

STATE OF INDIANA)
) ss: ST. JOSEPH CIRCUIT/SUPERIOR COURT
COUNTY OF ST. JOSEPH) CAUSE NO. 71_____ -1908-MI-

71C01-1908-MI-000389

JUDICIAL WATCH, INC.,)
c/o Jones Law Office LLC)
205 W. Jefferson Blvd., STE. 200)
South Bend, IN 46601)
Plaintiff,)

v.)

CITY OF SOUTH BEND,)
c/o Mayor Peter Buttigieg)
227 W. Jefferson Blvd., Ste. 1400N)
South Bend, IN 46601)

CITY OF SOUTH BEND)
c/o Tim Scott, President)
South Bend Common Council)
227 W. Jefferson Blvd., Ste 441S)
South Bend, IN 46601)

CITY OF SOUTH BEND)
c/o Aladean DeRose, City Attorney)
227 W. Jefferson Blvd., Ste 1200)
South Bend, IN 46601)

CITY OF SOUTH BEND)
South Bend Common Council)
227 W. Jefferson Blvd., Ste 441S)
South Bend, IN 46601)
Defendant.)

COMPLAINT

Plaintiff Judicial Watch, Inc., by its attorney, Andrew B. Jones of Jones Law Office LLC, brings this action against the City of South Bend to compel compliance with the Access to Public Records Act. Judicial Watch states as follows:

Jurisdiction and Venue

1. Jurisdiction and venue are proper in St. Joseph County pursuant to Ind. Code § 5-14-3-9(e).

Parties

2. Plaintiff Judicial Watch, Inc. is a not-for-profit, educational organization that seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. As part of its mission, Judicial Watch regularly requests records under federal and state “open records” laws, analyzes the responses and any records it receives, and disseminates its findings and the records to the public to inform them about their government.

3. Defendant is the City of South Bend, a public agency as defined by Ind. Code § 5-14-3-2(q)(2)(A).

Statement of Facts

4. On December 16, 2016, South Bend Mayor Pete Buttigieg issued Executive Order Number 02-2016, entitled “Establishment of a City-Recognized Identification Card Program in Furtherance of the City’s Diversity and Inclusion Initiative.”

5. The executive order did not create a municipal ID card. It ordered all City departments, commissions, agencies, and personnel to accept a yet-to-be-established ID card issued by La Casa de Amistad (“La Casa”), a local not-for-profit corporation. The executive order also recognized that La Casa had entered into an agreement with SF Global to provide the ID card.

6. At the time the executive order was issued, the *South Bend Tribune* reported that La Casa hoped the new ID card would make life easier for illegal aliens living in South Bend.

7. In June 2019, *NBC News* reported that more than 2,153 ID cards have been issued since 2017. In addition, *NBC* noted, “La Casa, as a private organization, isn’t bound by requests for public records the way the city might be if it were running the program.”

8. In light of this most recent report, Judicial Watch submitted four separate APRA requests to South Bend.

9. South Bend made demands for specificity that are not mandated by the APRA or related case law.

10. South Bend has failed to produce all items requested.

June 22, 2019 Request

11. On June 22, 2019, Judicial Watch submitted an APRA request seeking:

A. All emails sent between Mayor’s Office officials and officials, employees, and/or representatives of the organization La Casa de Amistad.

B. All emails sent between Mayor’s Office officials and officials, employees, and/or representatives of South Bend municipal agencies regarding the Community Resident Card program or the use of Community Resident Cards.

The time frame for the requested records is January 2016 through December 2017.

12. On June 24, 2019, South Bend informed Judicial Watch that its request was not “reasonably particular” because it did not specify a time frame of

six months or less, it did not contain a particularized subject matter or set of search terms, it did not identify specific senders or recipients, and it did not provide complete email addresses for La Casa employees.

13. On June 25, 2019, Judicial Watch resubmitted its request to comply with South Bend's concerns. The amended request sought:

A. All emails between Mayor Buttigieg, Chief of Staff Laura O'Sullivan, Genevieve Miller, Cherri Peate, Mark Bode, and/or Jamie Morgan on the one hand, and the following officials of La Casa de Amistad on the other hand, Executive Director Sam Centellas, President Felix Bueno, Jr., Vice President Tammy and/or Treasurer Molly Buser, regarding the Community Resident Card program and/or the use of the Community Resident Cards. The time frame for the requested records is July through December 2016, inclusive.

B. All emails between Mayor Buttigieg, Chief of Staff Laura O'Sullivan, Genevieve Miller, Cherri Peate, Mark Bode, and/or Jamie Morgan on the one hand, and the following South Bend officials on the other hand regarding the Community Resident Card program and/or the use of the Community Resident Cards: South Bend Police Chief Scott Ruzkowski, Public Works Executive Director Eric Horvath, Redevelopment Commission President Marcia I. Jones, and/or President of the Board of Public Safety John Collins. The time frame for the requested records is July through December 2016, inclusive.

14. On July 1, 2019, South Bend again informed Judicial Watch that part of its request was not reasonably particular. Specifically, South Bend requested Judicial Watch provide it with the complete email addresses for the La Casa Employees.

15. South Bend's demand for the complete email addresses for the La Casa employees is not supported by APRA or relevant case law.

16. South Bend also informed Judicial Watch that it conducted an email search for records responsive to the second part of the request and that it did not locate any records.

17. Judicial Watch again amended its request on July 8, 2019. Judicial Watch provided South Bend with the requested email addresses and sought for additional terms to be searched.

18. On July 18, 2019, South Bend informed Judicial Watch that it allegedly did not locate any records responsive to Judicial Watch's request.

July 12, 2019 Request

19. On July 12, 2019, Judicial Watch sent an APRA request to South Bend seeking all emails sent to or from the Chief of Police of the South Bend Police Department from July 2016 to December 2016 mentioning "Community Resident Card," "Resident Card," "Resident ID," "Community ID," "SB ID," "Municipal ID," and/or "SBID."

20. On July 16, 2019, South Bend informed Judicial Watch that its request was not reasonably particular because it did not specify any individual senders or recipients with whom the Chief of Police would have been exchanging emails.

July 18, 2019 Request

21. On July 18, 2019, Judicial Watch sent an APRA request to South Bend seeking all records related to the Community Resident Card program, excluding communications, but including (and not limited to) contracts, Memoranda of Understanding, monthly/yearly reports related to the number of cards issued and

allocated, and policy documents related to the cards' use, eligibility of applicants and possible revocation.

22. South Bend responded to Judicial Watch's request on July 31, 2019.

South Bend only produced the executive order and two information bulletins.

July 22, 2019 Request

23. On July 22, 2019 Judicial Watch sent an APRA request to South Bend seeking:

A. Emails between Mayor Buttigieg, Chief of Staff Laura O'Sullivan, Genevieve Miller, Cherri Peate, Mark Bode, and/or Jamie Morgan on the one hand, and the following officials of La Casa de Amistad on the other hand, Executive Director Sam Centellas, President Felix Bueno, Jr., Vice President Tammy Bell, and/or Treasurer Molly Buser, regarding the Community Resident Card program using all of the following search terms: "Community Resident Card," "CRC," "Municipal ID," "SB ID," "SBID," "Resident ID," and/or "Community ID." The time frame for the requested records is January 2017 through June 2017, inclusive.

B. All emails between Mayor Buttigieg, Chief of Staff Laura O'Sullivan, Genevieve Miller, Cherri Peate, Mark Bode, and/or Jamie Morgan on the one hand, and the following South Bend officials on the other hand: South Bend Police Chief Scott Ruskowski, Public Works Executive Director Eric Horvath, Redevelopment Commission President Marcia I. Jones, and/or President of the Board of Public Safety John Collins, regarding the Community Resident Card program and/or the use of the Community Resident Cards, employing the search terms: "Community Resident Card," "CRC," "Municipal ID," "SB ID," "SBID," "Resident ID," and/or "Community ID." The time frame for the requested records is January 2017 through June 2017, inclusive.

24. South Bend acknowledged receiving Judicial Watch's request on July 23, 2019.

25. As of the date of this Complaint, South Bend has not responded to Judicial Watch's request. South Bend's failure to respond is considered a denial of disclosure. Ind. Code § 5-14-3-9(e).

Count I
(Failure to Respond)

26. Judicial Watch reaffirms paragraphs 1-25 as though fully restated herein.

27. Judicial Watch is being irreparably harmed by South Bend's failure to respond to Judicial Watch's July 22, 2019 APRA request as Judicial Watch is being denied its legal right to inspect public records. Ind. Code § 5-14-3-3.

28. Judicial Watch has no adequate remedy at law.

Count II
(Failure to Conduct a Sufficient Search)

29. Judicial Watch reaffirms paragraphs 1-28 as though fully restated herein.

30. South Bend failed to conduct a sufficient search in response to Judicial Watch's four APRA requests.

31. With respect to the June 24, 2019 and July 18, 2019 requests, South Bend claims to have failed to locate any responsive records even though records would most likely exist.

32. With respect to the July 12, 2019 request, South Bend refused to conduct any search for records because it claims the request is not reasonably particular.

33. With respect to the July 22, 2019 request, South Bend simply has failed to conduct a search and has failed to produce any records for inspection.

34. Judicial Watch is being irreparably harmed by South Bend's failure to conduct a sufficient search for records responsive to all four of Judicial Watch's APRA requests as Judicial Watch is being denied its legal right to inspect public records. Ind. Code § 5-14-3-3.

35. Judicial Watch has no adequate remedy at law.

Count III
(Failure to Produce All Non-Exempt Information)

36. Judicial Watch reaffirms paragraphs 1-35 as though fully restated herein.

37. As South Bend has produced only three public records in response to Judicial Watch's four requests, comprehensive APRA requests, South Bend has failed to produce all non-exempted information.

38. South Bend has failed to provide Judicial Watch any statement of specific exemption authorizing the withholding of all or part of any public record in direct violation of Ind, Code 5-14-3-9(d).

39. Judicial Watch is being irreparably harmed by Defendants' failure to produce all non-exempted information responsive to all four of Judicial Watch's APRA requests as Judicial Watch is being denied its legal right to inspect public records. Ind. Code § 5-14-3-3.

40. Judicial Watch has no adequate remedy at law.

WHEREFORE, Judicial Watch prays that the Court: (1) declare South Bend to be in violation of the Access to Public Records Act; (2) enjoin South Bend from continuing to withhold access to any and all non-exempted public records responsive to Judicial Watch's four APRA requests and further enjoin South Bend to produce any and all such records to Judicial Watch without further delay; and (3) order such other and further relief as the Court finds just and equitable.

Respectfully submitted,
JONES LAW OFFICE LLC

/s/Andrew B. Jones
Andrew B. Jones (#29686-71)
Margaret M. Marnocha (#23249-71)