

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

NATIONAL ASSOCIATION OF CRIMINAL)		
DEFENSE LAWYERS,)		
)		
Plaintiff,)		
)		
v.)	No.	
)		
SUPERINTENDENT OF THE CHICAGO)		
POLICE DEPARTMENT, CHIEF OF THE)		
EVANSTON POLICE DEPARTMENT, CHIEF)		
OF THE JOLIET POLICE DEPARTMENT, and)		
DIRECTOR OF THE ILLINOIS STATE POLICE,)		
)		
Defendants.)		

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff National Association of Criminal Defense Attorneys, by its undersigned attorneys, for its complaint against defendants Superintendent of the Chicago Police Department, Chief of the Evanston Police Department, Chief of the Joliet Police Department and Director of the Illinois State Police, alleges as follows:

INTRODUCTION

1. This is an action to obtain a court order directing the defendant Police agencies to produce for inspection and copying certain records that are required to be disclosed pursuant to the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 140/1, *et seq.*, and for payment of attorneys fees to Plaintiff’s counsel under FOIA.

2. The documents that Plaintiff seeks concern a legislatively mandated study regarding whether there should be reform of the manner in which police agencies in this State present line-ups and photo arrays to persons who have witnessed a crime. This is a matter that is of great interest to the general public and to the administration of criminal justice.

3. In the aftermath of the Illinois death penalty moratorium and former Illinois Governor George Ryan's commutation of all pending death sentences, the Illinois General Assembly enacted various measures intended to correct the problem of innocent persons being sentenced to death. Among the reform provisions was a requirement that the Illinois State Police conduct a year-long pilot program to test the effectiveness of a procedure whereby line-ups and photo arrays are presented (a) sequentially, *i.e.*, with subjects displayed to the witness one after the other instead of all at once (as is traditionally done) and (b) on a double blind basis, *i.e.*, by a line-up administrator who does not know which subject is suspected of the crime, as opposed to by an administrator who knows who is suspected (as is traditional). *See* 725 ILCS 5/107A-10.

4. The Illinois State Police, in collaboration with the Chicago Police Department, the Evanston Police Department and the Joliet Police Department, conducted the required pilot program (the "Pilot Program") and, on March 17, 2006, released its Report to the Legislature of the State of Illinois: the Illinois Pilot Program on Sequential Double-Blind Identification Procedures (the "Report"). The findings in the Report were controversial. Although academic research has consistently found that sequential, double-blind identification procedures yield more reliable eyewitness identifications, the Report claimed that the sequential double-blind procedure produced more known false identifications than the traditional procedures. Leading experts in the field of eyewitness identification have sharply questioned the validity of the findings in the Report.

5. The FOIA requests at issue in this case seek access to the data underlying the Report and its findings. Access to this data is essential to meaningful public dialogue concerning the validity and the accuracy of the findings in the Report. Such a dialogue is essential. False eyewitness identifications have been responsible for a number of wrongful convictions in this

State and around the country and it is therefore imperative that line-up and photo array procedures be as reliable and as accurate as possible.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 5 ILCS 140/11(d) to hear this appeal from the denial of Plaintiff's FOIA requests to the Illinois State Police, the Chicago Police Department, the Evanston Police Department and the Joliet Police Department. Venue is proper in the Circuit Court of Cook County.

PARTIES

7. Plaintiff National Association of Criminal Defense Lawyers ("NACDL"), a professional bar association founded in 1958 with more than 12,500 direct members, submitted the FOIA request in issue in this cause. NACDL is a not for profit corporation of the District of Columbia with its principal place of business there.

8. The Chicago Police Department is an agency of the City of Chicago and is subject to the requirements of FOIA with respect to documents in its possession and control. Pursuant to 725 ILCS 5/107A-10, the Chicago Police Department was selected as one of the police departments to participate in the pilot program to test sequential double blind line-up procedures and has possession and control of some or all of the documents in Plaintiff seeks. The Superintendent of the Chicago Police Department has the final authority with respect to granting or denying requests under FOIA, and is therefore a proper party defendant in this cause.

9. The Evanston Police Department is an agency of the City of Evanston and is subject to the requirements of FOIA with respect to documents in its possession and control. Pursuant to 725 ILCS 5/107A-10, the Evanston Police Department was selected as one of the police departments to participate in the pilot program to test sequential double blind line-up

procedures and has possession and control of some or all of the documents Plaintiff seeks. The Chief of the Evanston Police Department has the final authority with respect to granting or denying requests under FOIA, and is therefore a proper party defendant in this cause.

10. The Joliet Police Department is an agency of the City of Joliet and is subject to the requirements of FOIA with respect to documents in its possession and control. Pursuant to 725 ILCS 5/107A-10, the Joliet Police Department was selected as one of the police departments to participate in the pilot program to test sequential double blind line-up procedures and has possession and control of some or all of the documents Plaintiff seeks. The Chief of the Joliet Police Department has the final authority with respect to granting or denying requests under FOIA, and is therefore a proper party defendant in this cause.

11. The Illinois State Police is an agency of Illinois State government and is subject to the requirements of FOIA with respect to documents in its possession and control. Pursuant to 725 ILCS 5/107A-10, the State Police were responsible for conducting the pilot program to test sequential double blind line-up procedures and have possession and control of some or all of the documents Plaintiff seeks. The Director of the Illinois State Police has the final authority with respect to granting or denying requests under FOIA, and is therefore a proper party defendant in this cause.

ALLEGATIONS OF FACT

12. Plaintiff's FOIA requests to each of the four defendant police agencies seek the following records relating to the conduct of the Pilot Program and the Report:

- 1) All documents that describe or reflect the procedures followed by investigating officers in the control group of cases, *i.e.*, those identification procedures that did *not* employ the sequential, double-blind method described in 725 ILCS 5/107A-

10(c). In addition to all other relevant information, this request includes any records documenting whether each live line-up was a first viewing of a suspect by an eyewitness, or if the eyewitness had previously identified the suspect in a photo line-up.

- 2) All documents employed to train the police officers who participated in the Pilot Program, and any recordings or records of such training.
- 3) All documents that relate to the retention of Sheri H. Mecklenburg, Dr. Roy S. Malpass and Dr. Ebbe Ebbesen to perform services in connection with the Pilot Program, the analysis of data and the preparation of the Report to the Legislature.
- 4) Documents sufficient to show the criminal court case numbers for each and every case included in the Pilot Program and the data analysis, all corresponding photographs and recordings of line-ups, and all photographs of suspects and fillers shown to an eyewitness during a photo spread or sequential photo array, as required by 75 ILCS 5/107A-5(a).
- 5) The complete database of information used to generate the data tables in the Report regarding the Pilot Program and the Appendix thereto, as well as any other information contained in the database that was not included in the Report and Appendix.

Exhaustion of Administrative Remedies: Illinois State Police

13. On 7/31/06, Plaintiff sent a written FOIA request to the Illinois State police (“ISP”) seeking to inspect and copy the documents described in paragraph 12, *supra*. A copy of this FOIA request is attached as Ex. A and incorporated by reference.

14. The ISP did not respond to Plaintiff's FOIA request within seven working days as required by 5 ILCS 140/3(c). Pursuant to FOIA, this non-response constitutes a denial of the request.

15. Accordingly, on September 12, 2006, Plaintiff appealed the ISP denial of its FOIA request. A copy of the appeal letter is attached hereto as Ex. B.

16. On September 21, 2006, Plaintiff agreed to allow the ISP an additional two weeks to respond to the FOIA and to the appeal. A copy of the letter memorializing that agreement is attached hereto as Ex. C. Under the parties' agreement, the Illinois State Police was to respond to the FOIA request and to the appeal by no later than October 4, 2006.

17. Plaintiff has never received any written response from the ISP to its July 31, 2006 FOIA or to its September 12, 2006 appeal from the denial of the FOIA. Pursuant to 5 ILCS 140/10(a), this non-response constitutes a denial of the appeal.

Exhaustion of Administrative Remedies: the Chicago Police Department

18. On July 31, 2006, Plaintiff sent a written FOIA request to the Chicago Police Department ("CPD") asking to inspect and copy the documents described in paragraph 12, *supra*. A copy of this FOIA request is attached as Ex. D and incorporated by reference.

19. Pursuant to 5 ILCS 140/3(c), CPD's response to Plaintiff's FOIA request was due on August 14, 2006. CPD failed to respond to Plaintiff's FOIA request. Pursuant to 5 ILCS 140/3(c), CPD's failure to respond is considered a denial of the request.

20. On September 12, 2006, Plaintiff appealed the denial of its FOIA request pursuant to 5 ILCS 140/10(a). A copy of the written appeal is attached as Ex. E and incorporated by reference.

21. On September 19, 2006, the CPD sent a letter a copy of which is attached as Ex. F, claiming that the appeal was premature and requesting more time. On September 27, Plaintiff's lawyer sent a second appeal letter to the CPD, a copy of which is attached as Ex. G and incorporated by reference.

22. On October 13, 2006 the CPD sent a response to the appeal, a copy of which is attached as Ex. H. The CPD claimed not to possess certain documents. CPD also claimed the following exemptions with respect to documents that it acknowledged are in its possession:

- i. Claimed that individual case files and line-up reports are exempt under 5 ILCS 140/7 (1)(c) and (d)
- ii. Claimed that training documents are exempt under 5 ILCS 140/1 (7)(1)(f).

Exhaustion of Administrative Remedies: the Evanston Police Department

23. On September 27, 2006, Plaintiff, sent a written FOIA request to the Evanston Police Department ("EPD"), asking to inspect and copy the documents described in paragraph 12, *supra*. A copy of this FOIA request is attached as Ex. I and incorporated by reference.

24. On October 12, 2006, the EPD responded, requesting seven additional working days to comply with the request in accordance with 5 ILCS 140/3(d). A copy of this letter is attached as Ex. J and incorporated by reference.

25. On October 20, 2006, the EPD sent a response to the FOIA request, a copy of which is attached as Ex. K. The EPD claimed not to possess certain documents. EPD, also claimed the following exemption with respect to documents that it acknowledged are in its possession:

- i. EPD claimed that investigative case files, database materials, photographs and line-up reports are exempt under 5 ILCS 140/7(1)(c) and (d).

26. Accordingly, on November 10, 2006, Plaintiff appealed the EPD denial of its FOIA request. A copy of the appeal letter is attached hereto as Ex. L.

27. On November 20, 2006, EPD sent a response to Plaintiff's appeal, a copy of which is attached as Ex. M, reasserting the same exemptions that had been claimed in response to the initial FOIA request.

Exhaustion of Administrative Remedies: the Joliet Police Department

28. On July 31, 2006, Plaintiff sent a written FOIA request to the Joliet Police Department ("JPD") asking to inspect and copy the documents described in paragraph 12, *supra*. A copy of this FOIA request is attached as Ex. N and incorporated by reference.

29. The JPD did not respond to Plaintiff's FOIA request within seven working days as required by 5 ILCS 140/3(c). Pursuant to FOIA, this non-response constitutes a denial of the request.

30. Accordingly, on September 12, 2006, Plaintiff appealed the JPD denial of its FOIA request. A copy of the appeal letter is attached hereto as Ex. O.

31. On September 20, 2006, the JPD sent a response to the appeal, a copy of which is attached as Ex. P. The JPD enclosed some records that Plaintiff had requested, claimed not to possess certain documents, and also claimed the following exemptions:

- i. The JPD claimed that individual case files and line-up reports are exempt under 5 ILCS 140/7(1)(b), (c)(i) and (c)(vii).

COUNT I (Illinois State Police)

32. Plaintiff repeats and re-alleges all prior paragraphs as if fully set forth herein.

33. Plaintiff has exhausted its administrative remedies with respect to its FOIA to the Illinois State Police and, pursuant to 5 ILCS 140/10(b), is now entitled to pursue this action to

obtain a court order compelling the Illinois State Police to comply with its obligation to provide Plaintiff with the requested documents.

34. The documents requested in Plaintiff's FOIA are subject to disclosure under FOIA. No exemption from disclosure is applicable.

35. The documents requested in Plaintiff's FOIA are of significant interest to the general public and the Illinois State Police denial of Plaintiff's request for those records lacks a reasonable basis in law. Plaintiff is therefore entitled to an award of reasonable attorney's fees pursuant to 5 ILCS 140/11(i).

WHEREFORE, Plaintiff National Association of Criminal Defense Lawyers respectfully requests that this Court enter an order (a) declaring that Plaintiff is entitled to all documents requested in its FOIA to the Illinois State Police; (b) compelling the Illinois State Police to immediately allow Plaintiff to inspect and copy the requested documents; (c) awarding Plaintiff its reasonable costs of suit, including attorneys fees; and (d) for such further relief as this Court may deem equitable and just.

COUNT II
(Chicago Police Department)

36. Plaintiff repeats and re-alleges all prior paragraphs as if fully set forth herein.

37. Plaintiff has exhausted its administrative remedies with respect to its FOIA to the Chicago Police Department and, pursuant to 5 ILCS 140/10(b), is now entitled to pursue this action to obtain a court order compelling the CPD to comply with its obligation to provide Plaintiff with the requested documents.

38. There is no lawful basis to withhold any of the documents listed in Plaintiff's FOIA request. No exemption is applicable and these documents are subject to disclosure under FOIA.

39. The documents requested in Plaintiff's FOIA are of significant interest to the general public and the Chicago Police Department denial of Plaintiff's request for those records lacks a reasonable basis in law. Plaintiff is therefore entitled to an award of reasonable attorney's fees pursuant to 5 ILCS 140/11(i).

WHEREFORE, Plaintiff National Association of Criminal Defense Lawyers respectfully requests that this Court enter an order (a) declaring that Plaintiff is entitled to all documents requested in paragraphs 1, 2, 4 and 5 of its FOIA to the Chicago Police Department; (b) compelling the Chicago Police Department to immediately allow Plaintiff to inspect and copy the requested documents; (c) awarding Plaintiff its reasonable costs of suit, including attorneys fees; and (d) for such further relief as this Court may deem equitable and just.

COUNT III
(Evanston Police Department)

40. Plaintiff repeats and re-alleges all prior paragraphs as if fully set forth herein.

41. Plaintiff has exhausted its administrative remedies with respect to its FOIA to the Evanston Police Department and, pursuant to 5 ILCS 140/10(b), is now entitled to pursue this action to obtain a court order compelling the Evanston Police Department to comply with its obligation to provide Plaintiff with the requested documents.

42. There is no lawful basis to withhold any of the documents listed in Plaintiff's FOIA request. No exemption is applicable and these documents are subject to disclosure under FOIA.

43. The documents requested in Plaintiff's FOIA are of significant interest to the general public and the Evanston Police Department denial of Plaintiff's request for those records lacks a reasonable basis in law. Plaintiff is therefore entitled to an award of reasonable attorney's fees pursuant to 5 ILCS 140/11(i).

WHEREFORE, Plaintiff National Association of Criminal Defense Lawyers respectfully requests that this Court enter an order (a) declaring that Plaintiff is entitled to all documents requested in paragraphs 1 and 5 of its FOIA to the Evanston Police Department; (b) compelling the Evanston Police Department to immediately allow Plaintiff to inspect and copy the requested documents; (c) awarding Plaintiff its reasonable costs of suit, including attorneys fees; and (d) for such further relief as this Court may deem equitable and just.

COUNT IV
(Joliet Police Department)

44. Plaintiff repeats and re-alleges all prior paragraphs as if fully set forth herein.

45. Plaintiff has exhausted its administrative remedies with respect to its FOIA to the Joliet Police Department and, pursuant to 5 ILCS 140/10(b), is now entitled to pursue this action to obtain a court order compelling the Joliet Police Department to comply with its obligation to provide Plaintiff with the requested documents.

46. There is no lawful basis to withhold any of the documents listed under heading 4 in Plaintiff's FOIA request. No exemption is applicable and these documents are subject to disclosure under FOIA.

47. The documents requested in Plaintiff's FOIA are of significant interest to the general public and the Joliet Police Department denial of Plaintiff's request for those records lacks a reasonable basis in law. Plaintiff is therefore entitled to an award of reasonable attorney's fees pursuant to 5 ILCS 140/11(i).

WHEREFORE, Plaintiff National Association of Criminal Defense Lawyers respectfully requests that this Court enter an order (a) declaring that Plaintiff is entitled to all documents requested in paragraph 4 of its FOIA to the Joliet Police Department; (b) compelling the Joliet Police Department to immediately allow Plaintiff to inspect and copy the requested documents;

(c) awarding Plaintiff its reasonable costs of suit, including attorneys fees; and (d) for such further relief as this Court may deem equitable and just.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS**

By: _____
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Ben Berman, Terri Davenport and Molly Thompson, third year students at Northwestern School of Law, also participated in the preparation of this document.