

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

CHARLES GOLBERT,)
Cook County Public Guardian,)
)
Plaintiff,)
)
v.)
)
Illinois Department of Children and Family Services,)
)
Defendant.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is an action under the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1, for declaratory and injunctive relief, seeking the release of public records from the Illinois Department of Children and Family Services (DCFS).

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 completed 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 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. *Id.*

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.” 5 ILCS 140/11.

PARTIES

5. Plaintiff CHARLES GOLBERT, Cook County Public Guardian, is the FOIA requester in this case.

6. Defendant DCFS is a public body with offices in Cook County, Illinois.

BACKGROUND

7. Plaintiff is court-appointed as attorney and guardian *ad litem* to represent approximately 6,000 children who are the subjects of cases pending in the Child Protection Division of the Circuit Court of Cook County under Article II of the Juvenile Court Act due to allegations that the children are abused, neglected or dependent. The vast majority of Plaintiff’s approximately 6,000 clients are placed by court order in the custody or guardianship of DCFS.

8. As the custodian or guardian of a child, DCFS is responsible for acting in the child’s best interest and being concerned about the general welfare of the child. 705 ILCS 405/1-3. DCFS must place the child in a placement that is consistent with the child’s best interests, and is the least restrictive most family-like setting appropriate for the child. 89 ILAC 301.60.

9. In June 2019 it came to the attention of the Cook County Public Guardian that two of his clients, both youth in care of the Department of Children of Family Services as defined in

20 ILCS 505/4d, had slept overnight in DCFS office space. Since then, the Cook County Public Guardian has learned of additional youth who have slept in DCFS and private agency office space.

10. Sleeping in offices, instead of clinically appropriate placements, is a violation of the children's basic civil rights, basic human dignity, and DCFS' obligations to youth in care under a decades-old consent decree. *B.H. v. Walker*, 88 C5599 (N.D. Ill.).

FOIA REQUEST

11. On June 26, 2019, Golbert requested from DCFS, the following:

For the most recent 6 months, the number of youth in the protective custody, temporary custody or guardianship of DCFS in Cook County and Statewide who stayed overnight in a DCFS or POS office.

Any and all documents reflecting how the Department is notified of, and keeps track of, youth who stay overnight in DCFS or POS offices, including, but not limited to, instructions to staff regarding reporting such incidents, actual notification of such incidents, and preparation and planning for youth staying overnight in DCFS or POS offices.

12. On June 28, 2019, Golbert requested from DCFS the following:

For the most recent 6 months, the number of youth in the protective custody, temporary custody or guardianship of the Illinois Department of Children and Family Services who stayed overnight at 1911 S. Indiana, Chicago, Il.

13. "Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section." 5 ILCS 140/3. Subsection (e) provides that a public body may extend the time to respond by an additional 5 business days based on one of the reasons specified in the statute. 5 ILCS 140/3(e). The public body must notify the person requesting the information of the reason for the 5-day extension

within 5 business days after receipt of the request. 5 ILCS 140/3(f). "Failure to respond within the time permitted for an extension shall be considered a denial of the request." 5 ILCS 140/3(f).

14. "Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would be unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information." 5 ILCS 140/3(g).

June 26, 2019 request

15. On July 3, 2019, 5 business days after receiving the June 26, 2019 request, DCFS notified Golbert that it was requesting a 5-day extension, through July 11, 2019, to respond, because --

- the request requires the collection of a substantial number of specified records;
- the request is couched in categorical terms and requires an extensive search for the records responsive to it;

- the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure or should be disclosed only with appropriate deletions; and

- the request for records cannot be complied with by the public body within 5 business days without unduly burdening or interfering with operations of the public body.

16. The response further states, "We will respond to your request by July 11, 2019. If all the requested records are not yet available by that date, I will need to speak with you about a possible agreed extension date to fully respond to your request."

17. DCFS did not produce the records on July 11, 2019.

18. As of July 22, 2019, DCFS has not communicated further with the Cook County Public Guardian regarding the request.

19. On July 12, 2019, the Cook County Public Guardian sent an inquiry to DCFS regarding the status of the response. DCFS responded that it was still attempting to collect the information.

20. On July 16, 2019, the Cook County Public Guardian communicated to DCFS that he would agree to an additional extension through July 18, 2019. DCFS did not respond.

June 28, 2019 request

21. On July 8, 2019, 5 business days after receiving the June 28, 2019 request, DCFS notified Golbert that it was requesting a 5-day extension, through July 15, 2019, to respond, because --

- the request requires the collection of a substantial number of specified records;

- the request is couched in categorical terms and requires an extensive search for the records responsive to it;

- the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure or should be disclosed only with appropriate deletions; and

- the request for records cannot be complied with by the public body within 5 business days without unduly burdening or interfering with operations of the public body.

22. The response further states, "We will respond to your request by July 15, 2019. If all the requested records are not yet available by that date, I will need to speak with you about a possible agreed extension date to fully respond to your request."

23. DCFS has not responded to the June 28, 2019 request or initiated any further communication with the Cook County Public Guardian regarding the request.

24. To the extent DCFS alleges each request is categorical and unduly burdensome, DCFS never extended to the Cook County Public Guardian an opportunity to confer and the burden on the public body does not outweigh the public interest in information regarding youth in care being compelled to sleep in offices.

COUNT I – VIOLATION OF FOIA

25. Paragraphs 1 – 24 are incorporated by reference.

26. DCFS is a public body.


27. The records sought in the FOIA requests are non-exempt public records of DCFS.

WHEREFORE, Golbert respectfully asks that this Court:

i. Declare that DCFS has violated FOIA;

- ii. Order DCFS to produce the requested records;
- iii. Award Plaintiff reasonable attorneys' fees and costs.
- iv. Award such other relief the Court deems appropriate.

Respectfully submitted,



CHARLES P. GOLBERT
Cook County Public Guardian

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