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Cook County, IL

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IRIS Y. MARTINEZ
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COOK COUNTY, IL
2021CH01761

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

JUDICIAL WATCH, INC.,)

Plaintiff,)

vs.)

CITY OF EVANSTON,)

Defendant.)

Case No.: 2021CH01761

In Chancery

Injunction/Temporary Restraining Order

**COMPLAINT IN CHANCERY FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

NOW COMES Plaintiff, Judicial Watch, Inc., by and through its attorney, and prays this Court render a declaratory judgment and grant injunctive relief under the Freedom of Information Act ("FOIA"), 5 ILCS § 140/1, *et seq.* For its Complaint, Plaintiff states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 ILCS § 140/11(d).
2. Venue is proper in Cook County pursuant to 5 ILCS § 140/11(c).

PARTIES

3. Plaintiff Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia. Plaintiff seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. As part of its mission, Plaintiff regularly requests records from public bodies, analyzes the responses it receives, and disseminates its findings to the American public to inform them about "what their government is up to."

4. Defendant City of Evanston is a “public body” as defined by 5 ILCS § 140/2(a). It has possession, custody, and control of the public records to which Plaintiff seeks access. *See* 5 ILCS 140/2(c).

STATEMENT OF FACTS

5. On March 22, 2021, the Evanston City Council adopted Resolution 37-R27, authorizing the implementation of the Evanston Local Reparations Restorative Housing Program and Program Budget.

6. Under the Evanston Local Reparations Restorative Housing Program, the City has allocated \$10,000,000 to provide \$25,000 to Black/African American individuals who are either residents or direct descendants of residents to the exclusion of all other residents or direct descendants of residents.

7. Concerned that this program violates the Equal Protection Clause of the U.S. Constitution as well as other state and federal laws, Judicial Watch reviewed the City’s website for information about and justifications of the program.

8. Unsatisfied with the website’s content, on March 29, 2021, Judicial Watch submitted a FOIA request to the City seeking:

- A. Records identifying discriminatory housing policies and practices that the Restorative Housing Reparations Program seeks to remedy;
- B. Records identifying the ways in which the Restorative Housing Reparations Program will remedy discriminatory housing policies and practices;
- C. Records identifying all methods of remedying discriminatory housing policies and practices the Evanston City Council examined before enacting the Restorative Housing Reparations Program;
- D. Records identifying all reasons why the Evanston City Council enacted the Restorative Housing Reparations Program instead of any

alternative method of remedying discriminatory housing policies and practices;

- E. Records relating to the development of criteria by which recipients of Restorative Housing Reparations Program funds will be selected;
- F. Records identifying the ways in which providing Restorative Housing Reparations Program funds to the selected recipients will remedy discriminatory housing policies and practices; and
- G. Records relating to any other discrimination of any kind, regardless of racial group, the Evanston City Council considered remedying as part of the Restorative Housing Reparations Program or any other proposed reparation programs.

9. On April 5, 2021, the City responded to Judicial Watch's request. By email, the City stated:

The information requested can be found on the Reparations webpage: <https://www.cityofevanston.org/government/city-council/reparations>

Proposed Restorative Housing Program Guidelines can be found here: <https://www.cityofevanston.org/home/showpublisheddocument?id=62777>

Evanston Policies and Practices Directly Affecting the African American Community, 1900 - 1960 (and Present)

10. The email did not assert that the City conducted a search for the requested records, that its search was reasonably calculated to discover the requested records, or that the records on the website constitute the only responsive records in the City's possession, custody, or control. Nor did the email identify which records correspond to which category or categories of records requested by Judicial Watch.

11. Judicial Watch subsequently re-reviewed the City's website. Records located on the website and the links provided by the City are only responsive to categories A, B, C, and E above. None of the records are responsive to categories D, F, and G.

12. In addition, a review of the website shows that records exist but have not been posted on the website nor have been produced to Plaintiff. For example,

- Records concerning the consideration of reparations for health and mental health disparities as discussed during the January 22, 2021 Reparations Committee Meeting;
- Records about the inclusion of multi-family properties to the program as discussed during the August 28, 2020 Reparations Committee Meeting;
- Records created as part of the City's Equity and Empowerment Commission's two community meetings in July 2019;
- Records of the three town halls hosted by the Reparations Subcommittee; and
- Records updating the City Council on December 14, 2020.

COUNT ONE

(Failure to Conduct a Sufficient Search)

13. Plaintiff reaffirms paragraphs 1-12 as though fully restated herein.

14. Defendant is in violation of FOIA. Defendant's search was not reasonably calculated to discover all records responsive to Plaintiff's FOIA request.

15. Defendant's failure to conduct a reasonable search prevented Defendant from producing all non-exempt, responsive records to Plaintiff. Plaintiff therefore is being irreparably harmed by Defendant's failure to conduct a reasonable search for records responsive to Plaintiff's FOIA request as Plaintiff is being denied its legal right to inspect public records.

16. Plaintiff has no adequate remedy at law.

COUNT TWO

(Failure to Produce All Non-Exempt Responsive, Records)

17. Plaintiff reaffirms paragraphs 1-16 as though fully restated herein.

18. Because Defendant has not conducted a reasonable search, Defendant fails to produce all non-exempt records responsive to Plaintiff's FOIA request.

19. Plaintiff is being irreparably harmed by Defendants' failure to produce all non-exempt, responsive records as Plaintiff is being denied its legal right to inspect public records.

20. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that the Court: (A) Declare Defendant to be in violation of the Illinois Freedom of Information Act, 5 ILCS §140/1, *et seq.*; (B) Enjoin Defendant from continuing to withhold access to non-exempt public records responsive to Plaintiff's FOIA; (C) Order Defendant to conduct a search reasonably calculated to discover the requested records and produce an affidavit describing its search efforts and demonstrating that its search was conducted in good faith; (D) Order Defendant to produce any and all non-exempt, public records responsive to Plaintiff's FOIA request; (E) Order Defendant to prepare an affidavit identifying with specificity any and all public records responsive to Plaintiff's FOIA request that are claimed to be subject to legal exemption from disclosure and further identifying with specificity the reason(s) for any such claim of exemption; (F) Award Plaintiff reasonable attorneys' fees and costs; and (F) Order such other and further relief as the Court finds just and equitable.

Dated: April 13, 2021

Respectfully submitted,

/s/ Paul J. Orfanedes

Paul J. Orfanedes
Ill. Bar No. 6205255
Cook County Attorney ID No. 43158
JUDICIAL WATCH, INC.
425 Third Street, S.W., Suite 800
Washington, DC 20024
Tel: (202) 646-5172
Fax: (202) 646-5199

/s/ Christine Svenson

Christine Svenson
Ill. Bar No. 6230370
Cook County Attorney ID No. 44565
SVENSON LAW OFFICES
505 N. LaSalle Street, Suite 350
Chicago, IL 60654
Tel: (312) 467-2900
Fax: (312) 467-2902

Counsel for Plaintiff