

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

LUCY PARSONS LABS,	)	
	)	
Plaintiff,	)	
	)	18 CH 01393
v.	)	
	)	Judge Peter Flynn
CITY OF CHICAGO MAYOR'S	)	
OFFICE,	)	
	)	
Defendant.	)	

**PLAINTIFF'S MOTION TO RECONSIDER**

Based upon records Plaintiff received only after the Court's ruling, Plaintiff has learned the details of the Tribune disclosure referenced by the City regarding records related to the Amazon HQ2 bid. It is now clear that the City produced these records two weeks before the FOIA request at issue in this case was made. There is no justification for providing these records to Tribune, but not LPL. Nor did Mayor's Office search Robert Rivkin's emails, the Mayor's point person on the Amazon project, and also one of the people encompassed by the Tribune's request. This was not the kind of good faith dialogue required by Section 3(g). Plaintiff's motion to reconsider should be granted, and the City should be required to confer with Plaintiff in good faith.

**I. LEGAL STANDARDS**

A motion to reconsider may be based on "newly discovered evidence, a change in the law, or errors in the court's application of the law." *Hajicek v. Nauvoo Restoration, Inc.*, 2014 IL App (3d) 121013, ¶ 12. Where a court has erred in its ruling, reconsideration is appropriate. *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 29 ("We commend the trial court for taking the matter for reconsideration in order to correct an erroneous ruling. Therefore, we are not

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persuaded by the plaintiffs' argument and we find that Zaryczny met the burden for reconsideration."); *see also MB Fin. Bank, N.A. v. Allen*, 2015 IL App (1st) 143060, ¶¶ 34 ("Because MBF's request for deficiency judgments contained in the motion to confirm was denied in error, the circuit court erred in denying the motion to reconsider. Therefore, we reverse the September 10, 2014, order denying MBF's motion to reconsider.").

## II. ARGUMENT

On October 26, 2017, Mayor's Office produced over 1,200 pages of emails and records to the Tribune related to Chicago's bid for Amazon's HQ2. Ex. A. LPL's request for records related to Amazon's HQ2 came only two weeks later on November, 8, 2017. Yet Mayor's Office failed to produce to LPL the responsive records that it had already gathered and produced to Tribune. This is the opposite of responding to the FOIA request in good faith or engaging in the narrowing process under Section 3(g) in good faith. And Defendant conceded that FOIA (Section 3(g)) requires public bodies to negotiate in good faith. Ex. B at 69:21-70:10 (8/9/18 hearing). Rather, as the Court stated, Defendant's response to the FOIA request was "the equivalent of slamming the door shut" and "fairly characterize[d] as a door slam." *Id.* at 68:10-22. As the Court put it, Defendant's response to the FOIA request was the equivalent of a parent telling his child to "shut-up." *Id.* at 71:7-72:16.

Simply producing to LPL what was already produced to Tribune also eliminated concerns regarding selecting specific names or email addresses to search. Specific names and emails had already been identified and searched. Moreover, Robert Rivkin, the Mayor's point person coordinating Chicago's bid for Amazon's HQ2 was identified.<sup>1</sup> At a minimum, emails and

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<sup>1</sup> *See* Mayor's Press Release (Sept. 27, 2017) ("The effort is being led for the Mayor's Office by Deputy Mayor Robert S. Rivkin[.]") *available at* [https://www.cityofchicago.org/city/en/depts/mayor/press\\_room/press\\_releases/2017/september/AmazonCoalition.html](https://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2017/september/AmazonCoalition.html).

records related to Rivkin and his email address should have been searched. Mayor's Office failed to respond to the FOIA request in good faith.

Defendant failed to produce responsive records that it had just produced to Tribune only two weeks earlier, and it did not search the Amazon point person's emails. More generally, rather than engaging in a dialogue with LPL and coming back with some suggestions or proposed searches, Mayor's Office just told LPL to "try again." As a result, this Court should grant LPL's motion to reconsider.

### III. CONCLUSION

For these reasons, the Court should grant Plaintiff's motion to reconsider.

RESPECTFULLY SUBMITTED,

*/s/ Joshua Hart Burday*

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**CERTIFICATE OF SERVICE**

I, Joshua Hart Burday, certify that on September 6, 2018, I caused the foregoing Plaintiff's Motion to Reconsider to be served via electronic mail on all counsel of record.

*/s/ Joshua Hart Burday*



## OFFICE OF MAYOR RAHM EMANUEL

CITY OF CHICAGO

October 26, 2017

Lauren Zumbach  
[lzumbach@chicagotribune.com](mailto:lzumbach@chicagotribune.com)

Dear Ms. Zumbach:

On behalf of the City of Chicago Office of the Mayor ("Mayor's Office"), I am responding to your Freedom of Information Act ("FOIA") request dated October 19, 2017, in which you are seeking:

*All emails and texts sent by, received by or copied on the following individuals' accounts – Mayor Rahm Emanuel, Robert Rivkin, Adam Collins, Aarti Kotak, Danielle DuMerer, Farzin Parang, David Reifman and Andrea Zopp – between Sep. 7, 2015 and the present that contain any form of the following terms: "Amazon", "Bezos", "HQ2", "Jamie", "Gorelick." I am requesting not only the emails and texts contained on government or publicly funded accounts but also any private or personally funded line or device in which such public business was discussed. This request also includes lines or devices assigned to or owned by other city staff employees, if used by any of the individuals mentioned above.*

First, please be advised that Danielle DuMere and David Reifman are not employed by the Mayor's Office. As such, the Mayor's Office has no responsive records for these two individuals. Please note that each City department is a separate "public body" under Section 2 of FOIA. 5 ILCS 140/2(a); Duncan Publishing, Inc. v. City of Chicago, 304 Ill. App. 3d 778, 784 (1st Dist. 1999) ("Clearly, each of the individual departments are subsidiary bodies of the City and are 'public bodies' as defined by the FOIA."). A FOIA request must be directed to the Department that maintains the records you seek. The Mayor's Office completed a search for the Mayor's Office employees listed above.

Second, regarding the portion of your request seeking records residing on any non-government email account of Robert Rivkin, Adam Collins, Aarti Kotak, Farzin Parang, and Andrea Zopp, the department has no responsive documents. Regarding the portion of your request seeking records residing on a non-government email account of Mayor Rahm Emanuel, I am producing herewith responsive records. On a quarterly basis, the Mayor's Office receives all emails concerning City business residing on the Mayor's non-government email accounts. At the end of the third quarter, the Mayor's Office received emails from June through September, 2017. Emails from October will become available at the end of the fourth quarter.

Personal email addresses have been redacted from the produced records pursuant to Section 7(1)(b) of FOIA, which exempts “private information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.” 5 ILCS 140/7(1)(b). Section 2(c-5) defines “private information” as:

unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

5 ILCS 140/2(c-5). Because personal email addresses are specifically exempted under Section 7(1)(b), they have been properly withheld.

Third, with respect to the City emails for Mayor Rahm Emanuel, Adam Collins, Aarti Kotak, Farzin Parang, and Andrea Zopp, please be advised that your request is unduly burdensome. Section 3(g) of FOIA provide that “requests for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information.”

A search for the City email accounts for the Mayor’s Office individuals listed above resulted in over 24,000 total hits. While the emails have not been reviewed, it is likely that many of these are news clips. Additionally, we have City employees with the name “Jamie”, and searching this term on its own means any email sent or received by the above listed individuals including a city employee named “Jamie” will be returned as responsive. In order to produce the requested records, approximately 24,000 emails and correspondence would need to be reviewed, and information exempt under FOIA would need to be redacted. It is estimated that it would take, at a minimum, 1 hour to review, redact, and produce 20 documents. Therefore, it would take approximately to 1,200 to 2,400 hours to review, redact, and produce the emails and correspondence that you requested. For these reasons, the staff and/ or resources necessary for your FOIA request are unduly burdensome on the daily operations of the Mayor’s Office.

Therefore, it is requested that your FOIA request be narrowed. If you would like assistance in narrowing your request, please contact me, and I will assist you. Otherwise, as explained above, as your FOIA request is currently drafted, the Mayor’s Office is unable to respond to the request.

If you agree to narrow your request, you must submit a revised written request to my attention. The Mayor’s Office will take no further action or send you any further correspondence unless and until your current request is narrowed in writing. If we do not receive your narrowed request within fourteen (14) calendar days of the date of this letter, your current request will be denied.

In regards to the portion of your request seeking texts, please note that the City’s Digital Policy dictates that employees may not use any text messaging feature on City-issued phones, except in certain circumstances, and in those circumstances employees must forward the text message to their City email account. Therefore, any request for text messages must be formulated as a request for a search of that employee’s emails, and any text messages that meet the search parameters of a requested email search will be produced in that manner.

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Finally, with respect to your request for “lines or devices assigned to or owned by other city staff employees, if used by any of the individuals mentioned above,” the Mayor’s Office has no reliable way of determining whether the devices or lines of other city staff were used by any of the above individuals in order to respond to this portion of your request, and therefore has no responsive records.

In the event that we do not receive a narrowed request and your current FOIA request is therefore denied, you have the right to have a denial reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General, 500 S. 2nd Street, Springfield, Illinois 62706, (877) 299-3642. You also have the right to seek judicial review of your denial by filing a lawsuit in Cook County Circuit Court.

Sincerely,

A handwritten signature in blue ink that reads "Shannon Leonard". The signature is cursive and includes a large loop at the end.

Shannon Leonard  
Freedom of Information Officer

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT - CHANCERY DIVISION

LUCY PARSONS LABS, )

Plaintiff, )

-vs- )

No. 18 CH 1393

CITY OF CHICAGO'S MAYOR'S )

OFFICE, )

Defendant. )

TRANSCRIPT OF PROCEEDINGS had in the  
above-entitled cause in Courtroom 2408 of the  
Richard J. Daley Center, on the 9th day of  
August, A.D. 2018, commencing at 10:33 a.m.

BEFORE: HONORABLE PETER FLYNN

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1 mayor's office needs the following search,  
2 parameters.

3           One, the email addresses or  
4 employee names of the accounts you wish  
5 searched.

6           Two, keywords you wish to search  
7 for.

8           And, three, the timeframe to be  
9 searched."

10           In the context of this particular  
11 discussion, that is the equivalent of slamming  
12 the door shut.

13           Now, three full paragraphs later  
14 near the bottom of the request, there is a  
15 paragraph which says, "It is necessary that  
16 your FOIA request be narrowed and clarified.  
17 If you would like assistance in narrowing your  
18 request, please contact me, and I will assist  
19 you."

20           But that's separated by a whole  
21 bunch of text from what I really think I have  
22 to fairly characterize as a door slam.

1 I'm going to step back from that  
2 sort of pejorative adjective by pointing out  
3 that that paragraph, the one which begins "in  
4 order to effectively run an email search,"  
5 reads to me like a form letter. It may well be  
6 that it is part of a form.

7 Certainly, if I were the mayor's  
8 office, I would be amazed if I didn't have a  
9 bunch of form letters for this type of request.  
10 But form letters don't do the job all that  
11 well.

12 If the paragraph, "it is  
13 necessary that your FOIA request be narrowed  
14 and clarified," had immediately followed the  
15 reference to section 3(g) of FOIA, it would  
16 have a lot more force in the context of  
17 discussion we're having than it does separated  
18 by three other paragraphs and another reference  
19 to private information and all sorts of stuff.  
20 It's not a wonderful response.

21 MS. MATHEW: Even if it's not a  
22 wonderful response, your Honor, it still meets

1 with the FOIA obligations that the mayor's  
2 office has. Specifically --

3 THE COURT: Which do not include to  
4 negotiate in good faith?

5 MS. MATHEW: It does, your Honor, but  
6 based on the quantity of FOIA requests received  
7 by the mayor's office, it does make sense that  
8 their offer is placed in a written  
9 communication that they are willing to help the  
10 requester narrow the search.

11 Just looking at the language of  
12 the email portion of the search, unlike the bid  
13 portion, it is written very broadly.

14 It says, "any and all  
15 communications between the mayor's office and  
16 Amazon." It doesn't talk about the bid.

17 There are several ways they could  
18 have attempted to be more specific in their  
19 asking of emails.

20 Again, I think the mayor's office  
21 was acting in good faith by providing the  
22 records that it knew that the requester was

1 asking for, but in the instance of any and all  
2 communications between the mayor's office and  
3 Amazon, I think it was appropriate and met its  
4 obligation under FOIA, for the FOIA officer to  
5 indicate it was burdensome as written because  
6 of the categorical nature of the request --

7 THE COURT: That's not what I'm  
8 focusing on. I already agreed with you that  
9 the way it's written, it would be unduly  
10 burdensome, and the way it's written on the  
11 public interest and information would be slim  
12 to none unless you're a librarian and really  
13 want to know what the mayor' office people are  
14 reading or something like that. That's not my  
15 problem.

16 My problem is that -- there is a  
17 wonderful paragraph in a book by S.J. Perelman  
18 who only somebody as old as me has ever heard  
19 of called Under the Spreading Apathy. He was a  
20 humorist of the early to mid 20th Century. He  
21 was remarkably funny most of the time.

22 In this paragraph, he describes a

1 father and son who are walking along. The son  
2 said to the father, "Why is the sky blue?"  
3 Then Perelman writes, "Shut up, the father  
4 explained."

5 Well, we have all been on the  
6 receiving end of a shut-up explanation. Right?  
7 This letter really reads like that. It does.

8 I can't accept the argument that  
9 we have such a huge volume of requests from  
10 other people that we cannot pay attention to  
11 yours because if that were true, FOIA would  
12 cease to exist.

13 On the other hand, the punitive  
14 effect of getting attorney's fees by filing a  
15 lawsuit in response to a letter like this is  
16 potentially overkill.

17 MS. MATHEW: Your Honor --

18 THE COURT: I'm not happy with either  
19 side of that balance.

20 MS. MATHEW: I understand, but I do  
21 think it's fair for the FOIA officer in the  
22 mayor's office to rely on her experience as the