developments, certificates of completion, certificates of occupancy, rezoning, variances, amendments to the Village's Zoning Bylaws or Zoning Map, or similar applications to use land in the Village by or concerning any Healthcare Facility as defined under the Itasca Zoning Ordinance since 2005. For each such application, provide a statement of whether the application was approved or denied, the zoning district where the entity sought to locate, the date of such approval or denial, and the reasons for approval or denial.
7. Identify Village policies or procedures for requesting a reasonable accommodation to the Village's Zoning Ordinance pursuant to the federal Fair Housing Act or the Americans with Disabilities Act, and produce all documents that contain or are sufficient to show these policies or procedures.

8. All communications² and documentation related to the Village's 2019 decision to classify Haymarket DuPage as a planned development for purposes of zoning proceedings rather than a healthcare facility.
9. All communications related to Haymarket DuPage between the Village of Itasca, its employees, representatives, or counsel (collectively, the "Village")³ and either of the following two interested parties in the Haymarket DuPage Plan Commission hearing: (1) Itasca Fire Protection District, including its employees, representatives, or counsel (collectively, the "Fire Department"); or (2) Itasca School District No. 10, its employees, representatives, or counsel (collectively, "School District"). Responsive documents or communications that are publicly available on the Village website or that Haymarket DuPage was copied on need not be produced.
10. State whether there were any meetings or verbal communications related to Haymarket DuPage between the Village and either of the two interested parties listed in item 9 above that occurred outside of the hearing process and outside the presence of Haymarket DuPage. If so, for each such meeting or communication, provide the date and location, identify the participants, and produce any recordings, documents, or notes.
11. All internal communications of the Village and documentation created by the Village related to Haymarket DuPage.
12. All communications and documentation related to Haymarket DuPage between the Village and Sarah Ketchum, including both consulting firms she worked for (The Kenrich Group LLC, which has been acquired by HKA Global, Inc.), or their counsel. Responsive documents and communications that are publicly available on the Village website or that Haymarket DuPage was copied on need not be produced.
13. All communications and documentation between the Village and Lissa Druss, directly or through counsel, related to Haymarket DuPage. Responsive documents and communications that are publicly available on the Village website or that Haymarket DuPage was copied on need not be produced.
14. All communications and documentation between the Village and North DuPage Special Education Cooperative representatives or counsel related to Haymarket DuPage.
15. All communications and documentation between the Village and Lake Park High School District 108 representatives or counsel related to Haymarket DuPage.
16. All communications and documentation between the Village and Superior Ambulance Service representatives or counsel related to Haymarket DuPage.

² "Communications" in the requests in this letter means correspondence, notes, records, letters, memoranda, reports, emails (both work and personal), and texts (both work and personal), instant messages, posts on messaging apps, and other documents (including transcriptions, logs, and audio and video recordings).

³ "Employees" and "representatives" used throughout this letter shall include both current and former employees/representatives. "Representatives" includes any staff or experts hired or retained in connection with the Haymarket DuPage zoning hearing before the Plan Commission.

17. State whether the Village has ever hired an expert to evaluate the economic impact of an application for a special use permit or a planned development since 2005. If so, produce all communications and documentation relating to any such expert and the work performed by the expert.
18. All communications and documentation relating to any application for a special use permit to operate a business, service, or organization that is nonprofit and exempt from paying property taxes, including but not limited to (1) American Academy of Pediatrics; (2) Gift of Hope Organ and Tissue; and (3) National Safety Council.
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22. Identify all applications for a special use permit or a planned development since 2005 where the School District participated by submitting documentation or statements to the Plan Commission. For any such application, produce all communications and documentation relating to the School District's participation.

We have attempted to limit the areas of inquiry to expedite the initial phase of this investigation, and we are willing to work with you to minimize any burdens that would be imposed upon you or your staff in providing this information.

In addition to providing us with the requested information, we invite you to provide us with any other information that you believe is relevant to our inquiry. We may want to interview certain Village employees, agents, or officials as well. We will let you know as soon as possible of any need to interview such persons.

Finally, we request that the Village maintain any and all records, documents, files, or tapes that could be relevant to this investigation in their current form. To the extent that such records are contained in a computer system, computer files should not be altered or destroyed pending completion of our investigation.

If you have any questions, please do not hesitate to contact me at (312) 353-5327 or patrick.johnson2@usdoj.gov.

Very truly yours,

JOHN R. LAUSCH, Jr.
United States Attorney

By: s/ Patrick W. Johnson
PATRICK W. JOHNSON
Assistant United States Attorney



A-2024-00452

Requester: Soule, Thomas

EXHIBIT E

Workflow

Appeal

Appeal Information

Received Date	12/08/2023	Agency	OIP
		Document Delivery Method	Email

Request Information

Request Number	EOUSA-2024-000356
Component	EOUSA
Subject of Request	All documents relating to a proposal by Haymarket DuPage LLC to open and operate a treatment center at 860 West Irving Park Road, Itasca, Illinois (within the Northern District of Illinois), including but not limited to (1) all documents relating to the Department of Justice's investigation of the Village of Itasca, Illinois regarding the denial of a zoning application to Haymarket DuPage for the proposed treatment center (as announced by the U.S. Attorney for the Northern District of Illinois on November 24, 2021 in the attached letter); and (2) all documents relating to the investigation of claims that the Village of Itasca violated any federal or state laws or regulations (including but not limited to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.), the Fair Housing Act (42 U.S.C. §3601 et seq.), the Rehabilitation Act (29 U.S.C. §701 et seq.), and any implementing regulations); and (3) all documents relating to any further investigation of individuals or entities involved in efforts to prevent either (a) Haymarket DuPage's acquisition of 860 West Irving Park Road, Itasca, Illinois, or (b) the approval of Haymarket DuPage's zoning application for a treatment center at that location; and (4) all documents relating to any investigation into the involvement of either (a) Mark Seames (661 Country Club Drive, Itasca, Illinois) or (b) Martin Jones (623 Country Club Drive, Itasca, Illinois) in the matter of the proposed treatment center as to any potential violations of federal or state laws or regulations committed by either or both of them.

Basis for Appeal

Description of Appeal	As fully explained in the attached letter and documentation, on December 1, 2023, Kevin Krebs of the EOUSA's staff wrote to me to say that "[a] search for records located in the United States Attorney's Office for the Northern District of Illinois has revealed no responsive records regarding the above subject." I respectfully submit that the EOUSA is incorrect. In brief, the Office of the U.S. Attorney for the Northern District of Illinois wrote a letter to the Village of Itasca, Illinois stating that the office had "initiated an investigation of the Village of Itasca for compliance with the requirements of Title II of the Americans with Disabilities Act of 1990... Pursuant to our authority under the ADA, the investigation is related to the zoning application of Haymarket DuPage LLC ("Haymarket DuPage") filed with the Village of Itasca to use property to operate a treatment center for individuals with substance use and behavioral health disorders." This was coupled with a request for documents from the Village of Itasca. If the Village of Itasca produced documents pursuant to the U.S. Attorney's request, then the U.S. Attorney's Office possesses documents that are responsive to the FOIA request.
Based on Denial of Fee Waiver	No
Based on Denial of Expedited Processing	No
Requester Item Type 1	Supplemental Information
Requester Items 1	2023 12 08 FOIA appeal letter (Request No. EOUSA-2024-000356).pdf
Requester Item Type 2	
Requester Items 2	
Requester Item Type 3	
Requester Items 3	

Requester Contact Information

Salutation		Address Type	Work
First Name	Thomas	Country	United States
Middle Name		Address Line 1	Ruberry Stalmack & Garvey LLC
Last Name	Soule	Address Line 2	300 South Wacker Drive, Suite 3250
Email Address	tom.soule@ruberry-law.com	City	Chicago
Organization	Ruberry Stalmack & Garvey LLC	State	Illinois
Register Number		Zip/Postal Code	60606
Phone Number	(312) 466-7217		
Fax Number	(312) 466-8055		
Other Information			

Expedited Processing Information

Expedited Processing Requested?	No
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EXHIBIT F

Home

REQUESTS ▼

◦ [My Requests](#)

APPEALS ▼

◦ [My Appeals](#)

ADMINISTRATION ^

QUICK LINKS ^



My Appeals

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Show 10 ▼ entries Search:

Appeal Number	Received Date	Status
A-2024-00452	12/08/2023	In Progress

Showing 1 to 1 of 1 entries

Previous 1 Next

RUBERRY

RUBERRY STALMACK & GARVEY, LLC

300 South Wacker Drive, Suite 3250
Chicago, Illinois 60606
Main (312) 466-8050 | Fax (312) 466-8055
www.ruberry-law.com

TOM SOULE
Junior Partner
Direct (312) 466-7217
tom.soule@ruberry-law.com

March 8, 2024

EXHIBIT G

Via priority mail

Bobak Talebian
Director, Office of Information Policy
U.S. Department of Justice
441 G Street NW, 6th Floor
Washington DC 20530

Re: *Freedom of Information Act Appeal – Overdue response*
(Request No. EOUSA-2024-000356 // Appeal No. A-2024-00452)

Dear Mr. Talebian:

On December 8, 2023, I lodged an administrative appeal as to a Freedom of Information Act request that I submitted to the Executive Office for U.S. Attorneys on November 13, 2023 (Request No. EOUSA-2024-000356 // Appeal No. A-2024-00452). The letter I submitted with the appeal – both by mail and by electronic submission through the FOIA STAR program – is attached for your reference.

According to official guidance from the Office of Information Policy, “[absent] ‘unusual circumstances,’ the FOIA provides that agencies should make a determination with respect to an appeal within twenty working-days of its receipt by the agency. 5 U.S.C. § 552(a)(6)(A)(ii).” As of today, the appeal that I lodged has been pending for 91 calendar days (or for 61 business days, excluding the four holidays that have occurred between then and now).

Please write to me immediately to explain the delay, and to advise as to when a decision on my appeal would be issued.

Very truly yours,



Thomas E. Soule

Enclosures

CC: Kenneth Hendricks – FOIA & Privacy Office Chief, Civil Division
(by e-mail to civil.routing.FOIA@usdoj.gov)

Arla Witte-Simpson – FOIA Public Liaison, Executive Office for U.S. Attorneys
(by mail to 175 N Street NE, Suite 5.400, Washington, DC 20530)

Patrick Johnson – Assistant U.S. Attorney, Northern District of Illinois
(by e-mail to patrick.johnson2@usdoj.gov)

December 8, 2023

Via electronic submission and certified mail

Bobak Talebian
Director, Office of Information Policy
U.S. Department of Justice
441 G Street NW, 6th Floor
Washington DC 20530

Re: Freedom of Information Act Appeal (Request No. EOUSA-2024-000356)

Dear Mr. Talebian:

I am writing to lodge an administrative appeal as to a Freedom of Information Act request that I submitted to the Executive Office for U.S. Attorneys on November 13, 2023 (Request No. EOUSA-2024-000356). In that request, I asked for the production of

all documents relating to a proposal by Haymarket DuPage LLC to open and operate a treatment center at 860 West Irving Park Road, Itasca, Illinois (within the Northern District of Illinois), including but not limited to (1) all documents relating to the Department of Justice's investigation of the Village of Itasca, Illinois regarding the denial of a zoning application to Haymarket DuPage for the proposed treatment center (as announced by the U.S. Attorney for the Northern District of Illinois on November 24, 2021 in the attached letter); and (2) all documents relating to the investigation of claims that the Village of Itasca violated any federal or state laws or regulations (including but not limited to the Americans with Disabilities Act (42 U.S.C. §12101 *et seq.*), the Fair Housing Act (42 U.S.C. §3601 *et seq.*), the Rehabilitation Act (29 U.S.C. §701 *et seq.*), and any implementing regulations); and (3) all documents relating to any further investigation of individuals or entities involved in efforts to prevent either (a) Haymarket DuPage's acquisition of 860 West Irving Park Road, Itasca, Illinois, or (b) the approval of Haymarket DuPage's zoning application for a treatment center at that location; and (4) all documents relating to any investigation into the involvement of either (a) Mark Seames (661 Country Club Drive, Itasca, Illinois) or (b) Martin Jones (623 Country Club Drive, Itasca, Illinois) in the matter of the proposed treatment center as to any potential violations of federal or state laws or regulations committed by either or both of them.

On December 1, 2023, Kevin Krebs of the EOUSA's staff wrote to me, in the attached letter, to say that "[a] search for records located in the United States Attorney's Office for the Northern District of Illinois has revealed no responsive records regarding the above subject." I respectfully submit that the EOUSA is incorrect.

Bobak Talebian
December 8, 2023
Page 2

As you can see from the attached letter from AUSA Patrick Johnson to Jeff Pruyn, the Mayor of Itasca, dated November 24, 2021, the U.S. Attorney for the Northern District of Illinois

initiated an investigation of the Village of Itasca for compliance with the requirements of Title II of the Americans with Disabilities Act of 1990... Pursuant to our authority under the ADA, the investigation is related to the zoning application of Haymarket DuPage LLC ("Haymarket DuPage") filed with the Village of Itasca to use property to operate a treatment center for individuals with substance use and behavioral health disorders.

Mr. Johnson's letter then demanded the production of twenty-two categories of documents in the Village's possession, relating to the application of Haymarket DuPage for a special use permit or a planned development permit, within 30 days of the letter.

Presuming for current purposes that the Village of Itasca complied with this request and produced documents, the U.S. Attorney's Office for the Northern District of Illinois possesses documents that are responsive to my FOIA request. Such documents should be produced, under FOIA, without further unnecessary delay.

The FOIA liaisons for the EOUSA and the Civil Division, as well as Mr. Johnson, are being copied on this letter to bring this matter to their attention, and so that they may provide assistance to me, and you, regarding this appeal.

Please do not hesitate to have your office contact me if you have any questions or concerns. Thank you very much.

Very truly yours,



Thomas E. Soule

Enclosures

CC: Kenneth Hendricks – FOIA & Privacy Office Chief, Civil Division
(by e-mail to civil.routing.FOIA@usdoj.gov)

Arla Witte-Simpson – FOIA Public Liaison, Executive Office for U.S. Attorneys
(by mail to 175 N Street NE, Suite 5.400, Washington, DC 20530)

Patrick Johnson – Assistant U.S. Attorney, Northern District of Illinois
(by e-mail to patrick.johnson2@usdoj.gov)



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 5.400, 3CON Building
175N Street, NE
Washington, DC 20530

(202) 252-6020

December 1, 2023

VIA E-mail

Thomas Soule
Ruberry Stalmack & Garvey LLC
330 South Wacker Drive Suite 3250
Chicago, IL 60606
tom.soule@ruberry-law.com

Request Number: EOUSA-2024-000356
Date of Receipt: November 13, 2023
Subject of Request: Ithaca Village/USAO-ILN

Dear Thomas Soule:

In response to your Freedom of Information Act and/or Privacy Act request, the following checked paragraph(s) apply:

1. A search for records located in EOUSA has revealed no responsive records regarding the above subject.
2. A search for records located in the United States Attorney's Office for the Northern District of Illinois has revealed no responsive records regarding the above subject.
3. After an extensive search, the records which you have requested cannot be located.
4. Records that might have been responsive to your request were destroyed pursuant to the agency's record retention and disposition schedules approved by the National Archives and Records Administration.
5. Please note that your original letter was split into separate files ("requests"), for processing purposes, based on the nature of what you sought. Each file was given a separate Request Number (listed below), for which you will receive a separate response:

This is the final action on this above-numbered request. If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90

days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may contact our FOIA Public Liaison at the Executive Office for United States Attorneys (EOUSA) for any further assistance and to discuss any aspect of your request. The contact information for EOUSA is 175 N Street, NE, Suite 5.400, Washington, DC 20530; telephone at 202-252-6020. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin Krebs", is written over a light pink rectangular background.

Kevin Krebs
Assistant Director



U.S. Department of Justice

United States Attorney
Northern District of Illinois

Patrick W. Johnson
Assistant United States Attorney
Deputy Chief, Civil Division

Dirksen Federal Courthouse
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604

Phone (312) 353-5327

November 24, 2021

By Electronic, Regular, and Certified Mail

Jeff Pruyn
Itasca Village Mayor
550 West Irving Park Rd.
Itasca, Illinois 60143
mayor@itasca.com

Charles E. Hervas
Hervas, Condon & Bersani, P.C.
333 Pierce Road, Suite 195
Itasca, Illinois 60143
[REDACTED]

Re: Investigation of Compliance with the Americans with Disabilities Act by the
Village of Itasca, Illinois

Messrs. Pruyn and Hervas:

We are writing to inform you that the U.S. Attorney's Office for the Northern District of Illinois has initiated an investigation of the Village of Itasca for compliance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA").¹ Among other things, the ADA prohibits discrimination against individuals with disabilities, including individuals with substance use disorder.

Pursuant to our authority under the ADA, the investigation is related to the zoning application of Haymarket DuPage LLC ("Haymarket DuPage") filed with the Village of Itasca to use property to operate a treatment center for individuals with substance use and behavioral health disorders. Specifically, Haymarket DuPage's application was considered in Plan Commission Case No. PC 19-014, which sought approval for a planned development by special use in order to permit a mixed-use residential and healthcare facility and other accessory uses in the B-2 Community Business District at 860 W. Irving Park Road. The Itasca Plan Commission recommended on September 22, 2021 that the Haymarket DuPage application be denied, and the Itasca Village Board denied the application on November 2, 2021.

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We ask that you provide the following information within thirty (30) calendar days of the date of this letter. If any of the information requested is not available in writing, please provide corresponding documents, written policies, or other written material that addresses the substance of the information requested. This request falls within DOJ's federal law enforcement authority. Such authority creates exceptions to statutes that may otherwise limit disclosure of private information.

Information Requested

1. The name, address, and telephone number of the individual to whom this office should direct any future questions and correspondence. Please indicate if this person has authority to negotiate a settlement of this matter.
2. Other than the Village's current Zoning Map and Bylaws, produce any previous zoning maps and bylaws in effect since 2016.
3. Any lists or other documents that contain the address and/or location of any business or organization in the Village that provides diagnosis, treatment, recovery support, or any other services to individuals suffering from substance use or mental health disorders.
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If you have any questions, please do not hesitate to contact me at (312) 353-5327 or patrick.johnson2@usdoj.gov.

Very truly yours,

JOHN R. LAUSCH, Jr.
United States Attorney

By: s/ Patrick W. Johnson
PATRICK W. JOHNSON
Assistant United States Attorney