

Return Date: No return date scheduled  
Hearing Date: 11/6/2018 10:00 AM - 10:00 AM  
Courtroom Number: 2410  
Location: District 1 Court  
Cook County, IL

FILED  
7/9/2018 2:01 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH08520

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

PEOPLE FOR THE ETHICAL  
TREATMENT OF ANIMALS, INC.,

No.2018CH08520

Plaintiff,

v.

FOREST PRESERVE DISTRICT OF COOK  
COUNTY,

Defendant.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff, People for the Ethical Treatment of Animals, Inc. (“PETA”), by and through its counsel, brings this Complaint seeking a declaratory judgment and injunctive relief against Defendant, the Forest Preserve District of Cook County (“District”), for failure to produce, or make available for inspection or copying, certain public records, in violation of the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 140/1 *et seq.* For its Complaint, Plaintiff alleges as follows:

**INTRODUCTION**

1. This is an action brought under the FOIA to compel the production of records relating to the Chicago Zoological Society’s (“Society”) operation of the Brookfield Zoo (“Zoo”). In particular, Plaintiff seeks the production of records pertaining to SeaWorld and the Zoo’s stingray exhibit following the deaths of every one of its fifty-four stingrays on July 10, 2015.

FILED DATE: 7/9/2018 2:01 PM 2018CH08520

2. At all relevant times, the Society, pursuant to a contract executed with the District under the authority of Section 40 of the Cook County Forest Preserve District Act, 70 ILCS 810/40, operated and managed the Zoo on land owned and supervised by the District.

3. At all relevant times, the Society, pursuant to its contract with the District, exercised physical custody and control over records relating to the Zoo's operation, including, but not limited to, records at issue here concerning SeaWorld and the Zoo's stingray exhibit.

4. At all relevant times, the Society's operation of the Zoo, pursuant to its contract with the District, constituted the performance of a governmental function within the meaning of 5 ILCS 140/7(2). *See Better Gov't Ass'n v. Ill. High School Ass'n*, 89 N.E.3d 376, 390 ¶¶ 62-63 (Ill. 2017) (“[W]e agree that [5 ILCS 140/]7(2) ensures that governmental entities must not be permitted to avoid their [FOIA] disclosure obligations by contractually delegating their responsibility to a private entity . . . . With respect to performing a governmental function on the District's behalf, ‘governmental function’ is defined as ‘a government agency’s conduct that is expressly or impliedly mandated or authorized by constitution, statute, or other law and that is carried out for the benefit of the general public.’” (quoting Black’s Law Dictionary 812 (10th ed. 2014))). Accordingly, all otherwise nonexempt records relating to the Society’s operation of the Zoo, including those concerning SeaWorld and the Zoo’s stingray exhibit, are public records subject to disclosure pursuant to 5 ILCS 140/7(2).

#### **VENUE AND JURISDICTION**

5. The Court has jurisdiction over this action pursuant to 5 ILCS 140/11.

6. Venue is proper in Cook County pursuant to 5 ILCS 140/11(c) because Defendant is located in Cook County, Illinois.

## **PARTIES**

7. Plaintiff PETA is a not-for-profit animal protection charity dedicated to protecting animals, including those used for exhibition and entertainment, from abuse, neglect, and cruelty. PETA undertakes these efforts through, *inter alia*, cruelty investigations, research, animal rescue, legislation, public education, and protest campaigns.

8. Defendant District is a municipal corporation created pursuant to the Cook County Forest Preserve District Act, 70 ILCS 810/0.01 *et seq.* The Cook County Forest Preserve District Act expressly authorizes the District to erect and maintain a zoological park, to collect and display animals, and to enter into contracts and hold real and personal property necessary for its corporate purposes.

## **FACTUAL BACKGROUND**

### **Illinois FOIA**

9. The purpose of the Illinois FOIA is to “provide the public with easy access to government information.” *S. Illinoisan v. Ill. Dep’t of Pub. Health*, 844 N.E.2d 1, 15 (Ill. 2006). To this end, the FOIA is accorded a “liberal construction.” *Id.* (quoting *Bowie v. Evanston Cmty. Consol. School Dist. No. 65*, 538 N.E.2d 557, 559 (Ill. 1989)).

10. The FOIA requires each public body to make all public records “available to any person” for inspection or copying. 5 ILCS 140/3(a). “Person” includes a corporation, organization, or association. 5 ILCS 140/2(b).

11. All public records of a public body are presumed to be open to inspection or copying, and any public body that asserts a record is exempt from disclosure bears the burden of proving by clear and convincing evidence that the record is exempt. 5 ILCS 140/1.2.

12. The FOIA defines “public body,” in part, as “all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof.” 5 ILCS 140/2(a).

13. The FOIA defines “public records” as “all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared for, or having been or being used by, received by, in the possession of, or under the control of any public body.” 5 ILCS 140/2(c).

14. Restraints on access to information, to the extent permitted under the FOIA, are “limited exceptions” to the presumption of open access to public records. 5 ILCS 140/1.

15. Public records that are not in the possession of a public body but are instead “in the possession of a party with whom the [public body] has contracted to perform a governmental function on behalf of the public body,” and that directly relate to that governmental function, are considered public records of the public body and are subject to disclosure under the FOIA, to the extent that they are not otherwise exempt. 5 ILCS 140/7(2).

### **Brookfield Zoo’s Stingray Exhibit**

16. The Society is a not-for-profit corporation incorporated in 1921. When or shortly after it was chartered, the Society entered an agreement with the District to develop, operate, and maintain the Zoo, which later opened in 1934, to provide educational and recreational

opportunities to the general public. The Society continues to operate the Zoo pursuant to a contract with the District and exercises control over the Zoo's records, including, but not limited to, records at issue in this case. The Zoo is located on land owned by the District and subject to its oversight.

17. The Zoo opened its stingray exhibit, Stingray Bay, in 2007. The exhibit allowed visitors to touch the stingrays as the stingrays swam in the enclosure.

18. As of July 10, 2015, the exhibit held fifty cownose rays, *Rhinoptera bonasus*, and four southern stingrays, *Dasyatis Americana*, in a saltwater tank.

19. On July 10, 2015, there was reportedly a malfunction in the exhibit's life-support system, which caused the oxygen levels in the rays' tank to drop to dangerously low levels. All fifty-four stingrays in the exhibit died.

20. The Zoo announced the death of the stingrays on July 12, 2015, and closed Stingray Bay for the remainder of the 2015 season.

21. Following the incident, Zoo officials reportedly investigated the cause of the malfunction. Upon information and belief, the Zoo never publicly disclosed the ultimate cause of the malfunction.

22. At the time of the incident, it was widely reported that the exhibit was a partnership between the Zoo and SeaWorld, and upon information and belief, some or all of the stingrays held at the exhibit were provided by SeaWorld.

#### **PETA's Request**

23. PETA submitted a FOIA request to Mr. Dennis White, the District's Chief Attorney and FOIA Officer, on October 24, 2016, seeking copies of "[a]ny and all records

related to Brookfield Zoo ('Zoo') and/or Chicago Zoological Society ('Society')" and "[a]ny and all records related to SeaWorld." A true and correct copy of the request is attached as Exhibit A.

24. Following a phone call with the District concerning the scope of the October 24 request, PETA amended its request on October 28, 2016, narrowing the scope of the records sought to "[a]ny and all records from January 1, 2012 to the present that are related to SeaWorld or the Brookfield Zoo's stingray exhibit." A true and correct copy of the amended request is attached as Exhibit B.

25. The District responded to PETA's request via letter dated November 7, 2016. The response included a copy of the District's agreement with the Society, as well as records concerning certain bonds. However, the District refused to disclose *any* records concerning SeaWorld or the Zoo's stingray exhibit, maintaining, "Beyond the revenue provided by the District to the zoo for various capital improvements, the District does not have any involvement with the Zoo or the Chicago Zoological Society's operation of Seaworld or any other marine mammal exhibit," and further asserting that "[t]he operation of marine mammal exhibits does not involve a governmental function under the purview of the District." A true and correct copy of the District's response is attached as Exhibit C.

#### **PETA's Request for Review and Attorney General's Determination**

26. Pursuant to 5 ILCS 140/9.5, on January 6, 2017,<sup>1</sup> PETA submitted a Request for Review of the District's Response to Ms. Sarah Pratt, the Public Access Counselor for the Office of the Illinois Attorney General, seeking "review of the District's denial of public records relating to SeaWorld or the Zoo's stingray exhibit." A true and correct copy of PETA's Request for Review is attached as Exhibit D.

---

<sup>1</sup> The letter was dated January 5, 2017.

27. On January 18, 2017, the Attorney General's Office sent a copy of PETA's Request for Review to the District and asked that the District provide a written response to the allegations in PETA's Request for Review. The District submitted its response to the Attorney General's Office on February 15, 2017, and PETA replied on February 27, 2017. True and correct copies of the District's February 15, 2017, letter and PETA's February 27, 2017, reply are attached as Exhibits E and F, respectively.

28. On March 13, 2017, the Society submitted a letter to the Attorney General's Office, asserting that it was not subject to the FOIA. The Society supplemented its letter on June 15, 2017, and PETA replied to the Society's letters on July 14, 2017. True and correct copies of the Society's letters of March 13, 2017, and June 15, 2017, and of PETA's July 14, 2017, reply are attached as Exhibits G, H, and I, respectively.

29. On February 8, 2018, Mr. Steve Silverman, Bureau Chief of the Attorney General's Public Access Bureau, issued the office's determination that the District's response to PETA's request violated FOIA, that the Society performs a governmental function in operating the Zoo, and that records concerning SeaWorld and the stingray exhibit directly relate to that governmental function. The Attorney General's Office concluded that since Section 40 of the Cook County Forest Preserve District Act "specifically authorizes the District to maintain a zoo, or to contract with the directors or trustees of any zoological society for the erection, operation and maintenance of a zoological park and the collection and display of such animals" and since the District, pursuant to this authority, contracted with the Society for the operation of the Zoo, "the District has contracted with the Zoological Society to perform a governmental function." A true and correct copy of the Attorney General's determination is attached as Exhibit J.

30. The Attorney General's determination requested that the District "issue a supplemental response to PETA's request, and disclose all non-exempt responsive records."

**The District's Failure to Timely Produce Responsive Records**

31. After receipt of the Attorney General's determination that the requested records are subject to FOIA, pursuant to 5 ILCS 140/3(d), the District had five business days to provide copies of records requested and otherwise fully cooperate with the Attorney General's request to disclose "all non-exempt responsive records" concerning the Zoo's relationship with SeaWorld and concerning the Zoo's stingray exhibit. On February 11, 2018, via email, PETA contacted Mr. Keino Robinson, the District's FOIA Officer who provided the District's October 28, 2017, response, requesting that responsive records be provided by February 15, 2018. This email was also sent to Mr. Randall Vickery, the Society's attorney. A true and correct copy of this email is attached as Exhibit K.

32. PETA did not receive any response or disclosure of responsive records from the District on or before February 15, 2018.

33. On February 20, 2018, PETA emailed Mr. Robinson, informing him of the District's failure to provide responsive records by February 15, 2018, and requesting that any responsive records be disclosed to PETA by February 23, 2018. This email was also sent to Mr. Vickery. A true and correct copy of this email is attached as Exhibit L.

34. PETA spoke with Mr. Vickery by phone on February 21, 2018, and February 26, 2018; on both occasions, Mr. Vickery stated that the Society would make an effort to accommodate PETA's request. PETA followed up with Mr. Vickery via email on March 6, 2018, inquiring about "the status of the Society's search and disclosure of records." A true and correct copy of this email is attached as Exhibit M.



35. Mr. Vickery responded to PETA via email on March 23, 2018, noting that he would be in touch with PETA the week of April 2, 2018, “with an update on where [the Society] [is] with the documents.” A true and correct copy of this email is attached as Exhibit N.

36. PETA contacted Mr. Vickery via email on April 24, 2018, after not receiving any update in the interim about the status of the Society’s progress in collecting and preparing responsive documents for disclosure. Mr. Vickery responded via email the same day, noting that he needed to have follow-up conversations with the Zoo’s management but should “be back . . . in the next few days.” A true and correct copy of these emails is attached as Exhibit O.

37. PETA again contacted Mr. Vickery via email on May 7, 2018—after not receiving any update or disclosure of responsive records in the interim—reminding Mr. Vickery that it had been more than eighteen months since PETA’s October 2016 request and three months since the Attorney General’s February 2018 determination, and insisting that responsive records be provided by June 1, 2018. A true and correct copy of this email is attached as Exhibit P.

38. As of the date of this filing, PETA has not received any records responsive to its request from either the District or the Society, despite the Attorney General’s February 8, 2018, opinion and request that “the District issue a supplemental response to PETA’s request, and disclose all non-exempt responsive records.”

#### **PRAYER FOR RELIEF**

39. The above paragraphs are hereby incorporated by reference.

40. The District is a public body within the meaning of 5 ILCS 140/2(a).

41. The Society performs a governmental function within the meaning of 5 ILCS 140/7(2) by operating the Zoo on the District's behalf, pursuant to Section 40 of the Cook County Forest Preserve District Act.

42. The requested records, held or otherwise maintained by the Society, are public records within the meaning of 5 ILCS 140/2(c) and are subject to disclosure pursuant to 5 ILCS 140/7(2) because they are "in the possession of a party with whom the [District] has contracted to perform a governmental function on behalf of the [District]" and directly relate to that governmental function, namely, the Society's operation of the Zoo.

43. In failing to disclose the requested records, the District has improperly withheld non-exempt public records in violation of 5 ILCS 140/3(d) and 5 ILCS 140/9.5. This court thus has jurisdiction to enjoin the District from withholding the records and to order their production pursuant to 5 ILCS 140/11(d).

WHEREFORE PETA prays that this Court enter an order:

- (1) Declaring that the Society's operation of the Zoo, by and through its contract with the District executed pursuant to the Cook County Forest Preserve District Act, constitutes the performance of a "governmental function" within the meaning of 5 ILCS 140/7(2);
- (2) Declaring that the records held and/or maintained by the Society through its operation of the Zoo pursuant to its agreement with the District that relate to its operation of the Zoo are "public records" within the meaning of 5 ILCS 140/2(a);
- (3) Enjoining the District from continuing to withhold the requested records and requiring the District to produce the requested records pursuant to 5 ILCS 140/11(d);

