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Courtroom Number: No hearing scheduled
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CIRCUIT CLERK
COOK COUNTY, IL
2018CH06576

9653013

FILED DATE: 7/2/2020 11:54 AM 2018CH06576

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

CHICAGO JUSTICE PROJECT,)	
)	
Plaintiff,)	
)	18 CH 06576
vs.)	
)	
CHICAGO POLICE DEPARTMENT,)	Hon. Caroline K. Moreland
)	
Defendant.)	

NOTICE OF FILING

To: Merrick J. Wayne
Loevy & Loevy
311 N. Aberdeen, 3rd Fl.
Chicago, IL 60607

Please take notice that a copy of the attached **DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER** was filed with the Clerk of the Circuit Court of Cook County, Illinois on July 2, 2020.

By: Marc Augustave
Marc Augustave
Senior Counsel

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies under penalties provided by law pursuant to Code of Civil Procedure Section 1-109, that a copy of the attached was served on the party to whom it is addressed by way of U.S. mail, postage prepaid to the address identified above on July 2, 2020.

MARK A. FLESSNER
Corporation Counsel of the City of Chicago
By: Marc Augustave

City of Chicago Department of Law
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(312) 742-2477
Attorney No. 90909

Marc Augustave
Senior Counsel

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CHICAGO POLICE DEPARTMENT,)	Hon. Caroline K. Moreland
)	
Defendant.)	

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION TO RECONSIDER**

Defendant, the Chicago Police Department ("CPD"), by its attorney, Mark A. Flessner, Corporation Counsel of the City of Chicago, submits this Response to Plaintiff's Motion to Reconsider the Order entered by this Honorable Court on March 16, 2020, as it pertains to the ruling on Count III ("Comprehensive Staffing Analysis"). In support, CPD states as follows:

The only matter at issue, for purposes of this Response to Plaintiff's Motion to Reconsider, is whether CPD's search for records responsive to CJP's September 26, 2016 FOIA Request was adequate. CPD fulfilled its obligations under FOIA, as it pertains to the Court's ruling on Count III ("Comprehensive Staffing Analysis") of Plaintiff's complaint, because its search was adequate and reasonably calculated to uncover all documents responsive to CJP's September 26, 2016 FOIA Request.

ARGUMENT

CPD Conducted an Adequate and Thorough Search Which was Reasonably Calculated to Locate Records Responsive to Plaintiff's September 26, 2016 FOIA Request.

Plaintiff alleges in its Motion to Reconsider that the search conducted by CPD was inadequate because CPD did not provide affidavits attesting to the adequacy of the search for the records responsive to its September 26, 2016 FOIA Request (Count III of Plaintiff's Complaint).

Plaintiff's September 26, 2016 FOIA Request asked for:

"A. The top to bottom comprehensive analysis that top Chicago Police Department official repeatedly referenced in a September 21, 2016 briefing with alderman at City Hall saying that this comprehensive analysis was the basis for why Superintendent Johnson had requesting the hiring of a 1,000 additional officers for the Chicago Police Department.

B. Any analysis, reports, memos, or documents that the Chicago Police Department maintains on the subject of Chicago Police Department staffing or allocation of Chicago Police Department resources from January 1, 2011 - September 26, 2016."

CPD initially stated in its Response to Plaintiff's Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment, as it relates to Count III of Plaintiff's complaint, that they were working to locate these records and would produce any non-exempt responsive records. CPD never disputed the existence of these records because it did not know if such records existed or not. Subsequently, after conducting a search for and not locating any responsive records, CPD assumed that to the extent that these records exist, they were likely included as part of the Michael Bromwich report on Chicago Police Department training / training academy completed in 2016 ("Bromwich Report"). However, as noted in Plaintiff's Motion to Reconsider, the Court determined that the Bromwich Report did not contain any of these records.

Illinois' FOIA was patterned after the federal FOIA, and therefore, case law construing

the federal statute may be used to interpret our state statute. BlueStar Energy Services, Inc. v. Illinois Commerce Commission, 374 Ill.App.3d 990, 996 (2007). When a plaintiff challenges the adequacy of an agency's search for information pursuant to a FOIA request, the question raised is whether the search was reasonably calculated to discover the requested information, not whether the information was actually found. SafeCard Services, Inc. v. Securities & Exchange Comm'n, 926 F.2d 1197, 1201 (D.C.Cir.1991). The adequacy of an agency's search for documents requested under FOIA "is judged by a standard of reasonableness and depends, not surprisingly, upon the facts of each case." Weisberg v. Dep't of Justice, 745 F.2d 1476, 1485 (D.C.Cir.1984). A defending agency has the burden of showing that its search was adequate, and to meet its burden, the agency may submit affidavits that explain the scope and method of its search. An affidavit containing facts demonstrating that the agency conducted a thorough search is presumed to be made in good faith and is sufficient to sustain that burden. BlueStar Energy, 374 Ill.App.3d at 996-97. Purely speculative claims do not undermine a finding that the agency conducted a reasonable search in good faith. SafeCard Services, 926 F.2d at 1200-01. When defendants satisfy their initial burden of proof by providing an affidavit in support of their motion, the burden then shifts to plaintiff. Kedzie & 103rd Currency Exchange, Inc. v. Hodge, 156 Ill.2d 112, 116 (1193). If plaintiff fails to submit admissible evidence to refute defendants' affidavit, then the trial court's granting of defendants' motion ... is proper. Hollingshead v. A.G. Edwards & Sons, Inc., 396 Ill.App.3d 1095, 1101-02 (2009).

At the outset, it must be noted that Plaintiff forfeited its argument contesting whether the search CPD conducted was adequate because Plaintiff failed to previously raise any such arguments. Plaintiff first raised its challenge to the adequacy of CPD's search for documents in its Motion to Reconsider. Issues cannot be raised for the first time in the trial court in a motion to

reconsider. See Patterson v. I.R.S., 56 F.3d 832, 841 (7th Cir. 1995). Nevertheless, CPD supports the adequacy of its search here with three affidavits attached as exhibits 1, 2, and 3.

There is no requirement that an agency search every record system, but the agency must conduct a good faith and reasonable search of those systems of records likely to possess the requested information. Oglesby v. Dep't of Army, 920 F.2d 57, 68 (D.C. Cir. 1990). CPD conducted three separate searches reasonably calculated to locate the records responsive to Plaintiff's September 26, 2016 FOIA Request. Specifically, CPD's Office of Constitutional Policing and Reform Division (Human Resources), CPD's Office of the Superintendent and CPD's Legal Affairs Division were searched for responsive records. Because of the subject of Plaintiff's September 26, 2016 FOIA Request, these are the locations within CPD where responsive documents were reasonably most likely to exist. There are no additional locations within CPD that are likely to turn up this information.

Robert Landowski, CPD's Director of Human Resources attests that there were no specific reports regarding the type of analysis plaintiff requested. See Exhibit ("Ex.") 1, Affidavit of Robert Landowski, ¶5. Additionally, Director Landowski searched for responsive records in the filing drawers in his office that have various reports on several subjects. He did not locate any report that shows an analysis of staffing or allocations from the timeframe listed. Director Landowski also searched for responsive records in the databases which his office accesses for these types of reports but no responsive records could be found. See Ex. 1 ¶6.

Similarly, Laurence Odoms, Administrative Sergeant in the Office of the Superintendent, averred that the Office of the Superintendent does not maintain, produce, or draft any records associated with officers' allocation or staffing. See Ex. 2, Affidavit of Laurence Odoms, ¶6. Nevertheless, Sgt. Odoms searched the records maintained in the file cabinets located in the

offices occupied by the Office of the Superintendent and found no responsive records. See Ex. 2 ¶7.

Lastly, Vaughn C. Ganiyu, an Associate Staff Attorney with CPD's Office of Legal Affairs, states in his affidavit that the Legal Affairs Division also does not maintain, produce, or draft any records associated with CPD officers' allocation or staffing. See Ex. 3, Affidavit of Vaughn C. Ganiyu, ¶6. Despite that, Mr. Ganiyu searched the records maintained in the file cabinets located in the offices occupied by the Legal Affairs Division and this search also yielded no responsive records. See Ex. 3 ¶7.

In sum, there is no requirement that an agency search "every" record system and CPD conducted a good faith search for records responsive to Plaintiff's September 26, 2016 FOIA Request. CPD searched for responsive records where they might most likely be found. CPD's failure to locate any responsive documents does not indicate that CPD's search was inadequate. CPD's burden was to prove that it fully discharged its obligation under FOIA. The attached affidavits are evidence which sufficiently demonstrate that CPD's search for documents was adequate and thorough and was reasonably calculated to uncover responsive records. As such, CPD fulfilled its obligations under FOIA, as it pertains to the Court's ruling on Count III ("Comprehensive Staffing Analysis") of Plaintiff's complaint.

CONCLUSION

WHEREFORE, for the above stated reasons, Defendant, the Chicago Police Department, respectfully requests that this Honorable Court denies Plaintiff's Motion to Reconsider the Order entered on March 16, 2020, as it pertains to the ruling on Count III ("Comprehensive Staffing Analysis"), or for such other relief as this Court deems just and appropriate.

Respectfully Submitted,

MARK A. FLESSNER
Corporation Counsel of the City of Chicago
By: /s/ Marc Augustave
Marc Augustave
Senior Counsel

Legal Information and Prosecutions Division
30 North LaSalle Street, Suite 1720
Chicago, Illinois 60602
(312) 742-2477
Attorney No. 90909

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Plaintiff,)	
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CHICAGO POLICE DEPARTMENT,)	Judge Caroline K. Moreland
)	
Defendant.)	

DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION TO RECONSIDER

Exhibit 1

Affidavit of Robert Landowski

the hiring of a 1,000 additional officers for the Chicago Police Department.


B. Any analysis, reports, memos, or documents that the Chicago Police Department maintains on the subject of Chicago Police Department staffing or allocation of Chicago Police Department resources from January 1, 2011 - September 26, 2016.”

5. Because of the records requested, I determined that there was no specific reports regarding this type of analysis which was previously created and left in a location where I was able to retrieve.
6. I searched for responsive records in the filing drawers in my office that have various reports on several subjects. I did not locate any report that shows an analysis of staffing or allocations from the timeframe listed. The databases which we access for these types of reports does not show a completed report for this timeframe that I was aware of.
7. This information is based on my professional knowledge as Director of Human Resources at the Chicago Police Department Human Resources Section, Office of Constitutional Policing and Reform Division of CPD.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER AFFIANT SAYETH NOT.

By:


Robert Landowski
Director of Human Resources
Chicago Police Department

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
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**DEFENDANT'S RESPONSE TO
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Exhibit 2

Affidavit of Laurence Odoms

“A. The top to bottom comprehensive analysis that top Chicago Police Department official repeatedly referenced in a September 21, 2016 briefing with alderman at City Hall saying that this comprehensive analysis was the basis for why Superintendent Johnson had requesting the hiring of a 1,000 additional officers for the Chicago Police Department.

B. Any analysis, reports, memos, or documents that the Chicago Police Department maintains on the subject of Chicago Police Department staffing or allocation of Chicago Police Department resources from January 1, 2011 - September 26, 2016.”

6. Because of the records requested, I determined that the Office of the Superintendent does not maintain, produce or draft any records associated with officers' allocation or staffing.
7. In an effort to locate any responsive records I searched the records maintained in the file cabinets located in the offices occupied by the Office of the Superintendent and found no responsive records.
8. This information is based on my professional knowledge as the Administrative Sergeant in the Office of the Superintendent.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER AFFIANT SAYETH NOT.

By: 
Sergeant Laurence Odoms
Chicago Police Department

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DEFENDANT'S RESPONSE TO
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Exhibit 3

Affidavit of Vaughn C. Ganiyu

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CHICAGO JUSTICE PROJECT,)
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 Plaintiff,) 18 CH 06576
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)
 CHICAGO POLICE DEPARTMENT,) Judge Caroline K. Moreland
)
 Defendant.)

AFFIDAVIT OF VAUGHN C. GANIYU

I, Vaughn C. Ganiyu, do solemnly affirm and certify, under the penalties provided under Section 1-109 of the Illinois Code of Civil Procedure, that if called as a witness, I would testify that the following facts are true and correct to the best of my knowledge and belief and are based on my personal knowledge:

1. I, Vaughn C. Ganiyu, am employed by the City of Chicago Police Department ("CPD") and have been a civilian with CPD since October of 2018.
2. Since October of 2018, I have been assigned as an Associate Staff Attorney in the Legal Affairs Division of CPD.
3. My duties and responsibilities consist of assisting the General Counsel, the Legal Affairs Division attorneys, and the support staff by performing various legal and support functions to assist in the operation of the division (e.g. litigation, legal consultation, responding to Freedom of Information Act requests and appeals).
4. The Legal Affairs Division handles all legal functions for the City of Chicago Police Department and the Superintendent.
5. I was asked by the CPD FOIA unit to assist with the processing of a FOIA request submitted to CPD by Chicago Justice Project seeking the following:

"A. The top to bottom comprehensive analysis that top Chicago Police Department official repeatedly referenced in a September 21, 2016 briefing with alderman at City Hall saying that this comprehensive

analysis was the basis for why Superintendent Johnson had requesting the hiring of a 1,000 additional officers for the Chicago Police Department.

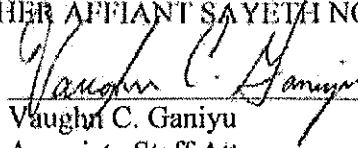
B. Any analysis, reports, memos, or documents that the Chicago Police Department maintains on the subject of Chicago Police Department staffing or allocation of Chicago Police Department resources from January 1, 2011 - September 26, 2016.”

- 6. Because of the records requested, I determined that the Legal Affairs Division does not maintain, produce, or draft any records associated with CPD officers' allocation or staffing.
- 7. In an effort to locate any responsive records, I searched records maintained in the file cabinets in the office occupied by the Legal Affairs Division and found no responsive records.
- 8. This information is based on my professional knowledge as an Associate Staff Attorney in the Legal Affairs Division of CPD.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER AFFIANT SAYETH NOT.

By:


 Vaughn C. Ganiyu
 Associate Staff Attorney
 Chicago Police Department