

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS**

JOHN KIEKEN,	)	
	)	
Plaintiff,	)	
v.	)	No.
	)	
CITY OF JOLIET, a municipal corporation,	)	
	)	
Defendant.	)	

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiff, John Kieken, by his attorneys, pursuant to 5 ILCS 140/1, *et. seq.*, complains of Defendant City of Joliet, as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, John Kieken (“Kieken”), is resident of the Village of Manhattan, Will County, Illinois.
2. Kieken is one of the founders of Stop NorthPoint, LLC (“Stop NorthPoint”). Stop NorthPoint is an Illinois limited liability company formed as a grassroots movement to preserve and protect Will County area residents and neighbors from the catastrophic consequences that will result if NorthPoint is permitted to proceed with the development of its proposed massive industrial park and trucking terminal.
3. Defendant, City of Joliet (“Joliet”), is an Illinois municipal corporation.
4. Jurisdiction is proper based in that Joliet is an Illinois municipal corporation and Plaintiff’s causes of action arose in Illinois.
5. Venue is proper given that Joliet is in Will County and Plaintiff’s causes of action arose in Will County.

6. On or about December 15, 2020, the City of Joliet approved an annexation and development agreement with EastGate for the approval of the annexation of 1,257 acres of unincorporated land into the City of Joliet. EastGate is a related entity to NorthPoint. Since then, Joliet and NorthPoint/EastGate entered into an Amended Annexation Agreement. Joliet's City Council is scheduled to hold public hearings and vote on whether to approve the Amended Annexation Agreement on December 21, 2021.

7. NorthPoint's proposed Development ("Development" or "Project") is enormous in size and scope. If permitted to proceed, the Development would be one of the largest of its kind ever built, approximately 4.5 times the size of Midway Airport.

8. The Project will consist primarily of warehouses where trucks would move goods to and from the distribution center to their destination. The facility would gain rail access by connecting the Development to the CenterPoint Intermodal Center ("CenterPoint"), a 6,400-acre intermodal complex adjacent to the I-55/I-80 interchange.

9. The Development is expected to generate more than 10,000 semi-trucks per day. There is immense public opposition to the Project and lawsuits have been filed to prevent the Project from proceeding.

10. Trucks exiting off of Interstates 80 and 55 would be required to travel approximately nine (9) miles to reach the trucking terminal/warehouses using local roads of Elwood and Manhattan. The Development would result in increased traffic congestion and backups on these already overly congested roads that were never designed to handle the volume of truck traffic that would be caused by the Development.

11. Truck traffic traveling to and from the trucking terminal/warehouses will have to traverse over roads that are not built to support heavy weight trucks. These roads include Walter

Strawn Drive, West Hoff Road, West Mississippi Avenue, Manhattan Road, Arsenal Road, South Elwood International Port Road, and others. The heavy increased volume of semi-truck and other traffic would severely damage local roadways and burden taxpayers with increased maintenance and road repair costs. There are serious public safety concerns associated with the Development along with the environmental impact the Development will have on the region.

**COUNT I (ILLINOIS FREEDOM OF INFORMATION ACT)**

12. Plaintiff realleges and incorporates by reference paragraphs 1-11.

13. Defendant, City of Joliet, and its various departments and agencies, are subject to the Illinois Freedom of Information Act (“FOIA” or “Act”). 5 ILCS 140/1, *et seq.*

14. On or about November 15, 2021, Kieken submitted a FOIA request to Joliet requesting:

Any/all traffic studies, any/all environmental studies, and documents from any agency, department, company, nonprofit or organization of any type or manner surrounding and/all traffic studies and any/all environmental studies related to NorthPoint Development, Compass Business Park, Compass Global Logistics Hub, East Gate Logistics Park Chicago LLC, and/or Wakal Limited Partnership.

(11/15/21 FOIA Request, a copy of Joliet’s Response with the Requests is attached hereto as Exhibit 1).

15. On November 19, 2021, Joliet denied the Request stating:

This letter is to inform you that your FOIA request is being denied for the following reasons:

5 ILCS 140/7(1)(f); Preliminary drafts or notes in which opinions are expressed or policies are formulated, unless the record is publicly cited and identified by the head of the public body.

No records exist with regard to environmental studies.

...

You also have the right to judicial review under 5 ILCS 140/11.

(Exhibit 1).

16. On December 3, 2021, the Joliet Herald News ran an article about NorthPoint's secretive traffic studies (a copy of the Article is attached hereto as Exhibit 2). The Article states that "NorthPoint has done a traffic study—or so they say and so do city officials. The Article talks about the "diverging realities." *Id.* The Article states: "Assistant City Attorney Chris Regis said NorthPoint filed a traffic study in its first go-around in getting an approval from the City Council, but the city requested more information. So the traffic study was still in progress—even though the plan was already approved. Then when NorthPoint filed its new plan it became obsolete." (Exhibit 2).

17. The Herald Article talks about the absurdity of the Joliet Council recently delaying a vote pending a traffic study for a proposed Dunkin' Donuts location while the Council plans to proceed with a vote on this massive Development with or without a traffic study (Exhibit 2). The Article further says:

The lack of a traffic study was brought out by questions posed by Christina Sammet of Jackson Township at a Plan Commission hearing last month in response to her questions, NorthPoint's traffic engineer said an updated study is not done and it's not certain to be done by Dec 21 when the City Council is scheduled to vote on the plan.

(Exhibit 2).

18. On November 18, 2021, CenterPoint sent a letter to Joliet Mayor, Bob Dekirk, requesting, *inter alia*, that the City and its Plan Commission table the Project until NorthPoint provides certain information including "NorthPoint's traffic study referenced in the Staff Report and any previous traffic studies provided by NorthPoint to the City of Joliet and which have not been provided to CenterPoint." (A copy of the 11/18/21 letter is attached hereto as Exhibit 3). The letter also requested other information and traffic studies. Upon information and belief, Joliet has refused CenterPoint's requests.

19. Mayor Dekirk on WJOL radio recently said to the effect that if CenterPoint wants a traffic study so bad it should pay for its own traffic study.

20. 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 employees. The Illinois General Assembly has declared that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is the fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with the Act.

21. The purpose of FOIA is “to open governmental records to the light of public scrutiny.” *Watkins v. McCarthy*, 2010 IL App (1<sup>st</sup>) 100632 ¶ 13.

22. Joliet’s denial of the FOIA request with its conclusory cite to § 140/7/(1)(f) is not well taken. This exemption provides:

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.

(5 ILCS 140/7 (1)(f)).

23. It is Joliet’s burden to prove the records in question fall within the claimed exemption. *Chicago Tribune Co. v. Cook County Assessor’s Office*, 2018 IL App (1<sup>st</sup>) 170455. To meet this burden and to assist the court in making its determination, the agency must provide a *detailed* justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing. *Illinois Educ. Ass’n v. Illinois State Bd. of Educ.*, 204 Ill.2d 456, 464 (2003).

24. Section 7(1)(f) of the Act is the equivalent of the “deliberative process” exemption found in section 552(b)(5) of the federal Freedom of Information Act, which exempts from disclosure inter- and intra-agency pre-decisional and deliberative material. *Harwood v. McDonough*, 344 Ill.App.3d 242 (1<sup>st</sup> Dist. 2003). In order for this exception to apply, the document must be both pre-decisional in the sense that it is actually antecedent to the adoption of an agency policy, and deliberative in the sense that it is actually related to the process by which policies are formulated. *Chicago Trib. Co.*, 2018 IL App (1st) 170455, at ¶ 28. Documents adopted as final agency policy are not protected from disclosure. *Id.* at ¶ 31.

25. Joliet’s denial violates FOIA. The decision is arbitrary, capricious and against the manifest weight of the evidence. There is no factual or legal support for the denial.

26. Documents related to any purported traffic studies commissioned by NorthPoint do not fall with the deliberate process exception contained in FOIA. Such studies were not commissioned by Joliet but by North-Point, a private party seeking the approval by the City council to annex and build a private commercial warehouse and trucking terminal. Based on public statements, the City has such documents related to its 2020 final decision to approve the original annexation agreement that was the subject of public hearings.

27. The decision whether to approve the amended annexation agreement is set for public hearings on December 21, 2021. The public requires this information in order to meaningfully participate and prepare for the hearing. There is no justification for Joliet to withhold and conceal this information from the public.

28. It cannot be said that the information sought is both pre-decisional in the sense that it is actually antecedent to the adoption of an agency policy, and deliberative in the sense that it is

actually related to the process by which policies are formulated. Joliet has no right to keep his information hidden from the public.

29. Plaintiff is entitled to attorneys' fees under the Act. § 140/11 provides that "[i]f a person seeking the right to inspect or receive a copy of a public record prevails in a proceeding under this Section, the court shall award such person reasonable attorney's fees and costs. 5 ILCS 140/11(i).

WHEREFORE, Plaintiff, John Kieken, requests that the Court:

- A. Enter an injunction and/or declaratory judgment requiring the City of Joliet to produce forthwith the requested documents;
- B. Award Plaintiff reasonable attorney's fees and costs pursuant to 5 ILCS 140/11(i);
- C. Any additional relief the Court deems just.

*/s/ Richard Linden*

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