

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

AMERICAN CIVIL LIBERTIES UNION)
OF ILLINOIS,)
)
Plaintiff,)
)
v.)
)
ILLINOIS STATE POLICE,)
)
Defendant.)

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COUNTY DEPARTMENT
CHANCERY DIV.

COMPLAINT

Plaintiff the American Civil Liberties Union of Illinois (the “ACLU”), by its attorneys, for its complaint against defendant the Illinois State Police (the “ISP”), alleges as follows:

NATURE OF THE ACTION

1. This is a complaint under the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 140/1 *et seq.* In violation of FOIA, the ISP has refused to produce certain records regarding the Illinois Statewide Terrorism and Intelligence Center (“STIC”). The ACLU seeks an injunction commanding the ISP to disclose the disputed records, and an order awarding the ACLU its attorneys’ fees.

2. The ISP’s STIC is the “fusion center” operated by the State of Illinois for purposes of gathering, storing, and sharing information about suspected criminal activity among federal, state, and local law enforcement agencies in Illinois. *See, e.g., ISP, STIC commemorates five year anniversary* (June 5, 2008) (stating that STIC is a “one-stop resource for police officers to obtain information related to criminal activity,” whose analysts “perform a comprehensive search of all available databases and resources”). Many members of the public are increasingly

concerned that fusion centers like STIC amass too much sensitive information about innocent members of the general public, with insufficient safeguards to ensure privacy.

3. The ISP has violated FOIA by withholding STIC's privacy policy, as well as records about STIC's access to private databases, STIC's use of the internet, and STIC's analytical assistance to Caterpillar Inc. for events targeting its operations. In further violation of FOIA, the ISP has refused to state whether it has withheld STIC policies and training records relating to numerous subjects, including when STIC gathers, stores, uses, shares, and removes sensitive personal information; the applicability of federal privacy regulations to STIC; and privacy complaints from the general public.

PARTIES

4. The ACLU is a non-profit, non-partisan, statewide organization with more than 20,000 members and supporters, dedicated to protecting and expanding the civil rights and civil liberties enshrined in the U.S. and Illinois Constitutions. It is crucial to the ACLU's mission that it receive timely information to keep its membership and the public apprised of developments and concerns in those areas.

5. The ISP is a "public body" as that term is defined in 5 ILCS 140/2(a). It operates STIC.

BACKGROUND

The Illinois FOIA

6. In FOIA, the Illinois General Assembly declared that "all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them." 5 ILCS 140/1. To deny a FOIA request on the basis of a

FOIA exemption, a public body must prove the applicability of the exemption by “clear and convincing evidence.” *Id.* at 140/11(f).

The disputed records

7. The following ISP records about STIC are subject to disclosure pursuant to FOIA, are not subject to any FOIA exemptions, are responsive to the ACLU’s FOIA request, are the subject of specific follow-up ACLU requests (as described below), and are now sought by the ACLU in this FOIA enforcement lawsuit:

- (a) STIC’s privacy policy.
- (b) The following records concerning STIC access to private databases:
 - (i) Any records that indicate what kinds of information are available to the ISP in each of the private databases that the ISP has stated it has access to (*i.e.*, Accurant, Choicepoint, Dun & Bradstreet, Experian, the Internet, ISO Claim Search, Lexis Nexis, and Westlaw).
 - (ii) The ISP contracts with Accurant, ChoicePoint, Dun & Bradstreet, ISO Claim Search, and Lexis Nexis.
 - (iii) Any records relating or referring to any additional private databases accessible to STIC, including but not limited to (i) contracts, and (ii) records indicating the kinds of information available through the database.
- (c) Any records that relate or refer to how STIC gathers information from the Internet, and what information STIC gathers from the Internet, including but not limited to any policy or training records.
- (d) Any records relating or referring to STIC analytical assistance to Caterpillar Inc. for events targeting its operations, including but not limited to:
 - (i) Any information provided from/to STIC to/from Caterpillar Inc., including any intelligence regarding expressive activity targeting Caterpillar operations.

- (ii) Any MOU, contract, or other written agreement between STIC and Caterpillar Inc. for the provision of “analytical assistance during major events . . . targeting operations of Caterpillar.”
- (iii) Any policy or training records that guide STIC in sharing information with and/or providing analytical assistance to the private sector.
- (iv) Any records that describe how and why information about expressive activity is entered into STIC.
- (v) Any records that relate or refer to expressive activity taking place at the following events, including but not limited to the planning of this expressive activity, and individuals and groups involved in this expressive activity:
 - (A) June 11, 2003 expressive activity outside Caterpillar’s Aurora plant.
 - (B) April 13, 2004 expressive activity inside and outside Caterpillar’s annual shareholder meeting in Chicago, IL.
 - (C) April 23, 2004 expressive activity outside Caterpillar headquarters in Peoria, IL.
 - (D) April 13, 2005 expressive activity inside and outside Caterpillar’s annual shareholder meeting in Chicago, IL.
 - (E) March 16, 2006 expressive activity outside Caterpillar headquarters in Peoria, IL.
 - (F) June 15, 2006 expressive activity inside and outside Caterpillar’s annual shareholder meeting in Chicago, IL.
 - (G) June 13, 2007 expressive activity inside and outside Caterpillar’s annual shareholder meeting in St. Charles, IL.
 - (H) June 11, 2008 expressive activity inside and outside Caterpillar’s annual shareholder meeting in Chicago, IL.
- (e) Any STIC policy and training records, not already produced, relating or referring to:
 - (i) Initiating, performing, or terminating any STIC investigation or analysis.

- (ii) What activities should be reported to STIC for input into the system.
 - (iii) The applicability of 28 C.F.R. Part 23, the federal regulation of private information in certain federally funded law enforcement databases, to STIC.
 - (iv) The removal of information from STIC's databases.
 - (v) Protecting individual civil liberties, including privacy protections and civilian oversight of STIC, and any written policies for tracking and handling privacy complaints or concerns.
 - (vi) The protection and retention of, and access by the public to, records, reports, and personal information held by STIC.
 - (vii) Information-sharing between STIC and any other government body, private entity, data aggregator, and/or commercial entity.
- (f) Any portions of the VITAL Operations Manual (updated on May 16, 2003) that set forth regulations protecting individual liberties, including any privacy protections, and any portions that state a criminal predicate standard for entering information about a particular person, maintaining such information, or disseminating such information.
- (g) The following records regarding STIC computer applications developed by private entities:
- (i) The complete contracts with, respectively, Oracle, Microsoft, Riverglass, and Mitre.
 - (ii) Any records which indicate what kinds of "applications" are being "developed" for the ISP by each of these four private entities.

Chronology of the ACLU'S FOIA request

8. On September 12, 2008, the ACLU sent a FOIA request to the ISP requesting certain records concerning STIC. *See* Exhibit 1. At that time, FOIA required the ISP to respond within seven working days. *See* 5 ILCS 140/3(c) (2008).

9. On January 5, 2009, the ISP sent the ACLU its initial response to this FOIA request, disclosing certain information, withholding other information, and asserting various FOIA exemptions. *See Exhibit 2.*

10. On February 13, 2009, the ACLU sent the ISP a follow-up letter seeking records responsive to the initial FOIA request, and complete copies of records produced in redacted form. The ACLU requested that the ISP respond by February 27, 2009. *See Exhibit 3.*

11. On April 10, 2009, the ISP sent the ACLU a letter disclosing certain records, and withholding certain records. *See Exhibit 4.*

12. On October 26, 2009, the ACLU sent a follow-up letter to the ISP, seeking records responsive to the initial FOIA request but not yet produced. *See Exhibit 5.* Specifically, the ACLU requested (a) STIC's privacy policy, (b) records concerning the applicability to STIC of the federal privacy regulations, and (c) policy or training records regarding information sharing. The ACLU requested a response from the ISP by November 16, 2009. The ISP did not respond.

13. On November 9, 2009, the ACLU sent a follow-up letter to the ISP seeking records responsive to the initial FOIA request but not yet produced. *See Exhibit 6.* Specifically, the ACLU requested records relating to analytical assistance that STIC provided to Caterpillar Inc. for events targeting its operations. This letter attached excerpts from the Illinois Terrorism Task Force 2006 Annual Report describing such assistance. The ACLU requested a response by November 30, 2009. The ISP did not respond.

14. On December 7, 2009, the ACLU sent a follow-up letter to the ISP requesting a response to the ACLU's earlier letters of October 26 and November 9. *See Exhibit 7.* The ACLU also requested a record responsive to its initial request, to wit, the portions of the VITAL

Operations Manual that protect individual civil liberties. The ACLU requested that the ISP respond by December 28, 2009. The ISP did not respond.

15. On April 23, 2010, the ACLU sent its final follow-up letter to the ISP. *See* Exhibit 8. It requested certain records responsive to the initial FOIA request yet still not produced, to wit, records relating and referring to (a) STIC's access to private databases, (b) STIC's use of the internet, and (c) STIC's computer applications developed by private companies. This letter also reiterated all of the ACLU's outstanding requests from previous letters.

16. On May 7, 2010, the ACLU received its first contact from the ISP in over a year, in the form of a letter from the ISP's Acting Chief Legal Counsel. *See* Exhibit 9. He stated that he would be "unable to provide a response until May 14, 2010." *Id.*

17. More than three months later, the ACLU has received no further correspondence from the ISP.

**CLAIM FOR RELIEF UNDER
ILLINOIS FREEDOM OF INFORMATION ACT**

18. The ACLU incorporates by references paragraphs 1 through 17 of this Complaint.

19. In this FIOA enforcement lawsuit, the ACLU seeks disclosure of the records enumerated above in paragraph 7, all of which are subject to disclosure pursuant to FOIA, are not subject to any FOIA exemptions, are subject to the ACLU's initial FOIA request in September 2008, and are also subject to the specific ACLU follow-up requests described above.

20. This court has jurisdiction "to enjoin [the ISP] from withholding public records and to order the production of any public records improperly withheld from the person seeking access." 5 ILCS 140/11(d).

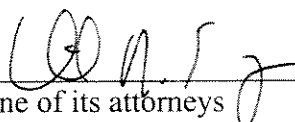
21. The ACLU is entitled to recover its reasonable attorney's fees pursuant to 5 ILCS 140/11(i).

WHEREFORE, the ACLU requests that this Court enter a judgment in its favor (1) ordering the ISP to promptly produce all of the requested records, (2) awarding the ACLU its attorneys' fees in prosecuting this action, and (3) awarding the ACLU any other appropriate relief.

September 21, 2010

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
OF ILLINOIS

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