

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

BETTER GOVERNMENT ASSOCIATION,)
)
Plaintiff,)
)
v.)
)
BOARD OF EDUCATION OF THE)
CITY OF CHICAGO,)
)
Defendant.)

COMPLAINT

NOW COMES Plaintiff, BETTER GOVERNMENT ASSOCIATION, by its undersigned attorneys, LOEVY & LOEVY, and brings this suit to overturn Defendant BOARD OF EDUCATION OF THE CITY OF CHICAGO's refusal, in willful violation of the Illinois Freedom of Information Act, to produce records showing the enrollment status of high school students. In support of its Complaint, BGA states as follows:

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. 5 ILCS 140/1.

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 140/3.

4. Under FOIA Section 11(h), “except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.”

PARTIES

5. Plaintiff BETTER GOVERNMENT ASSOCIATION is the FOIA requester in this case.

6. Defendant CPS is a public body located in Cook County, Illinois.

SEPTEMBER 8 REQUEST

7. On September 8, 2017 BGA requested “documents sufficient to show the school enrollment status of every high school student along with their grade (such as ninth grade, tenth grade etc.) for each school year from SY2010-11 through SY 2016-17.” BGA also requested a list of all headers of all fields of all databases CPS uses to compile enrollment information. A true and correct copy is attached as Exhibit A.

8. CPS immediately sent an automated message seeking extension of five business days to respond. A true and correct copy is attached as Exhibit B.

9. Upon information and belief, the extension message was sent without any human review and/or was based on the volume of FOIA requests received by CPS and not on the subject matter of the particular request.

10. On September 15, 2017, CPS denied the request asserting Section 3(g) of FOIA, the undue burden exemption. A true and correct copy is attached as Exhibit C.

11. In violation of FOIA Section 3(g), CPS failed to “extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions” before invoking the exemption. In fact, CPS expressly refused to engage in the required process, instead insisting that BGA submit a new request.

12. BGA made multiple attempts to confer with CPS about the scope of the request and CPS failed to respond.

COUNT I – SEPTEMBER 8 WILLFUL VIOLATION OF FOIA

13. The above paragraphs are incorporated by reference.

14. CPS is a public body under FOIA.

15. The records sought in BGA’s FOIA request are non-exempt public records of CPS.

16. CPA has willfully and intentionally violated FOIA by refusing to produce the requested 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;
- ii. declare that CPS has violated FOIA;
- iii. order CPS to produce the requested records;
- iv. enjoin CPS from withholding non-exempt public records under FOIA;

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- v. enjoin CPS from taking extensions via automated response;
- vi. order CPS to pay civil penalties;
- vii. award Plaintiff reasonable attorneys' fees and costs;
- viii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorneys for Plaintiff
BETTER GOVERNMENT ASSOCIATION

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Matthew Topic
Joshua Burday
LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900
foia@loevy.com
Atty. No. 41295



Better Government Association
223 West Jackson Boulevard
Chicago, Illinois 60606

312.427.8330 P
312.821.9038 F
www.bettergov.org

Dear FOIA Officer,

I am writing to make a request under the Freedom of Information Act (5 ILCS 140) for public records maintained by Chicago Public Schools:

- 1) I am requesting documents sufficient to show the school enrollment status of every high school student along with their grade (such as ninth grade, tenth grade etc.) for each school year from SY2010-11 through SY2016-17.

The data should also include the names of all schools from which those students graduated, transferred to, and/or dropped out. If they left CPS prior to completing their credits, please include information indicating whether they left the district for a non-CPS school or alternative school, a GED program, a job training program, homeschooling or any other destination along with the name of that destination, if applicable.

Please note that I am not requesting any personally identifiable information, such as students' names or home addresses. However, I am seeking all other data the district keeps on students as part of this data set, including but not limited to, date of birth, home zip code, ethnicity or race and gender.

- 2) A list of all headers of all fields of all databases CPS uses to compile enrollment information of high school students in the district. As part of this request, I ask that you include a key defining the headers as well as any terms used within the data sets.

I ask that you send me these records in the electronic format in which they are kept.

If you feel any portion of this request is exempt from public scrutiny, please describe the precise nature of the portion being redacted, a written explanation of the specific statutory authority under which you are doing so, and provide that portion of the request not in dispute.

Should you have any questions, concerns or problems with this request, please contact me at the phone numbers or email provided below.

As this request is made in my capacity as a journalist, time is of the utmost concern.

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Exhibit A

Thank you for your prompt attention to this matter.

Sincerely,

Kiannah Sepeda-Miller
Investigator
Better Government Association
223 W. Jackson Blvd., Suite 300
Chicago, IL 60606
312-821-9027 (W)
303-990-1424 (C)
ksepeda@bettergov.org

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Chicago Public Schools FOIA Center <cps@mycusthelp.net>

Sep 8

to me

Dear Kiannah:

Thank you for your interest in Chicago Public Schools. Your FOIA request has been received and is being processed. Your FOIA Center reference number for tracking purposes is: **N003484-090817**

You have requested the following records: **I am writing to make a request under the Freedom of Information Act (5 ILCS 140) for public records maintained by Chicago Public Schools: 1) I am requesting documents sufficient to show the school enrollment status of every high school student along with their grade (such as ninth grade, tenth grade etc.) for each school year from SY2010-11 through SY2016-17. The data should also include the names of schools from which those students graduated, transferred to, and/or dropped out. If they left CPS prior to completing their credits, please include information indicating whether they left the district for a non-CPS school, a GED program, a job training program, homeschooling or any other destination along with the name of that destination, if applicable. Please note that I am not requesting any personally identifiable information, such as students' names or home addresses. However, I am seeking all other data the district keeps on students as part of this data set, including but not limited to, date of birth, home zip code, ethnicity or race and gender. 2) A list of all headers of all fields of all databases CPS uses to compile enrollment information of high school students in the district. As part of this request, I ask that you include a key defining the headers as well as any terms used within the data sets. I ask that you send me these records in the electronic format in which they are kept. If you feel any portion of this request is exempt from public scrutiny, please describe the nature of the portion being redacted, a written explanation of the specific statutory authority under which you are doing so, and provide that portion of the request not in dispute. Should you have any questions, concerns or problems with this request, please contact me at the phone numbers or email provided below. As this request is made in my capacity as a journalist, time is of the utmost concern. Thank you for your prompt attention to this matter.**

Chicago Public Schools (CPS) responds to all public records requests in accordance with the Illinois Freedom of Information Act (FOIA), 5 ILCS 140/1 et seq.

Due to the high volume of FOIA requests received by CPS, we are unable to fulfill your request within 5 business days. Section 3(e)(vi) of FOIA permits CPS to extend the response time to 10 business days if a request cannot be fulfilled in 5 business days without unduly burdening or interfering with the operations of the District. We hereby extend the response time to your FOIA request to 10 business days in accordance with 5 ILCS 140/3(e)(vi).

If further time is needed to assemble and copy all documents responsive to your FOIA request, we will contact you with a time estimate and a request to extend.

Upon the completion of a response, CPS will provide the first 50 pages to you at no charge. If a response is more than 50 pages, a fee of 15¢ per page will be charged for each additional page. Copies of video recordings have a fee of \$48. All applicable fees must be paid prior to the copying. **CPS will inform you of any fees due if your paper response exceeds 50 pages.**

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed. Thank you for using the CPS FOIA Center.

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FOIA Center
Chicago Public Schools



Chicago Public Schools FOIA Center <cps@mycusthelp.net>

to me

Sep 15



--- Please respond above this line ---

September 15, 2017

RE: N003484-090817

Dear Ms. Sepeda-Miller,

On September 8, 2017 you requested: documents sufficient to show the school enrollment status of every high school student along with their grade (such as ninth grade, tenth grade etc.) for each school year from SY2010-11 through SY2016-17. The data should also include the names of all schools from which those students graduated, transferred to, and/or dropped out. If they left CPS prior to completing their credits, please include information indicating whether they left the district for a non-CPS school or alternative school, a GED program, a job training program, homeschooling or any other destination along with the name of that destination, if applicable. Please note that I am not requesting any personally identifiable information, such as students' names or home addresses. However, I am seeking all other data the district keeps on students as part of this data set, including but not limited to, date of birth, home zip code, ethnicity or race and gender. 2) A list of all headers of all fields of all databases CPS uses to compile enrollment information of high school students in the district. As part of this request, I ask that you include a key defining the headers as well as any terms used within the data sets.

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RESPONSE:

Chicago Public Schools reviewed your request and determined it is unduly burdensome on the operations of the District as currently written. Pursuant to 5 ILCS 140/3(g) the District is extending the opportunity to you to narrow your request to more manageable proportions. It is unduly burdensome as currently written because it is asking for seven years worth of data on every single high school student within the District. There are approximately 100,000 students in high school every year, which means that the response would have thousands of entry. Additionally, the information you seek is not located in one database nor can it be easily compiled into one format.

Please note that even if you narrow your request, it will be impossible for CPS to track all student movement so any data you may receive would be incomplete. Also, given the individuality of student movements, much of the data would need to be redacted to protect students' privacy under the ISSRA.

Further, this request does not describe records but asks for CPS to do a research on your behalf and require the generation of documents. FOIA obligations apply to the provision of existing public records; a public body is not required to answer questions or generate new records in response to a FOIA request. See Kenyon v. Garrels, 184 Ill. App. 3d 28,32 (4th Dist. 1989); see also Yeager v. Drug Enforcement Admin., 678 F. 2d 315, 321 (D.C. Cir. 1922) ("A requester is entitled only to records that an agency has in fact chosen to create and retain.").

If you wish to perform a research project, you may contact Research Review Board at <http://cps.edu/Research/Pages/Research.aspx>.

Pursuant to 5 ILCS 140/3 (g), we are asking that you narrow your request to more manageable proportions. If you decide to narrow your request, you will be asked to submit a revised request to the CPS. Please do not narrow as a reply to this response. Failure to narrow your request will result in a denial under 5 ILCS 140/3 (g). Furthermore, if the request for documents is narrowed the CPS will not release any documents exempt under the Freedom of Information Act.

In the case of a denial, pursuant to 5 ILCS 140/9.5(a) you may file a Request for Review with the Public Access Counselor (PAC) at:

Public Access Counselor
Office of the Attorney General; [500 South 2nd Street](http://www.pac.state.il.gov)
[Springfield, IL 62706](http://www.pac.state.il.gov).

You also have the right to seek judicial review of your denial by filing a lawsuit in the State circuit court, 5 ILCS 140/11.

Best,

Elyssa Shull
Freedom of Information Act Officer
Chicago Public Schools

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

BETTER GOVERNMENT ASSOCIATION

v.

BOARD OF ED OF CITY OF CHICAGO

No. 2017-CH-14441

Defendant Address:

BOARD OF ED OF CITY OF CHICAGO

1 N. DEARBORN ST., #950

CHICAGO, IL 60602

SUMMONS ALIAS - SUMMONS

To each defendant:

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 1500 Rolling Meadows, IL 60008
District 4 - Maywood Maybrook Ave. Maywood, IL 60153
District 5 - Bridgeview 10220 S. 76th Ave. Bridgeview, IL 60455
District 6 - Markham 16501 S. Kedzie Pkwy. Markham, IL 60428
Richard J. Daley Center 50 W. Washington, LL-01 Chicago, IL 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 thirty (30) days after its date.

Atty. No.: 41295
Name: LOEVY & LOEVY
Atty. for: BETTER GOVERNMENT ASSOCIATION
Address: 311 N ABERDEEN 3FL
City/State/Zip Code: CHICAGO, IL 60607
Telephone: (312) 243-5900
Primary Email Address: matt@loevy.com
Secondary Email Address(es): joshb@loevy.com

Witness: Monday, 30 October 2017
/s DOROTHY BROWN
DOROTHY BROWN, Clerk of Court
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)

Chancery DIVISION

Litigant List

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Plaintiffs

Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
BETTER GOVERNMENT ASSOCIATION				

Total Plaintiffs: 1

Defendants

Defendant Name	Defendant Address	State	Unit #	Service By
BOARD OF ED OF CITY OF CHICAGO	1 N. DEARBORN ST., #950 CHICAGO, IL	IL	60602	Sheriff-Clerk

Total Defendants: 1