

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

BRANDON SMITH,)
)
 Plaintiff,)
)
 v.)
)
 COOK COUNTY STATE’S ATTORNEY’S)
 OFFICE,)
)
 Defendant.)
)

COMPLAINT

NOW COMES Plaintiff, BRANDON SMITH, by his undersigned attorneys, LOEVY & LOEVY, and brings this Freedom of Information Act suit to overturn Defendant COOK COUNTY STATE’S ATTORNEY’S OFFICE’s refusal to provide adequate transparency into its handling of the Laquan McDonald shooting. In support of his Complaint, SMITH 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. 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.

3. Public bodies must respond to FOIA requests within five business days, or, if the criteria for an extension are met, within ten business days. 5 ILCS 140/3(d).

4. If the court determines that a public body willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith, the court shall impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence. 5 ILCS 140/11(j).

PARTIES

5. Plaintiff BRANDON SMITH is a resident of Cook County, Illinois.

6. Defendant COOK COUNTY STATE'S ATTORNEY'S OFFICE ("CCSAO") is a public body located in Cook County, Illinois.

SMITH'S FOIA REQUESTS AND DEFENDANT'S FOIA VIOLATIONS

7. On November 24, 2015, SMITH requested from CCSAO under FOIA:

1. All records indicating when the decision to charge Officer Van Dyke for the shooting of Laquan McDonald was made and/or referencing the decision to charge once that decision had been made;
2. All records discussing public safety issues regarding the release of the video of the Laquan McDonald shooting video;
3. All communications with the City of Chicago Mayor's Office or the Mayor himself or members of his staff regarding the Laquan McDonald shooting video, release of the video, or the decision to charge Officer Van Dyke;
4. All emails and attachments of Anita Alvarez, her chief of staff, or Sally Daly dated November 17, 2015, through November 24, 2015;
5. All electronic records containing both of the search terms "Van Dyke" and "Servin";
6. All records related to Laquan McDonald, including but not limited to his shooting, any investigations into his shooting, any cover up into or obfuscation regarding the circumstances of his shooting, any possible discipline or criminal charges against anyone involved in the foregoing, any requests for information about his shooting, the potential results of releasing or not releasing information about his shooting, litigation or PAC reviews regarding requests for information about his shooting, the decision to release any information about his shooting, responses to the media about the shooting, and/or the potential impact of the shooting or

release of information about the shooting on the 2015 mayoral election or the next Cook County State's Attorney election.

8. On December 1, 2015, CCSAO acknowledged receipt of the requests and requested an extension until December 11, 2015, to provide a response.

9. Plaintiff agreed to the extension.

10. On December 11, 2015, CCSAO requested another extension until December 18, 2015, to respond to the FOIA requests.

11. Plaintiff again agreed to the extension.

12. On December 18, 2015, CCSAO responded to SMITH's November 24, 2015 FOIA requests. CCSAO claimed to have no responsive records for the first, second, and third requests. CCSAO alleged to be in the process of locating and producing emails responsive to the fourth request. CCSAO claimed that the fifth request was "vague" and requested clarification on how to search electronic records for the specified search terms. As for the sixth request, CCSAO asserted that every record relating to the criminal investigation of Laquan McDonald's death, with the exception of Judge Valderrama's opinion and order requiring CPD to release the shooting video, was exempt under Section 7(1)(d) of FOIA.

13. In her press conference announcing charges against Jason Van Dyke, Anita Alvarez stated that her office had already decided to press charges at the time the McDonald shooting video was ordered released and claimed that the decision to charge was accelerated because of public safety concerns if the video was released in the absence of charges having been brought. Based on those comments, upon information and belief, records do exist that are responsive to the first and second requests.

14. As to the third request, it is implausible that no records exist showing communications between the State's Attorney and Mayor's Office about the McDonald shooting

or decision to charge Van Dyke, especially in light of the State's Attorney's claim of public safety concerns about the release of the video.

15. As to the fourth request, CCSAO produced records as to Ms. Alvarez and her chief of staff, but has failed to produce any emails of Sally Daly (CCSAO's press officer). SMITH is without sufficient information to know whether all responsive, non-exempt records for Alvarez and her chief of staff were produced, and asks, as the law requires, that CCSAO prove that it conducted a reasonable search for records.

16. As to Ms. Daly's emails, CCSAO has taken multiple, unilateral extensions of time and refused to commit to a production date, and as of the date of this Complaint, has not complied with this request.

17. As to the fifth request, SMITH clarified the scope of "electronic records," but CCSAO has failed to respond any further.

18. As to the sixth request, it is implausible that every record related to CCSAO's handling of the Laquan McDonald murder is exempt under FOIA.

COUNT I – WILLFUL VIOLATION OF FOIA

19. The above paragraphs are incorporated by reference.

20. CCSAO is a public body under FOIA.

21. SMITH made six written requests to CCSAO for public records of CCSAO.

22. CCSAO has failed to provide all records responsive to SMITH's FOIA requests.

23. CCSAO's failures to produce responsive records are willful and intentional violations of FOIA and acts of bad faith.

WHEREFORE, SMITH asks that the Court:

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- 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 CCSAO has violated FOIA;
- iii. order CCSAO to produce the requested records redacting only the material that is exempt;
- iv. enjoin CCSAO from withholding non-exempt public records under FOIA;
- v. order CCSAO to pay civil penalties;
- vi. award SMITH reasonable attorneys' fees and costs;
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ CRAIG FUTTERMAN

Attorneys for Plaintiff

BRANDON SMITH

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