

12-Person Jury

Hearing Date: 7/1/2020 10:00 AM - 10:00 AM
Courtroom Number: 2510
Location: District 1 Court
Cook County, IL

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL

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

GOLD RUSH AMUSEMENTS, INC. and)		
RICK HEIDNER,)	2020CH02670	8715548
)		
Plaintiffs,)		
)		
v.)		
)		
ILLINOIS GAMING BOARD,)		
)		
Defendant.)		

COMPLAINT

Plaintiffs GOLD RUSH AMUSEMENTS, INC. (“GOLD RUSH”) and RICK HEIDNER (together, the “Plaintiffs”), by the undersigned attorneys, KING & SPALDING and TAFT STETTINIUS & HOLLISTER LLP, bring this suit arising from Defendant the ILLINOIS GAMING BOARD’s (“IGB”) failure, in willful and intentional violation of the Illinois Freedom of Information Act, to comply with Plaintiffs’ requests for records regarding the IGB’s unauthorized and unlawful leak of Plaintiffs’ data, as well as other Plaintiffs’ requests for non-exempt public records, including the IGB’s disparate treatment of Plaintiffs compared to other licensees. In support of the Complaint, Plaintiffs state as follows:

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois 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 as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act (“FOIA”). 5 ILCS 140/1.

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2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of the people. 5 ILCS 140/1.

3. Under FOIA Section 1.2, “[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.” 5 ILCS 140/1.2.

4. Under FOIA Section 11(h), “[e]xcept as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.” 5 ILCS 140/11(h).

PARTIES

5. Plaintiff Gold Rush is an Illinois corporation with its principal place of business in Hoffman Estates, Cook County, Illinois. Gold Rush is a licensed terminal operator in the business of placing and operating video gaming terminals in establishments for use by the public.

6. Plaintiff Rick Heidner is an individual residing in Cook County, Illinois. Mr. Heidner is Gold Rush’s corporate secretary, and Gold Rush has identified him to the IGB as a person with significant influence or control (“PSIC”) of the video gaming business under applicable IGB regulations.

7. Mr. Heidner and Gold Rush are the FOIA requesters in this case.

8. Defendant IGB was established by the Illinois Riverboat Gambling Act (now retitled the Gambling Act), 230 ILCS 10/5(a), with its principal place of business in Cook County, Illinois. The IGB is the Illinois regulatory agency charged with administering, regulating, and

enforcing the system of video gaming in Illinois. The IGB's authority, established in the Video Gaming Act, 230 ILCS 40/78(a), covers all video gaming operations in Illinois.

BACKGROUND

9. This case arises from the IGB's pattern of targeted action against Gold Rush and Mr. Heidner, including (a) its unfair contribution to negative press against Mr. Heidner and Gold Rush; (b) its disparate treatment of Mr. Heidner and Gold Rush compared to other licensees; and (c) its illegal disclosure of sensitive personal information belonging to Mr. Heidner, his family, and his business associates.¹ During the IGB's orchestrated campaign against Plaintiffs, the IGB has abused the FOIA process to publicize negative information about the Plaintiffs while denying legitimate requests from the Plaintiffs.

10. In particular, the IGB has used FOIA as a sword to quickly disseminate harmful information about Gold Rush and Mr. Heidner, yet it hides behind the shield of extensions and thin assertions of exemptions when Gold Rush and Mr. Heidner seek legitimate information from the IGB via FOIA.

IGB's Unfair and Disparate Treatment of Different FOIA Requests

11. On October 11, 2019, the first of a series of negative articles appeared in the *Chicago Tribune* ("*Tribune*") relating to Mr. Heidner and Gold Rush. These articles speculated about whether Mr. Heidner had disclosed certain information to the IGB during the application for and granting of Gold Rush's video gaming terminal operator license. He had.

¹ The IGB's purposeful disclosure of personally identifiable information relating to Mr. Heidner, his family members, and other individuals associated with Mr. Heidner or Gold Rush is the subject of pending litigation in the Court of Claims. *Rick Heidner et al. v. Illinois Gaming Board*, Case No. 20CC2258 (Ill. Ct. Cl.).

12. Rather than fairly confirming that Mr. Heidner had made complete and accurate disclosures, the IGB made a public statement that the “current IGB board is newly appointed and did not participate in the approval or renewal process for [Mr. Heidner].”

13. On December 17, 2019, the IGB initiated an unprecedented Disciplinary Complaint without a proper factual basis against Gold Rush that sought the severe penalty of license revocation despite Gold Rush’s demonstrated history of compliance.

14. On December 18, 2019, the IGB’s Director of Policy and Special Projects tipped off the *Tribune* about the existence of the then-nonpublic Disciplinary Complaint. The *Tribune* then submitted a FOIA request to the IGB that requested the Disciplinary Complaint and sent a text message to the IGB’s Director of Policy and Special Projects to confirm that the FOIA request had been submitted.

15. A mere 33 minutes after the reporter’s FOIA request had been submitted, the IGB provided a copy of the Disciplinary Complaint against Gold Rush, despite the IGB’s policy governing “Official Documents and Manuals,” which dictates that “[i]nformation concerning investigations, procedures, or operations of the agency should not be discussed outside the agency” The IGB’s policy further states, “***Media inquiries should be referred to the Administrator or General Counsel.***” (Emphasis added).

16. Phone records reveal that the IGB’s Director of Policy and Special Projects had several phone calls with the reporter the afternoon and evening of December 18, 2019, undoubtedly to assist the *Tribune* in preparing another negative article about Gold Rush and Mr. Heidner. Within hours, the *Tribune* published another negative story about Mr. Heidner and Gold Rush, focusing on the Disciplinary Complaint.

17. The IGB's response to the *Tribune* stands in stark contrast to the inadequate and improper responses it gave to the Plaintiffs when they submitted similar FOIA requests.

18. For example, on December 24, 2019, counsel for Gold Rush and Mr. Heidner submitted FOIA Request 2019-398 to the IGB, which asked for all communications between the IGB and the *Tribune* regarding Mr. Heidner and Gold Rush to understand how information relating to the Disciplinary Complaint was shared with the *Tribune*, as well as communications between the IGB and five specific individuals with the Office of the Governor.

19. Plaintiffs' FOIA Request 2019-398 did not receive the same expedited review and response by the IGB as the *Tribune*'s FOIA request did in December 2019. Rather, as set forth below, on the date of the statutory deadline, the IGB invoked an extension of time to claim five additional business days to respond to the FOIA requests related to the IGB's tip-off to the *Tribune*, and then later stated its need for approximately 60 more days to respond to the FOIA requests related to the IGB's communications with the Governor's office.

20. On January 9, 2020, the IGB produced materials that were incomplete and necessitated follow-up FOIA requests from Gold Rush. Specifically, despite a request for all communications between the IGB and the *Tribune*, the IGB's response omitted text messages between IGB staff and a *Tribune* reporter, as well as phone records reflecting conversations between IGB staff and the same *Tribune* reporter.

21. In other circumstances, the IGB has missed deadlines for responding to FOIA requests issued on behalf of Gold Rush and Mr. Heidner, without invoking an extension of time or even acknowledging the request.

22. In fact, with respect to its failure to comply with statutory FOIA deadlines, counsel for the IGB brazenly suggested that the IGB is the only victim of the agency's failure to comply

with statutory deadlines, stating, “Had we asserted the statutory extension, the Board’s response would only have been a day late . . . *the only consequence of an untimely FOIA response is the agency’s inability to assert that a request is burdensome.*” (Emphasis added).

23. Unfortunately, this cavalier statement is demonstrative of the IGB’s attitude toward FOIA requests issued by Plaintiffs. Of course, the IGB’s loss of potential defenses to the production of documents is not the only consequence of the IGB’s disregard of FOIA’s deadlines and requirements. Plaintiffs are plainly prejudiced when the IGB delays providing information that is relevant to the defense of Plaintiffs’ reputations and Gold Rush’s gaming license. Moreover, when the IGB ignores the mandates of FOIA, public access, government transparency, and accountability to the citizens of Illinois—the core principles of FOIA—are the real victims.

24. As set forth in further detail herein, as part of its unfair treatment of Gold Rush and Mr. Heidner, the IGB has consistently responded to legitimate FOIA requests issued on behalf of Gold Rush and Mr. Heidner by delaying responses, asserting inapplicable exemptions, and making incomplete productions. The IGB’s FOIA responses are inconsistent with the law and policies favoring transparent government and are evidence of the IGB’s disparate treatment of Gold Rush and Mr. Heidner, licensees in good standing who have a history of compliance with Illinois gaming laws and regulations.

JANUARY 27, 2020 - FOIA REQUEST 2020-024 (DATA BREACH)

25. On January 24, 2020, a local TV station reported that the IGB “sent a letter to the office of Illinois’ legislative leaders on January 10, 2020” (the “Letter”) to disclose that an IGB employee “improperly accessed confidential information on IGB licensees and applicants and

disclosed this information without authorization or justification to three federal government entities” (the “Data Breach”).²

26. Upon learning of the Data Breach, Gold Rush and Mr. Heidner had a strong suspicion that the IGB had improperly and illegally leaked Mr. Heidner’s personal information, which derived from sensitive and detailed financial, banking, and business information that he was required to submit as part of the IGB’s licensing process. Unfortunately, those suspicions turned out to be well-founded.

27. However, before the IGB provided untimely notice confirming that Mr. Heidner was a victim of the Data Breach, counsel for Mr. Heidner proactively issued FOIA requests on January 27, 2020 in order to determine the scope of the potential damage to Mr. Heidner (“FOIA Request 2020-024”).

28. FOIA Request 2020-024 sought:

- 1) Documents sufficient to identify the IGB licensees and applicants whose information was disclosed in the Leak [(“Part One”)];
- 2) Documents and communications disclosed to the three federal agencies in the Leak [(“Part Two”)];
- 3) The Letter [(“Part Three”)];
- 4) Communications pertaining to the Leak that relate to Gold Rush Amusements and/or Rick Heidner [(“Part Four”)]; [and]
- 5) All documents and communications regarding the IGB’s response to this FOIA request, including but not limited to a custodian list, search terms, and internal correspondence regarding the IGB’s document collection process [(“Part Five”)].

A true and accurate copy of FOIA Request 2020-024 is attached hereto as **Exhibit A**.

² Mark Maxwell, Illinois Gaming Board Staffer Leaked Sensitive Information to Feds: Letter (January 24, 2020 at 4:35PM), WCIA, <https://www.wcia.com/news/capitol-news/illinois-gaming-board-staffer-leaked-sensitive-information-to-feds-letter>.

29. On February 3, 2020, the IGB produced some records responsive to Parts One and Three of the request. A true and accurate copy of the IGB's response to FOIA Request 2020-024 is attached hereto as **Exhibit B.**

30. Regarding Part Two of the request, IGB withheld the records pursuant to Section 7(1)(a) and 7(1)(n) of the Illinois FOIA "with the exception of the attached letters sent to the federal entities who received the unauthorized disclosure." *See* Exh. B.

31. The IGB redacted the names of the federal entities on these letters purportedly "to protect information exempt from FOIA under Section 7(1)(n)." *See* Exh. B.

32. Contrary to the IGB's assertion under FOIA Section 7(1)(n), it is unclear how the withheld records could relate to the "adjudication" of any employee disciplinary matters, and the First District Appellate Court has held in *Kalven v. City of Chicago* that Section 7(1)(n) does not apply to *investigations*, but only to *adjudications*. Upon information and belief, the IGB was aware of the *Kalven* decision when it willfully and improperly asserted Section 7(1)(n).

33. Moreover, the IGB has not identified any other state or federal law in its response that would make the records exempt under Section 7(1)(a).

34. Upon information and belief, the IGB was aware of the plain text of Section 7(1)(a), which requires some other state or federal law to "specifically prohibit" disclosure, when it willfully and improperly failed to identify any such state or federal law.

35. Regarding Part Four of the request, the IGB withheld the records pursuant to Sections 7(1)(a), 7(1)(m), and 7(1)(n). *See* Exh. B (The IGB mislabeled the Part Four as the "third request" in its response letter.).

36. The IGB's denial of Part Four of the request based on 7(1)(a) and 7(1)(n) suffers from the same flaws as Part Two of the request.

37. The IGB also failed to establish that any of the withheld material is subject to attorney-client or other such privileges under Section 7(1)(m).

38. Regarding Part Five of the request, the IGB withheld the records under Sections 7(1)(m) and 7(1)(n). *See* Exh. B.

39. The IGB's denial of Part Five of the request suffers from the same flaws as Parts Two and Four of the request.

40. Much of the information withheld from Plaintiffs is Plaintiffs' own personal information that the IGB improperly and illegally disclosed to the three unnamed and improperly redacted federal agencies.

41. On February 17, 2020, Plaintiffs attempted to resolve IGB's willful violations without the need for litigation, to no avail. Specifically, Plaintiffs sent the IGB a demand letter that noted the deficiencies in the IGB's responses and gave the IGB an opportunity to comply with FOIA. A true and accurate copy of the demand letter is attached hereto as **Exhibit C**.

42. On February 25, 2020, the IGB responded to Plaintiffs' February 17, 2020 letter, and did not make any response to Plaintiffs' arguments regarding FOIA Request 2020-024 or cure its deficient public records production with respect to FOIA Request 2020-024.

43. On February 27, 2020, counsel for Plaintiffs conferred with an IGB attorney who confirmed that the parties were at an impasse with respect to FOIA Request 2020-024.

44. As of this date of filing, the IGB has not produced all records responsive to FOIA Request 2020-024 and has willfully violated FOIA.

DECEMBER 24, 2019 - FOIA REQUEST 2019-399 (LAREDO OUTSIDE COMMUNICATIONS)

45. In December 2019, Gold Rush reported to the IGB that one of its competitors had engaged in a sale transaction that constituted an illegal inducement under applicable video gaming

statutes and IGB regulations. Specifically, Gold Rush had confirmed a long-held suspicion that a November 2018 deal involving Laredo Hospitality Ventures, LLC (“Laredo”), a video gaming establishment chain, Illinois Café and Service Company, LLC (“ICSC”), another video gaming establishment chain, and Midwest SRO, LLC (“Midwest”), a video gaming terminal operator and competitor to Gold Rush, was structured to facilitate Midwest’s payment of millions of dollars to gaming establishment owners to become the terminal operator for their establishments (the “Transaction”). With limited exceptions, it is illegal for a terminal operator to provide anything of value to establishment owners in exchange for the placement of its video gaming terminals in those establishments.

46. The IGB’s handling of the Transaction, as contrasted with the IGB’s handling of the allegations contained within the IGB’s Disciplinary Complaint against Gold Rush, provides significant evidence of the IGB’s bias against Gold Rush and Mr. Heidner.

47. In order to obtain evidence of the IGB’s disparate treatment of Gold Rush when compared to one of its competitors that engaged in the actual payment of an illegal inducement, on December 24, 2019, Plaintiffs, through their counsel, submitted FOIA Request 2019-399 to the IGB for communications between the IGB and the parties to the Transaction from December 1, 2017 to the present. A true and accurate copy of FOIA Request 2019-399 is attached hereto as

Exhibit D.

48. On January 2, 2020, the IGB sought a five-business day extension. A true and accurate copy of the IGB’s January 2, 2020 response is attached hereto as **Exhibit E.**

49. On January 9, 2020, IGB claimed that the requested records are “confidential under 230 ILCS 10/6(d) as incorporated through 230 ILCS 40/80” and exempt under Section 7(1)(a) of

FOIA. A true and accurate copy of the IGB's January 9, 2020 response is attached hereto as **Exhibit F.**

50. Section 10/6(d) of the Illinois Gambling Act states, in relevant part, that “[a]ll information, records, interviews, reports, statements, memoranda or other data supplied to or used by the application for a license or a renewal under this Act shall be privileged, strictly confidential and shall be used only for the purpose of evaluating an applicant for a license or a renewal.” 230 ILCS 10/6(d).

51. Plaintiffs did not request records that were “supplied to or used by the application for a license or renewal.” *See* Exh. D.

52. Plaintiffs' request sought information regarding communications between IGB and the parties to the Transaction about a potential sale transaction. *See* Exh. D.

53. With respect to the Transaction, the IGB wrote a letter on October 26, 2018 to the parties to the potential sale transaction stating its position that under the Video Gaming Act and IGB rules, the IGB had no authority to approve or deny the Transaction or consider a renewal of license based upon a potential transaction, which is entirely inconsistent with the IGB's current attempt to assert Section 6(d). Significantly, in the IGB's October 26, 2018 letter, IGB staff raised the exact same concerns that Gold Rush and Mr. Heidner have raised to the IGB concerning the Transaction. The Transaction that was the subject of the IGB's October 26, 2018 letter closed on or about November 16, 2018.

54. The IGB's disparate treatment of Gold Rush and its competitor raises serious concerns regarding the fundamental fairness of the IGB as well as its enforcement priorities. Moreover, the IGB's actions are evidence that the IGB's purported regulatory actions and enforcement powers have been wielded in an arbitrary and capricious manner.

55. In its January 9, 2020 response to FOIA Request 2019-399, the IGB also claimed that the request was unduly burdensome under Section 3(g) of FOIA, “given the Gaming Board’s limited staff and resources.” *See* Exh. F.

56. Section 3(g) of FOIA states in relevant part, “[i]f any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying the reasons why it would be unduly burdensome and *the extent to which compliance will so burden the operations of the public body.*” 5 ILCS 140/3(g) (emphasis added).

57. IGB did not specify the reasons why the search itself would be unduly burdensome or the extent to which compliance would burden the operations of the IGB. *See* Exh. F.

58. FOIA expressly states that “[t]he General Assembly recognizes that this Act imposes fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements. The General Assembly declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding.” 5 ILCS 140/1.

59. By failing to include this information required under FOIA Section 3(g), IGB not only violated the letter and the spirit of the provision, but also deprived Plaintiffs of a good-faith opportunity to determine whether the request should be narrowed.

60. On February 17, 2020, Plaintiffs attempted to resolve IGB’s willful violations without the need for litigation, to no avail. Specifically, Plaintiffs sent the IGB a demand letter that noted the deficiencies in the IGB’s responses and gave the IGB an opportunity to comply with FOIA. *See* Exh. C.

61. On February 25, 2020, the IGB responded to Plaintiffs' February 17, 2020 letter, and did not make any response to Plaintiffs' arguments regarding FOIA Request 2019-399 or cure its deficient public records production with respect to FOIA Request 2019-399.

62. On February 27, 2020, counsel for Plaintiffs conferred with an IGB attorney who confirmed that the parties were at an impasse with respect to FOIA Request 2019-399.

63. As of this date of filing, IGB has not produced all records responsive to FOIA Request 2019-399 request and has willfully violated FOIA.

DECEMBER 24, 2019 - FOIA REQUEST 2019-400 (LAREDO INTERNAL COMMUNICATIONS)

64. On December 24, 2019, Plaintiffs, through their counsel, also submitted FOIA Request 2019-400 to the IGB for internal communications regarding the Transaction, from December 1, 2017 to present. A true and accurate copy of the FOIA Request 2019-400 is attached hereto as **Exhibit G.**

65. On January 2, 2020, the IGB sought a five-business day extension. A true and accurate copy of the IGB's response is attached hereto as **Exhibit H.**

66. Just as it did with regard to Plaintiffs' request for communications between the IGB and the parties to the Transaction (*see* Paragraphs 45-59, *supra*), and asserting the same inapplicable exemptions, the IGB improperly denied Plaintiffs' request for internal IGB communications about Laredo. A true and accurate copy of the IGB's response is attached hereto as **Exhibit I.**

67. As of this date of filing, IGB has not produced all records responsive to this request and has willfully violated FOIA.

COUNT I – JANUARY 24, 2020 - FOIA REQUEST 2020-024 (DATA BREACH)

68. The above paragraphs are incorporated by reference.

69. The IGB is a public body under FOIA.

70. The records sought in FOIA Request 2020-024 are non-exempt public records of the IGB.

71. The IGB has violated FOIA by failing to produce all non-exempt records responsive to FOIA Request 2020-024.

72. IGB's violations were willful and intentional.

COUNT II – DECEMBER 24, 2019 - FOIA REQUEST 2019-399 (LAREDO OUTSIDE COMMUNICATIONS)

73. The above paragraphs are incorporated by reference.

74. The IGB is a public body under FOIA.

75. The records sought in FOIA Request 2019-399 are non-exempt public records of IGB.

76. The IGB has violated FOIA by failing to produce all non-exempt records responsive to FOIA Request 2019-399.

77. The IGB's violations were willful and intentional.

COUNT III – DECEMBER 24, 2019 - FOIA REQUEST 2019-400 (LAREDO INTERNAL COMMUNICATIONS)

78. The above paragraphs are incorporated by reference.

79. The IGB is a public body under FOIA.

80. The records sought in FOIA Request 2019-400 are non-exempt public records of the IGB.

81. The IGB has violated FOIA by failing to produce all non-exempt records responsive to FOIA Request 2019-400.

82. The IGB's violations were willful and intentional.

WHEREFORE, Plaintiffs ask that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;
- ii. declare that the IGB has violated FOIA by failing to produce all documents responsive to FOIA Requests 2020-024, 2019-399, and 2019-400 and instead improperly asserting exemptions under FOIA;
- iii. enjoin the IGB from withholding public records responsive to FOIA Requests 2020-024, 2019-399, and 2019-400;
- iv. order the IGB to immediately produce to Plaintiffs the records responsive to FOIA Requests 2020-024, 2019-399, and 2019-400;
- v. order the IGB to pay civil penalties pursuant to 5 ILCS 140/11(j) for willful, intentional, and bad faith violations of FOIA;
- vi. award Plaintiffs reasonable attorneys' fees and costs pursuant to 5 ILCS 140/11(i);
and
- vii. award such other relief the Court considers appropriate.

Dated: March 3, 2020

RESPECTFULLY SUBMITTED,

/s/ Patrick M. Collins

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