

**IN THE CIRCUIT COURT OF THE 7TH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS
CHANCERY DIVISION**

JUDICIAL WATCH, INC.,)
501 School Street, S.W., Suite 500)
Washington, DC 20024,)
)
Plaintiff,)
)
vs.)
)
THE OFFICE OF)
ATTORNEY GENERAL)
500 South Second Street)
Springfield, IL 62706,)
)
and)
)
LISA MADIGAN, in her)
official capacity as Attorney)
General of the State of Illinois,)
Office of the Attorney General)
500 South Second Street)
Springfield, IL 62706)
Defendants.)
_____)

Case No.:

**COMPLAINT IN CHANCERY FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

NOW COMES the Plaintiff, Judicial Watch, Inc., by and through its attorney, and prays that this Court render a declaratory judgment and grant injunctive relief under the Freedom of Information Act (“FOIA”), 5 ILCS § 140/1, *et seq.* For its Complaint, Plaintiff states as follows:

1. Plaintiff is a non-profit, educational organization that seeks to promote integrity, transparency, and accountability in government by obtaining public records under state and federal “open records” laws, analyzing those records, and disseminating them to the public, among other means.

2. Defendants are the Office of the Attorney General, a “public body” as that term is defined by 5 ILCS § 140/2(a), and Lisa Madigan, who is being sued in her official capacity as the “head” of Defendant Office of the Attorney General.

3. On or about April 19, 2007, Plaintiff served a FOIA request on Defendant Office of the Attorney General seeking access to the following two (2) categories of public records:

1. All correspondence to Governor Rod R. Blagojevich, the Office of the Governor, or any state agency under the Governor’s control, concerning or relating to the production of public records requested pursuant to the Illinois Freedom of Information Act.
2. All responses by Governor Rod R. Blagojevich, the Office of the Governor, or any state agency under the Governor’s control, concerning or relating to correspondence from the Office of the Attorney General regarding the production of public records requested pursuant to the Illinois Freedom of Information Act.

A true and correct copy of the request is attached hereto and incorporated herein as Exhibit A.

4. Defendant Office of the Attorney General failed to respond to Plaintiff’s request within seven (7) working days. Pursuant to 5 ILCS §140/3(c), such failure to respond is considered a denial of the request.

5. On May 29, 2007, Plaintiff appealed the denial of its request to Defendant Madigan in her capacity as the head of Defendant Office of the Attorney General. A true and correct copy of Plaintiff’s appeal is attached hereto and incorporated herein as Exhibit B.

6. Pursuant to ILCS § 140/10(a), Defendant Madigan was required to respond to Plaintiff’s administrative appeal within seven (7) working days, or by June 13, 2007 at the latest.

7. In mid-June 2007, Defendants contacted Plaintiff, by telephone, seeking clarification of Plaintiff's request. Plaintiff provided the requested clarification.

8. On or about June 20, 2007, Defendants sent a letter to Plaintiff confirming Plaintiff's clarification, acknowledging that Defendant Office of the Attorney General possessed records responsive to Plaintiff's request, and representing that responsive records would be produced:

The purpose of my telephone call last week was to seek clarification of this request. Specifically, I needed clarification as to whether you are seeking documents solely from the Public Access Counselor's bureau of the Office of the Attorney General and also to ask that you narrow your request to specific years in an effort to aid in our search and production of these records. You indicated that you were seeking documents from the Public Access Counselor for the last two years. **As such, our office is gathering these extensive records and anticipates that we will provide to you responsive documents.** I anticipate that I will contact you by June 29, 2007 regarding this matter.

A true and correct copy of Defendants' June 20, 2007 letter is attached hereto and incorporated herein as Exhibit C.

9. As of November 1, 2007, Defendants have failed to provide Plaintiff with any records responsive to its April 19, 2007 request.

COUNT ONE

(Violation of the Illinois Freedom of Information Act, 5 ILCS § 140/1, *et seq.*)

10. Plaintiff reaffirms paragraphs 1-9 as though fully restated herein.

11. Plaintiff is being irreparably harmed by Defendants' failure to produce the requested records, as Plaintiff is being denied its legal right to inspect public records.

12. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that the Court:

- A. Declare Defendants to be in violation of the Illinois Freedom of Information Act, 5 ILSC §140/1, *et seq.*;
- B. Enjoin Defendants from continuing to withhold access to any and all non-exempt public records responsive to Plaintiff's April 19, 2007 FOIA request and further enjoin Defendants to produce any and all such records to Plaintiff without further delay;
- C. Enjoin Defendants to prepare, forthwith, an affidavit declaring that they have fully and completely complied with Plaintiff's April 19, 2007 FOIA request and further declaring that any and all non-exempt public records responsive to the request have been produced to Plaintiff;
- D. Order Defendants to prepare, forthwith, an affidavit identifying with specificity any and all public records responsive to Plaintiff's April 19, 2007 FOIA request that are claimed to be subject to legal exemption from disclosure and further identifying with specificity the reason(s) for any such claim of exemption.
- E. Award Plaintiff reasonable attorney's fees and costs; and
- F. Order such other and further relief as the Court finds just and equitable.

Dated: November 1, 2007

Respectfully submitted,



Paul J. Orjanedes
Ill. Bar No. 6205255
JUDICIAL WATCH, INC.
501 School Street, S.W., Suite 500
Washington, DC 20024
Tel.: (202) 646-5172
Fax.: (202) 646-5199
Attorneys for Plaintiff

EXHIBIT A



**Judicial
Watch**TM
*Because no one
is above the law!*

**VIA FACSIMILE (217-782-7046) AND
CERTIFIED U.S. MAIL (7005 1160
0001 5019 0370)**

April 19, 2007

Ms. Terry Mutchler
Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, IL 62706

Re: Illinois Freedom of Information Act Request

Dear Ms. Mutchler:

Judicial Watch, Inc. hereby requests that the Office of the Attorney General produce the following public records pursuant to the provisions of the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*:

1. All correspondence to Governor Rod R. Blagojevich, the Office of the Governor, or any state agency under the Governor's control, concerning or relating to the production of public records requested pursuant to the Illinois Freedom of Information Act.
2. All responses by Governor Rod R. Blagojevich, the Office of the Governor, or any state agency under the Governor's control, concerning or relating to correspondence from the Office of the Attorney General regarding the production of public records requested pursuant to the Illinois Freedom of Information Act.

We understand that the Division of Public Access and Opinions within the Office of the Attorney General provides assistance to members of the public and others seeking access to public records under the Illinois Freedom of Information Act. We also understand that the Office of the Attorney General writes letters to public bodies regarding whether requested records should be produced. *See* Excerpt from Transcript of Proceedings in *Better Government Association, et al. v. Office of Governor Rod Blagojevich*, Case No. 07 MR 5 (Sangamon Co.

Office of the Attorney General
April 19, 2007
Page 2

Cir. Ct. April 13, 2007), attached hereto; *see also* 2006 Public Access Counselor Annual Report. We are particularly interested in instances in which the Office of the Attorney General determined that the production of public records by the Governor, the Office of the Governor, or state agencies under the Governor's control was required by the Illinois Freedom of Information Act and whether and/or how the Governor, the Office of the Governor, or a state agency under the Governor's control responded to any such determination.

By way of example, on October 26, 2006, the Office of the Attorney General wrote to the Office of the Governor regarding whether certain federal grand jury subpoenas served on the Office of the Governor and requested by the Better Government Association and other entities should be produced. We do not require a copy of the Office of the Attorney General's October 26, 2006 letter, as that particular correspondence was produced to us on or about December 4, 2006 pursuant to a separate Freedom of Information Act request. We would like records regarding other such instances, however.

Please produce the requested record(s) to us at our Washington, DC office, located at 501 School Street, S.W., Suite 500, Washington, DC 20024, within seven (7) working days of your receipt of this request. 5 ILCS § 140/3(c). If the requested record(s) cannot be produced within seven (7) working days, please notify us in writing of the reason(s) for the delay and the date by which the requested record(s) will be available.

In addition, Judicial Watch, Inc. requests that the above-referenced records be furnished without charge pursuant to 5 Ill. Comp. Stat. 140/6. Judicial Watch, Inc. is a 501(c)(3) non-profit educational organization that seeks to promote transparency and integrity in government. The Office of the Governor's responses to Freedom of Information Act requests for the federal grand jury subpoenas has been the subject of at least two lawsuits, including a lawsuit by Judicial Watch, Inc., and has received substantial public attention. *See, e.g.,* John O'Connor, "Judge: Madigan May Not Defendant Governor in Subpoena Lawsuit," *Chicago Tribune*, April 13, 2007; Bruce Rushton, "Madigan: Release Subpoenas; Governor's Spokeswoman Says They'll Stay Secret," *State Journal-Register*, October 27, 2006. Judicial Watch, Inc. is interested in any pattern or practice on the part of the Governor, the Office of the Governor, and/or state agencies under the Governor's control regarding responses to Freedom of Information Act requests. The principal purpose of this request is to enable Judicial Watch, Inc. to access and analyze the requested records, then disseminate the results of its findings to the public. Waiver or reduction of the fee is therefore in the public interest, as the principle purpose of the request is to access and disseminate information regarding the welfare and legal rights of the public in general. Judicial Watch, Inc. does not make this request for the principal purpose of securing any personal or commercial benefit. Thus, a waiver or reduction of fees is in the public interest. In the event any fee is to be charged for copying the requested records, please advise us in advance if the expected cost of the copying is likely to exceed \$150.00.

Office of the Attorney General
April 19, 2007
Page 3

Finally, if you do not understand this request or any portion thereof, or if you feel you require clarification of this request, or any portion thereof, please contact us at (202) 646-5172.

Thank you for your attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.

A handwritten signature in black ink, appearing to read "Paul J. Orfanedes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul J. Orfanedes

Enclosure

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IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
SANGAMON COUNTY, SPRINGFIELD, ILLINOIS

BETTER GOVERNMENT ASSOCIATION and
DAN SPREHE,

Plaintiffs,

-vs-

NO. 07 MR 5

THE OFFICE OF GOVERNOR ROD
BLAGOJEVICH,

Defendant.

Hearing held on the 13th day of April, 2007, at
the hour of 2:30 p.m., at 200 South Ninth Street,
Sangamon County Courthouse, Springfield, Illinois,
before Circuit Judge Patrick J. Kelley.

TRANSCRIPT OF PROCEEDINGS

CAPITOL REPORTING SERVICE
2021 Timberbrook Dr.
Springfield, Il 62702
(217) 787-6167

1 I think we are going to have serious reservations
2 that the import of what the judge has done and we
3 re-arguing it.

4 THE COURT: I understand.

5 MR. ROSEN: But what I think your Honor has
6 done is essentially said that because a state agency,
7 in this case the Office of the Governor, disagrees
8 with the views of the Attorney General, the chief
9 legal officer of the State of Illinois, in a letter
10 expressed to that office, that office is entitled to
11 independent counsel.

12 THE COURT: Well, that's not exactly what I
13 said. The record will be clear. What I said was --
14 in fact, what I said was had that letter been
15 privately expressed to the Governor, it may be a
16 different posture, but this one has been expressed,
17 publicly expressed to the opposing counsel in this
18 case or to the opponent of the Governor, to the
19 plaintiff in this case, and so there are some
20 distinctions here. You're not saying exactly what I
21 said.

22 MR. ROSEN: In every case, the public access
23 officer reviews the requests from the citizen, in
24 this case the Better Government Association, and

1 makes an evaluation on what has been presented to the
2 public access officer about whether or not the public
3 agency ought to be contacted. In every case, unless
4 there is some confidentiality that would prohibit or
5 attorney-client relationship that would prohibit,
6 which is not the case here, the public access
7 officer, because the Attorney General believes in an
8 open government, copies the letter, in this case to
9 Mr. Quinlan, to the citizen complaining and, in
10 addition, when the matter is already in the media as
11 this case was, because the media was following this
12 issue very closely and when the media, as in this
13 case, is calling the public access counselor daily to
14 find out what she intends to do, which is, in a
15 sense, a FOIA request itself, we have already
16 released the matter to the media.

17 So all that has happened here is what is done in
18 every case by the public access counselor. Nothing
19 different done in the ordinary course of business in
20 terms of contacting the citizen, the BGA and press,
21 and all that has happened is the Office of the
22 Governor doesn't like what it heard from the Attorney
23 General, and based -- that's all that this case is
24 about.

1 Based on that, I respect that your Honor doesn't
2 intend to say that, but I think clearly what your
3 Honor has said allows any agency now to say we
4 disagree with the Attorney General, we want private
5 counsel.

6 THE COURT: You can take that expansive
7 interpretation. I don't believe that's what I said.
8 I said I think I found there was conflict under the
9 Attorney General's Act here, so --

10 MR. FELDMAN: Your Honor, we are going to --
11 I may be a little bit slow, but we certainly heard
12 the Court's view of Quinn, so we are going to ask
13 leave to file an amended complaint for seven days so
14 I -- that we can add the Governor in his official
15 capacity so we have the head of whatever the Office
16 of the Governor is today.

17 THE COURT: Okay.

18 MS. McNAUGHT: With regard to my request for
19 a stay, can we have a stay at least seven days in
20 order to decide?

21 THE COURT: Sure.

22 MS. McNAUGHT: Thank you. We will do that.

23 THE COURT: Seven days to figure out where
24 it is going.

Judicial Watch, Inc.

501 School Street, S.W.
Suite 725
Washington, D.C. 20024

Telephone 202-646-5172
Facsimile 202-646-5199

FACSIMILE TRANSMISSION

TO: Terry Mutchler, Public Access Counselor

FIRM: OFFICE OF THE ATTORNEY GENERAL

FROM: Paul J. Orfanedes

DATE: April 19, 2007

TELECOPY NUMBER: (217) 782-7046

NUMBER OF PAGES (Including Cover Page): 8

Our Reference No.: 500

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501 School Street, S.W.
Suite 725
Washington, D.C. 20024

Telephone 202-646-5172
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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Ms. Terry Mutchler
 Public Access Counselor
 Office of the Attorney General
 500 South Second Street
 Springfield, IL 62706

2. Article Number
 (Transfer from service label) 7005 1160 0001 5019 0370

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Agent
 Addressee
 B. Delivered by (Printed Name) **Michael J. Pemberton**
 C. Date of Delivery **1-24-07**

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 City, State, ZIP+4
 Springfield IL 62706

EXHIBIT B



Judicial Watch

Because no one is above the law!

**VIA FACSIMILE (217-782-7046) AND
CERTIFIED U.S. MAIL**

May 29, 2007

The Hon. Lisa Madigan
OFFICE OF THE ATTORNEY GENERAL
500 South Second Street
Springfield, IL 62706

Re: Illinois Freedom of Information Act Appeal

Dear Attorney General Madigan:

Pursuant to the provisions of the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* ("FOIA"), on April 19, 2007, Judicial Watch, Inc. served the enclosed request for public records on the Office of the Attorney General. According to the U.S. Postal Service, the request was received by the Office of the Attorney General on April 24, 2007 at the latest.

To date, we have received no response to our FOIA request. Pursuant to 5 ILCS 140/3(c), the failure to respond to a FOIA request within seven (7) working days shall be considered a denial of the request. Because you are the head of the Office of the Attorney General, Judicial Watch, Inc. hereby appeals the denial of its request to you. 5 ILCS 140/10(a). Please notify us within seven (7) working days whether we will be allowed access to the requested records. *Id.*

Thank you for your attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.



Paul J. Orfanedes

cc: Terry Mutchler, Public Access Counselor

Enclosure

Judicial Watch, Inc.

501 School Street, S.W.
Suite 725
Washington, D.C. 20024

Telephone 202-646-5172
Facsimile 202-646-5199

FACSIMILE TRANSMISSION

TO: The Hon. Lisa Madigan

FIRM: OFFICE OF THE ATTORNEY GENERAL

FROM: Paul J. Orfanedes

DATE: May 29, 2007

TELECOPY NUMBER: (217) 782-7046

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Judicial Watch, Inc.

501 School Street, S.W.
Suite 725
Washington, D.C. 20024

Telephone 202-646-5172
Facsimile 202-646-5199

FACSIMILE TRANSMISSION

TO: The Hon. Lisa Madigan

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FROM: Paul J. Orfanedes

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<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>The Hon. Lisa Madigan Office of the Attorney General 500 South Second Street Springfield IL 62706</p> </div>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label) 7005 1160 0001 5019 5023</p>	
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	

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Street, Apt., or PO Box N	Office of the Attorney General
City, State, ZIP	500 South Second Street
	Springfield IL 62706
PS Form 3800, June 2002 See Reverse for Instructions	

EXHIBIT C



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 20, 2007

Mr. Paul J. Orfanedes
Judicial Watch, Inc.
501 School Street, S.W.
Washington, D.C. 20024

Dear Mr. Orfanedes:

Thank you for taking the time to talk with me about your request for documents from the Office of Attorney General pursuant to the Illinois Freedom of Information Act, 5 ILS 140/1 *et. seq.* This correspondence will serve also as a response to your May 29, 2007 letter to the Attorney General.

You asked for a copy of the following:

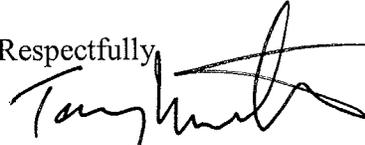
1. All correspondence to the Governor Rod. R. Blagojevich, the Office of the Governor or any state agency under the Governor's control, concerning or relating to the production of public records requested pursuant to the Illinois Freedom of information Act.
2. All responses by Governor Rod. R. Blagojevich, the Office of the Governor or any state agency under the Governor's control, concerning or relating to the production of public records requested pursuant to the Illinois Freedom of Information Act.

The purpose of my telephone call last week was to seek clarification of this request. Specifically, I needed clarification as to whether you are seeking documents solely from the Public Access Counselor's bureau of the Office of Attorney General and also to ask that you narrow your request to specific years in an effort to aid in our search and production of these records. You indicated that you were seeking documents from the Public Access Counselor for the last two years. As such, our office is gathering these extensive records and anticipates that we will provide to you responsive documents. I anticipate that I will contact you by June 29, 2007 regarding this matter.

Mr. Paul J. Orfanedes
June 20, 2007
Page 2

If you have questions, please contact me at 217-558-0486.

Respectfully,

A handwritten signature in black ink, appearing to read "Terry Mutchler", written over the word "Respectfully,".

Terry Mutchler
Public Access Counselor
Assistant Attorney General

TM:dh