

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

Committee to Elect BILL4AG,)
)
Bill Malan)
)
Plaintiffs)
)
v.)
OFFICE OF THE ATTORNEY)
GENERAL OF ILLINOIS,)
)
PUBLIC ACCESS COUNSELOR,)
)
LISA MADIGAN in her capacity as)
Attorney General)
)
CARA SMITH, in her capacity as Public)
Access Counselor)
Defendants)

10CH46950

Case No. 2010 CH _____

FILED
CH-2301
OCT 28 2010
DOUGLAS BROWN
CLERK OF THE CIRCUIT COURT

**VERIFIED COMPLAINT FOR INJUNCTION,
DECLARATORY JUDGMENT AND OTHER RELIEF**

Committee to Elect BILL4AG and Bill Malan complains and alleges of Defendants:

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 the FOIA, the Office of the Attorney General (OAG) has refused and/or delayed in producing certain records relating to the OAG's "Operation Guardian" initiative. The Plaintiffs seek an injunction directing the Defendants to disclose the records requested in compliance with the FOIA, Declaratory Judgment, an order awarding Plaintiffs their costs and attorneys' fees, and other relief as specified in the Prayer.

PARTIES

2. Plaintiff Committee to Elect BILL4AG (“Committee”) is an Illinois Political Committee duly organized for the purpose of electing Bill Malan (“Malan”) to the office of Illinois Attorney General.
3. Plaintiff Malan is a resident of Cook County.
4. Plaintiff Malan is the Libertarian Party candidate for Illinois Attorney General in the 2010 general election.
5. Plaintiff Malan, and other Libertarian Party candidates are on the Illinois general election ballot.
6. Defendant Public Access Counselor is authorized to ensure compliance with the Illinois Freedom of Information Act, 5 ILCS § 140 *et seq.*
7. Defendant Cara Smith is the Public Access Counselor.
8. In addition to her role as Public Access Counselor, Defendant Cara Smith is Attorney General Lisa Madigan’s Deputy Chief of Staff for Policy and Communications.
9. Defendant Public Access Counselor is a “public body” as defined in 5 ILCS 140/2(a) and Defendant Cara Smith is the “head of the public body” in 5 ILCS 140/2(e).
10. Defendant Office of the Attorney General is a “public body” as defined in 5 ILCS 140/2(a) and Defendant Lisa Madigan is the “head of the public body” in 5 ILCS 140/2(e).

BACKGROUND

11. In February of 2010, the OAG initiated “Operation Guardian,” a series of unannounced compliance checks of nursing home facilities in Illinois.
12. On September 20, 2010, the OAG issued a press release stating 124 residents and staff with outstanding warrants were identified in 21 compliance checks. (See Exhibit 1).
13. During the Attorney General election campaign, Plaintiff Malan, Libertarian Party candidate for Attorney General, published newsletters and essays alleging:
 - a. Lisa Madigan is misleading the public by representing the discovery of over 120 open warrants in conjunction with “Operation Guardian” as a “compliance” initiative; and
 - b. Under cover of “Operation Guardian,” Lisa Madigan is in fact campaigning at public expense; (See Exhibit 2); and
 - c. As stated in Governor Quinn’s 2010 task force report, nursing homes do not have the ability to check for open warrants. (See Exhibit 3, excerpt from the Governor’s Task Force Report); and
 - d. Lisa Madigan’s weak record on pursuing public corruption, cronyism, and pay to play is because she is part of the problem; for example, \$200,000 in contributions went to Lisa Madigan, Mike Madigan, and the Illinois Democratic Party, and people related to those contributors got put on a “special admissions” track at the University of Illinois Urbana-Champaign. (See Exhibit 4); and

- e. Lisa Madigan has failed to investigate possible violations of election finance laws by the Republican Party of Illinois because the Democrats were “probably not squeaky clean on this issue either.” (See Exhibit 5);
and
 - f. Contrary to her assertion that she is an “independent” Attorney General, she has failed to investigate examples of corruption and pay-for-play. (See Exhibit 6)
14. On September 22, 2010, Malan submitted an FOIA request to the OAG asking for records regarding the nursing home compliance inspections.
15. On September 29th, the OAG FOIA Officer John Costello requested an extension of time to respond. (See Exhibit 7)
16. FOIA Officer for the OAG, John Costello, submitted a Form for Pre-Approval to the Public Access Counselor, (See Exhibit 8) to withhold documents pursuant to the following statutory exemptions:
- a. 5 ILCS 140 §(7)(1)(c), “Personal information... the disclosure of which would constitute a clearly unwarranted invasion of personal privacy...”;
and
 - b. 5 ILCS 140 §(7)(1)(f), “Preliminary drafts, notes... and other records in which opinions are expressed or policies or actions are formulated....”
17. On October 6, 2010, FOIA Officer for the OAG, John Costello, responded to Malan’s September 22, 2009 FOIA request regarding nursing home compliance checks (“Operation Guardian”), providing some information and enumerating the OAG’s bases for withholding documents. Ms. Costello also stated in his October

6, 2010 memo to Malan that the OAG had no documents responsive to some of the requests. (See Exhibit 9)

18. On October 14, 2010, Matthew Sebek, Assistant Public Access Counselor informed the OAG that further inquiry was required regarding documents the OAG claimed were exempt under Sections 7(1)(c) and (f). (See Exhibit 10)

THE DISPUTED “OPERATION GUARDIAN” DOCUMENTS

19. Malan’s request #1 was for “Any document describing Operation Compliance [sic] (nursing home surprise compliance checks), including project charter, scope, purpose, goals, and similar documents.”

20. The OAG, in its October 16, 2010 response to Malan’s request #1 stated its intention to withhold all responsive documents pursuant to... Section 7(1)(f)...” (See Exhibit 9)

21. Malan’s request #2 was for information about time spent by OAG staff on Operation Guardian, and if any contractors were used.

22. The OAG, in its October 16, 2010 response to Malan’s request #2 stated it had no documents responsive to this request. (See Exhibit 9)

23. Malan’s request #3 was for information regarding the offenses charged in the arrest warrants, names of the persons listed on warrants, whether or not the individual was taken into custody, and related information.

24. The OAG, in its October 16, 2010 response to Malan’s request #3, stated some documents were prohibited from disclosure by federal law, and that one document

was partially responsive but contained preliminary notes, and was being withheld on that basis pursuant to Section 7(1)(f). (See Exhibit 9)

25. Although the OAG issued a blanket refusal to provide records responsive to Malan's request #3, similar information, including the names of persons arrested, crimes charged, and whether the individual was taken into custody were released to the press on several occasions. (See Exhibits 11, 12, 13, 14)
26. Malan's request #4 was for copies of the "calendar for General Madigan and any other OAG employees involved in Operation Compliance for days where Operation Compliance checks were carried out."
27. The OAG, in its October 16, 2010 response to Malan's request #4, asserted several bases for denying or redacting information. See Exhibit 9. p.2, second paragraph from bottom of page).
28. Malan's request #5 was for documentation of meetings by OAG staff with media and other groups while Operation Guardian compliance checks were performed.
29. The OAG, in its October 16, 2010 response to Malan's request #5, stated its intent to redact personal information pursuant to Section 7(1)(c). (See Exhibit 9, pp.2-3)
30. Malan's request #6 was for records related to travel, meals, and lodging expenses incurred in conjunction with Operation Guardian and the source of payment.
31. The OAG, in its October 16, 2010 response to Malan's request #6, stated it had no documents responsive to this request. (See Exhibit 9, p.3)
32. To date, the OAG has provided no information regarding Lisa Madigan's schedule and meetings with media or other groups. The OAG has only provided

the dates Lisa Madigan attended Operation Guardian compliance checks, copies of press releases, and partial calendar information for OAG staff.

CLAIM FOR RELIEF: ILLINOIS FREEDOM OF INFORMATION ACT

33. Plaintiffs incorporate by reference paragraphs 1 through 32 of this Complaint.

34. Under the Act, all 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

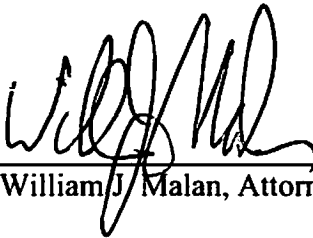
35. Plaintiffs seek enforcement of the Illinois Freedom of Information Act for all records not exempt under the Act.

36. Plaintiffs seek an injunction ordering Defendants to produce all records improperly withheld.

37. Plaintiffs are entitled to reasonable attorneys' fees pursuant to 5 ILCS 140/11(i).

WHEREFORE, Plaintiffs Committee to Elect BILL4AG and Bill Malan pray the Court:

1. Conduct an *in camera* review of all requested records as soon as practicable;
2. Issue an order declaring Defendants are in violation of the Illinois Freedom of Information Act;
3. Enjoin Defendants from violating the FOIA by withholding documents and order the immediate production of said documents;
4. Enjoin Defendants to prepare, without delay, affidavits that they have fully and completely complied with Malan's September 22, 2010 FOIA request;
5. Award Plaintiffs reasonable costs and attorney fees as provided under the statute;
6. Award civil penalties if the Court finds the Defendants or any of them acted in violation of 5 ILCS 140/11(j)
7. Any and all further relief this Court deems just.




William J. Malan, Attorney for Plaintiffs

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2300 W. Polk Street, Ste. 100
Chicago, IL 60612
312.415.0800
312.415.0808 (fax)
Attorney No. 44626
IARDC No. 6276641

Verification

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated this 29th Day of October 2010



William J. Malan, Candidate, on behalf of
Committee to Elect BILL4AG



September 20, 2010

ATTORNEY GENERAL MADIGAN'S OPERATION GUARDIAN DISCOVERS OVER 100 ARREST WARRANTS

Nursing Home Safety Initiative Has Conducted Unannounced Compliance Checks at 21 Nursing Home Facilities throughout Illinois

Chicago – Today, Attorney General Lisa Madigan released results from 21 unannounced nursing home compliance checks conducted over the past nine months as part of her Operation Guardian initiative. The Attorney General revealed her office has identified 124 residents and staff with active arrest warrants living among the elderly nursing home population. Madigan spoke early this afternoon outside of the Central Nursing and Rehab, 2450 N. Central in Chicago. Madigan's office conducted an Operation Guardian compliance check at Central Nursing and Rehab on Sept. 10 where nine residents were wanted on outstanding arrest warrants, four residents were arrested and one resident, listed as a missing person, was cleared.

"When we make the difficult decision to entrust our parents or grandparents to care in a nursing home, we do so with the reasonable expectation they will be safe and well cared for. Yet we have seen far too often that some nursing homes are instead serving as safe houses for fugitives," said Attorney General Madigan. "Operation Guardian will continue to make unannounced visits to nursing homes across Illinois to ensure their residents are not only in a safe environment, but that they also are abiding by all standards set by law. It is the least we can do for our loved ones."

These multi-agency checks give state and local agencies the opportunity to review safety and compliance issues. The Department on Aging's Long Term Care Ombudsman Program works to ensure residents' rights are not being violated. The Department of Public Health conducts a compliance review of any identified offenders and any reported incidents in the last six months. The Department of Financial and Professional Regulation interviews administrators and performs a license check of all professionals employed at the nursing facility.

Attorney General Madigan launched "Operation Guardian" last February. This initiative expands on her previous work to shut down south suburban Emerald Park Nursing Home that was found to have housed numerous sex offenders and other felons.

Madigan has since successfully worked to require background checks and criminal history analyses of nursing home residents to identify those who might pose a threat to others. In addition, Madigan authored the Resident's Right to Know Act that requires nursing homes complete an annual Consumer Choice Information Report detailing the facility's standard of care, service and security issues to provide better information to residents and their families.

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[Return to September 2010 Press Releases](#)



ESSAY #2

October 17, 2010

Lisa Madigan's Transparent Stonewalling



Bill Malan for Illinois Attorney General

Libertarian Party of
Illinois Candidate
for Attorney General

www.bill4AG.org



Lisa Madigan: Preaches Transparency, Practices Stonewalling *Madigan's Office Stonewalls Key Facts of "Operation Guardian"*

Illinois Attorney General Lisa Madigan's Freedom of Information (FOI) web page boldly proclaims: **ENSURING OPEN AND HONEST GOVERNMENT.**

The person responsible for ensuring all Illinois agencies comply with FOI requests is the **Public Access Counselor** (PAC). The PAC is an attorney in the AG's office named Cara Smith. However, when Cara Smith is not wearing her PAC hat, she is Lisa Madigan's Deputy Chief of Staff for Policy/Communications. In other words, Cara Smith is Spinner in Chief for Lisa Madigan and also responsible for **ENSURING OPEN AND HONEST GOVERNMENT.**

Florida, "The Sunshine State," used to run an ad campaign with the tagline "The rules are different here." Illinois is like that, except for the "sunshine" part. Illinois does not have to advertise "the rules are different here." Illinois and corruption are synonyms. Only in Illinois would the AG's top spinner also be in charge of controlling the release of information about the AG's office in response to FOI requests.

OPERATION GUARDIAN STONEWALLING. Madigan's office issued a press release on September 20th that over 120 persons with outstanding warrants had been identified during *Operation Guardian*. On September 22nd, I submitted an FOI request asking for information about the 120 persons - what were the crimes charged, how many were arrested and how many were left in the homes. I also asked for information about media and other groups Madigan met with during *Operation Guardian*, and also about activities by her staff.

I put in the FOI request to get some sunshine on two key points:

1. Since nursing homes do not have the ability to check for open warrants (which was the basis for the "120 felons" press release) it is **misleading at best** to call this aspect of *Operation Guardian* a "compliance check."
2. Madigan's traveling "compliance" road show was campaigning on the public dime.

In response to my FOI request, Madigan's office sent me copies of press releases, along with documents saying why they won't release some items and others need more consideration.

But this is Illinois: the rules are different here. And those rules won't change until we throw out the people who made them.

10. Authorize nursing homes to admit residents on a provisional basis when background checks and criminal history analyses are not available prior to admission.

Rationale: Under current law, nursing homes are required to serve anyone they admit unless they engage in an involuntary discharge process. This sometimes discourages nursing homes from transferring residents who pose a risk to the general population. Generally, this is an important safeguard to prevent nursing homes from discriminating against certain types of residents or conditions and avoids serious disruptions in care when residents have to move.

The task force recommends establishing a narrow exception so nursing homes could accept a resident on a provisional basis, until all the criminal background check and criminal history analysis are available, and then discharge the resident without going through the involuntary discharge process. If the new resident is determined to be an identified offender for whom the nursing home is unable to provide the necessary security and treatment measures, the facility will be able to transfer the resident to a nursing home certified as described in Recommendation 17. Discharges under this new provision would require the pre-admission screening team to assure residents are transferred to an appropriate facility or setting for their needs.

11. Determine a mechanism to retrieve information about outstanding warrants, recent arrests on suspicion of a felony, and prior convictions in other states.

Rationale: The Identified Offender program and the Uniform Conviction Information Act restrict ISP from releasing information other than prior Illinois convictions to the nursing homes. Additional information may be necessary for the nursing home to develop an appropriate care plan. More analysis is needed to determine whether this information is valuable and, if so, how the additional criminal background information can be retrieved within the constraints of federal law.

12. Engage the Illinois State Police, the Attorney General's Office, Clerks of the Court, and Department of Public Health to determine how to conduct a criminal history analysis of identified offenders in a timely manner.

Rationale: Many criminal history analyses are not completed on time and others contain incomplete information. Nursing homes are required to initiate the criminal background check by submitting a request to the Illinois State Police. ISP conducts the check and sends the results to the nursing home. When there are criminal convictions covered under the law (210 ILCS 45/1-114.01), the nursing home must notify DPH, which then conducts a more extensive criminal history analysis by searching conviction and sentencing information to gain insight into the

ESSAY #5

October 23, 2010

Q: Lisa will go
after cronyism:
(a) Right after
the election;
(b) Just as soon
as Old Scratch
buys ice skates



Bill Malan for Illinois Attorney General

Libertarian Party of
Illinois Candidate
for Attorney General

www.bill4AG.org



Madigans Get \$200k for “Affirmative Action”

Yesterday, I wrote that the **Sun-Times** lukewarm endorsement of Lisa Madigan for Attorney General stated: "...Madigan could do more...in fighting public corruption. But let's not be naive -- that's one crusade Madigan is unlikely to take on. Not when it could so obviously put her at odds with her father." Similarly, the **Tribune** endorsement of Madigan recognized pursuing corruption is not high on Lisa Madigan's priority list: ...the hallmark of [Lisa Madigan's] tenure has been consumerism, not corruption-busting. May that change in the third term for which she is endorsed." Yes, and we should also expect Porky and Petunia to sprout wings and Beelzebub to retire and take up ice fishing. Perhaps the Tribune editorial board does not read its own paper, which provides ample evidence that Lisa Madigan is anything but an independent Attorney General. In a May 10, 2010 article Tribune reporters Jodi S. Cohen, Stacy St. Clair, David Kidwell and John Chase wrote how Lisa Madigan received about \$50,000 in contributions, and her dad Mike Madigan and the Democratic Party of Illinois received another \$150,000 from people who got relatives put on a "special admissions track" at highly competitive University of Illinois Urbana-Champaign.

If Lisa is independent, then I am Pat Paulsen. And Illinois needs an independent Attorney General, and I am Bill Malan. For more information go to www.BILL4AG.org

ESSAY #4

October 21, 2010

**Why Lisa
Madigan
Ignores
Republican
Ballot Misdeeds**



Bill Malan for Illinois Attorney General

Libertarian Party of
Illinois Candidate
for Attorney General

www.bill4AG.org



Voting is a fundamental right. It is also one of the most important duties of a citizen. In Illinois, it is a felony to use deception to prevent any person from supporting the nomination or election of any person for public office. From June through August of this year, the Illinois Republican Party, Pat Brady, Chairman, coordinated an effort to "jigger the ballot," to borrow a phrase from Republican Candidate Mark Kirk.

State GOP Dirty Tricks. Probable violations of the law by the State GOP included misreporting the use of party funds. The State GOP paid Republican lawyers John Fogarty and Brien Sheahan, and others on the Party payroll to obstruct candidate nominations while hiding the identity of the puppeteer footing the bill - the Illinois Republican Party. The State GOP attempted to hide the fact it was behind objections to 23 candidates, through the use of two phony or "conduit" objectors. Funds used to pay State GOP staffers to oppose candidates were misreported as used for "grassroots organizing."

Steve Kim Endorses Dirty Tricks. When these dirty tricks were being played, I asked Republican Candidate for Attorney General Steve Kim to repudiate these low and probably illegal tactics of the Republican Party. Mr. Kim's campaign did not respond. So today I call upon Attorney General Lisa Madigan to investigate this likely violation of election law by the Illinois Republican Party. But odds are Lisa Madigan will ignore it, because the Democrats are probably not squeaky clean on this issue either.

Sun-Times' Limited Endorsement. The Chicago Sun-Times, in its endorsement of Lisa Madigan noted: "One area where Madigan could do more -- and where her Republican challenger *Steve Kim vows he would do more* -- is in fighting public corruption. *But let's not be naive -- that's one crusade Madigan is unlikely to take on. Not when it could so obviously put her at odds with her father.*"

Given Republican Steve Kim's failure to repudiate the actions of his party, his "vow" to fight corruption should be taken with a grain of salt.

It is a shocking and dismal state of affairs that a major paper endorsed Madigan, while admitting that she will not fight corruption. The citizens of Illinois should not

accept - like bleating sheep - the fact that their chief law enforcement officer will not attack corruption. If the people of Illinois want to get rid of corruption, they need to elect an **independent** Attorney General.

Illinois is \$12 billion in the red, and every year, a half billion dollars is squandered as a result of corruption and official misconduct. Corruption and cronyism should be a **priority** for the Attorney General, **not a minefield the AG needs to tiptoe around.** Only an **independent Attorney General** will do what is necessary to drain the cesspool of corruption in Illinois.

ESSAY

October 14, 2010

**Journalism
Succumbs After
Long Decline:
An Autopsy**



Bill Malan for Illinois Attorney General

Libertarian Party of
Illinois candidate of
Attorney General

www.bill4AG.org



In an interview today on WBEZ's popular "848" show, Attorney General Lisa Madigan was asked if it is possible for her to be independent given her father is the powerful Speaker, Mike Madigan. In response, General Madigan replied that, although that may have been a legitimate question when she first ran eight years ago, she has proven her independence, and as an example said her office investigated former 6th District State Representative Patricia Bailey, a Democrat. Bailey was eventually convicted in 2005 of perjury for filing documents stating she lived in the 6th district, when in fact she did not.

In the State of Illinois, Madigan putting the gaff on Bailey is like an angler coming back from the Caribbean with a minnow. The reporter asked no follow-up.

Similarly, the Chicago Tribune, once an independent – even belligerent - newspaper, has succumbed. The Tribune's editorial board, combining the investigative acumen of Inspector Clouseau with the observational power of Mr. Magoo gave a wheezing endorsement to Illinois Attorney General Lisa Madigan in her bid for re-election. A partial autopsy of the Tribune's last words follows.

A. Madigan is a "tireless advocate for consumers and taxpayers...."

FINDINGS: Madigan has often pursued businesses and banks, but Illinois taxpayers – consumers of and payers for government services – have gotten short shrift. Madigan has been more of a lapdog than a watchdog when it comes to protecting the citizens against government corruption and pay-for-play.

Examples:

1. **Union Giveaway:** State employees unions recently made huge contributions to Governor Pat Quinn's campaign. At about the same time Quinn re-opened negotiations with the unions, giving them large pay increases and extending a "no-layoff" guarantee for another year. With the state \$12 billion in the red, this "tireless advocate for consumers and taxpayers" Lisa Madigan's failure to call a foul qualifies her for an endorsement as a professional wrestling referee.

2. **Payday Loans.** Lisa Madigan, as well as Speaker Mike Madigan pressed for increased regulation of payday loans. The increased regulation included computer tracking of consumer loans. According to Chicago Sun-Times "Watchdog" reporters Tim Novak and Dave McKinney, the contractor for these transactions is Veritec. A lobbyist for Veritec is Jordan Matyas, who married one of Speaker Madigan's daughters on July 3, 2010. Mike Madigan stated he "doesn't recall talking to Jordan about [the payday loan] bill" and "Jordan wasn't his son-in-law yet" when Madigan voted for it. The deal "totally stinks," according to Republican Senate Minority Leader Christine Radogno.
3. **UI-UC Scandal.** Was Madigan a "tireless advocate for consumers and taxpayers" regarding the admissions scandal at the University of Illinois Urbana-Champaign? Big campaign contributors got relatives put on a special admissions track of that highly competitive state university, bumping applicants who qualified on their own merit. When a committee looked into the scandal in 2009, ten legislators, including Speaker Mike Madigan, were invited to testify. Of the ten, the Speaker and six others refused to testify. Lisa Madigan did nothing to investigate this blatant pay-for-play.

B. Lisa Madigan "has worked to get felons out of nursing homes"

FINDINGS: Between April and August of 2010 – that is to say, during the campaign season - Lisa Madigan participated in unannounced "compliance checks" at several nursing homes. Madigan's office issued a press release on September 20, 2010 that the "compliance" checks uncovered 124 residents and staff with outstanding warrants.

The kicker is, nursing homes do not have the ability to check for open warrants. So the failure of nursing homes to check for open warrants is not a "compliance" issue. In February of 2010, a task force on nursing home safety reported to Governor Quinn there was no "mechanism to retrieve information about outstanding warrants, recent arrests on suspicion of a felony, and prior convictions in other states." The task force also noted that processes that are required by law to be completed by the Illinois Department of Public Health within 14 days "are not completed for months" in many cases.

Rather than "compliance checks" so-called Operation Guardian served as a traveling campaign platform for Lisa Madigan, paid for by the state.

C. CONCLUSION

Forensic journalism in Illinois arrived Dead On Arrival in 2010. Suspected cause of death is repeated stress trauma caused by cutting and pasting from incumbents press releases. This disease is chronic; Illinois news organizations repeatedly endorse incumbent politicians in order to maintain their "inside source." But how can our "independent media" be the watchdog this state truly needs if they continue to cozy up with the very people they're supposed to be monitoring?



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 29, 2010

Mr. Bill Malan
2300 W. Polk Street
Chicago, IL 60612-4242

*Re: Freedom of Information Act Request
FOA201009757*

Dear Mr. Malan:

I have your letter received on September 22, 2010, wherein you request, pursuant to the Freedom of Information Act, copies of records relating to the administration of the "Operation Guardian" initiative.

Please be advised that we are extending the time within which to respond by five working days, as allowed by section 3(e)(vi and vii) of the Act (5 ILCS 140/3(e)(vi)(vii) because there is a need for consultation which shall be conducted with all *practicable* speed with relevant staff of the Attorney General's Office who work directly with this program, and the request for records cannot be complied with by this office within the time limits prescribed by paragraph (c) of this Section without unduly burdening or interfering with the operations of the office.

We expect to complete our response by October 6, 2010. In the event you would like to discuss any details with respect to our response to your request, please feel free to contact me at (217) 782-9024. Thank you for your cooperation.

Sincerely,


John Costello
FOIA Officer

JC/jp

EXHIBIT 7

FORM FOR PRE-APPROVAL OF USE OF EXEMPTION 7(1)(c) or 7(1)(f)

**** Note to Public Body:** Before denying a request, in whole or in part, based on an exemption in Section 7(1)(c) or 7(1)(f) of the Freedom of Information Act, you must provide written notice to the Public Access Counselor and the requester of the intent to deny the request on this basis. 5 ILCS 140/9.5(b). Completing and submitting this form to the Public Access Counselor and to the requester will constitute written notice of the public body's intent to deny the requester's FOIA request in whole or in part based upon the exemption in Section 7(1)(c) or 7(1)(f) of the Freedom of Information Act.

Name of Public Body: Office of Illinois Attorney General

Contact Information for FOIA Officer: John Costello, 500 S. Second St., Springfield, IL 62706
jcostello@atg.state.il.us 217-782-9024

Signature of FOIA Officer: 

Exemption claimed by public body (check which applies):

The requested records contain personal information and the disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. 5 ILCS 140/7(1)(c).

The requested records are preliminary drafts, notes, recommendations, memoranda or other records in which opinions are expressed, or policies or actions are formulated.
5 ILCS 140/7(1)(f).

Proposed response to the requester's FOIA request by the public body (*attach additional pages, if necessary*):

See attached

Detailed summary of the basis for asserting the exemption (*attach additional pages, if necessary*):

See attached

*****ATTACH A COPY OF THE FOIA REQUEST*****

The Public Access Counselor will not accept this Notice of Pre-Approval without attachment of a copy of the FOIA request in question.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 6, 2010

Mr. Bill Malan
2300 W. Polk Street
Chicago, IL 60612-4242

Re: Freedom of Information Act Request FOA201009757

Dear Mr. Malan:

Thank you for writing to the Office of Illinois Attorney General with your request for information pursuant to the Freedom of Information Act, 5 ILCS 140/1 *et seq.*

By email received September 22, 2010, you requested the following:

1. Any document describing Operation Compliance (nursing home surprise compliance checks), including project charter, scope, purpose, goals, and similar documents.
2. Time spent by staff in the OAG related to Operation Compliance, including position (attorney, paralegal, secretary, etc) and tasks performed, date of activity, and start and stop time for tasks related to Operation Compliance. If any contract personnel were used, the name, title, purpose of contract and compensation of such contract personnel. If any OAG staff or contractors performed any work or services related to Operation Compliance for which time records are not kept, please identify such persons, the work or services performed, and the date, if known.
3. Information regarding individuals identified with outstanding warrants by Operation Compliance, including:
 - a. Nursing Home name and city
 - b. Name of person with outstanding warrant
 - c. Jurisdiction of warrant, its issue date, and the offense stated in the warrant
 - d. Disposition, e.g. individual taken into custody by Illinois State Police, transported to another state, left in nursing home, etc.
 - e. Identity the person who made the decision regarding disposition in part 3(d) above.
4. The calendar for General Madigan and any other OAG employees involved in Operation Compliance for days where Operation Compliance checks were carried out.
5. Meetings with media or other groups while OAG staff were traveling to, staying at, or traveling from Operation Compliance checks including
 - a. OAG staff person name;
 - b. Location of meeting
 - c. Purpose of meeting
 - d. Individuals present
6. Travel, meals, and lodging expenses related to Operation Compliance, including source of payment (OAG budget, a campaign committee, etc) amount, date incurred and purpose of expense.

By letter dated on September 29, 2010, our office extended the time within which to respond by five working days, as allowed by section 3(e) of the Act, 5 ILCS 140/3(e).

Your request is granted in part and denied in part, as explained fully below.

Regarding Item 1, a number of press releases issued over the past six months describe the nature of Operation Guardian. These press releases are enclosed. Additionally, for each compliance check of a nursing home, the Attorney General's Office prepares an operational plan. In these documents, policies or actions for the compliance checks are formulated and recommendations are expressed. For that reason, with this letter, we are notifying the Public Access Counselor of our intention to withhold these documents pursuant to the exemption in Section 7(1)(f) of the Act, 5 ILCS 140/7(1)(f).

Regarding Item 2, the Office of the Illinois Attorney General has no documents responsive to your request. Please be advised that a public body is not required to answer questions in response to a request. The "Act is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records." 5 ILCS 140/3.3. As a courtesy, however, our office has compiled data from numerous sources to provide the following listing of staff members who have worked on the Operation Guardian initiative:

Cara Smith, Deputy Chief of Staff for Policy/Communications

Michael Hood, Deputy Attorney General, Criminal Justice

Kevin O'Connell, Chief, Investigations Division

Various members of the Office's Investigations Division.

With regard to Item 3, the information concerning the outstanding warrants for individuals residing in nursing homes comes from the Law Enforcement Agencies Data System (LEADS). LEADS information is prohibited from disclosure under federal law and, as a result, is exempt under Section 7(1)(a) of the Act. The documents relating to the warrants are maintained by the issuing jurisdiction and documents relating to the arrests of individuals are maintained by the arresting jurisdiction and not by the Office of the Illinois Attorney General. We would be pleased to identify the arresting jurisdictions for you, so that you can seek the information from those agencies. Finally, our office has identified one document that is partially responsive but contains preliminary notes. As a result, we are seeking to withhold this document pursuant to Section 7(1)(f) of FOIA, 5 ILCS 140/7(1)(f).

Regarding Item 4, the Illinois Attorney General, Lisa Madigan, attended the operations on April 27, June 24, July 7, August 9 and 27. The Attorney General's calendar for these dates contains: (1) personal cell phone numbers which we are redacting pursuant to Section 7(1)(b) of the Act; (2) information regarding the security provided to the Attorney General which we are redacting under Section 7(d)(vi) of the Act; and (3) information concerning personal appointments which we are seeking to redact under Section 7(1)(c) of the Act. The limited information concerning personal appointments is highly personal and does not bear in any way on the public duties of the Attorney General. As a result, we are notifying the Public Access Counselor of this Office's intention to redact this limited information pursuant to Section 7(1)(c) of the Act. We have enclosed calendars for Cara Smith, Michael Hood and Kevin O'Connell for the dates of the Operation Guardian compliance checks.

Regarding Item 5, the Attorney General's calendar for the dates of the Operation Guardian compliance checks reflects meetings with media; however, as discussed above, we are notifying

the Public Access Counselor of this Office's intention to redact limited personal information pursuant to Section 7(1)(c) of the Act prior to disclosure.

Regarding Item 6, the Office of the Illinois Attorney General has no documents responsive to your request.

As explained fully above, the Office of the Illinois Attorney General proposes to withhold a number of documents in accordance with exemptions under FOIA. Once our Office receives a determination from the Public Access Counselor, we will provide the Attorney General's calendar and any remaining documents. With respect to this limited denial in response to Items 1, 3 and 4, you have a right to have the denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Illinois Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
publicaccess@atg.state.il.us

You also have the right to judicial review of your denial by filing suit in the state circuit court. 5 ILCS 140/11.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial letter. 5 ILCS 140/9.5(a).

Please do not hesitate to contact me at 217-782-9024 if you have further questions.

Sincerely,



John Costello
FOIA Officer

Cc: Public Access Counselor



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

October 14, 2010

Mr. John Costello
Freedom of Information Officer
Office of the Illinois Attorney General
500 S. 2nd St.
Springfield, IL 62706

RE: FOIA Pre-approval Request – 2010 PAC 10046

Dear Mr. Costello:

We have received from the Office of the Illinois Attorney General (OAG) a written notice of its intention to assert the Section 7(1)(c) and Section 7(1)(f) exemptions in response to a Freedom of Information Act (FOIA) request, dated September 22, 2010, submitted by Mr. Bill Malan. This request sought six categories of documents relating to the Illinois Attorney General's Operation Guardian compliance checks.

The OAG has indicated that it intends to withhold information concerning personal appointments which appear in responsive portions of the Illinois Attorney General's calendar, pursuant to Section 7(1)(c). Section 7(1)(c) of the Freedom of Information Act permits a public body to withhold "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." That provision further defines an "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." It also provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

The OAG has also indicated that it intends to withhold an operational plan, responsive to category 1 of Mr. Malan's request, because it contains recommendations regarding the formulation of policies or actions with respect to these compliance checks, pursuant to Section 7(1)(f). The OAG further indicates that it intends to assert Section 7(1)(f) as its basis for

EXHIBIT 10 p.1

withholding one document, responsive to category 3 of Mr. Malan's request, because it contains "preliminary notes." Section 7(1)(f) of the Freedom of Information Act allows withholding of:

[p]reliminary drafts, notes, recommendations, memoranda or other documents 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. 5 ILCS 140/7(1)(f).

In *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1st Dist. 2003), the Illinois Appellate Court ruled that "as a matter of public policy, section 7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process." *Id.* at 247. In considering the matter, the *Harwood* court adopted the defendant's argument that the word "preliminary" does not refer to the "posture of the particular document sought to be disclosed" but rather to "predecisional intra-agency communications." *Id.* at 247-248. The court noted that no previous Illinois cases interpreted the use of the word preliminary and, as such, stated that it was helpful to look to cases interpreting the parallel language of the Federal Freedom of Information Act. The court determined that the exemption is intended to protect "predecisional, deliberative communications that are part of an agency's decision-making process." *Id.* at 248 (quoting *Parmalee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998).

With respect to the OAG's 7(1)(f) assertion, we have determined that **further inquiry** into this matter is necessary to evaluate whether such assertion is proper with regard to the requested records. Pursuant to Section 9.5(c) of FOIA (5 ILCS 140/9.5(c)), we ask that the OAG provide us with copies of the records it intends to withhold as exempt under Section 7(1)(f). Please be aware that the OAG must provide this information to us within seven (7) working days after you receive this correspondence. 5 ILCS 140/9.5(b),(c). If you believe that other documents or information would be helpful to us as we review these issues, you may submit additional records or affidavits with the requested information.

In addition to its assertions of Section 7(1)(c) and 7(1)(f), the OAG also indicates that it intends to assert Sections 7(1)(a), 7(1)(b), and 7(1)(d)(iv) in response to this FOIA request. In this vein, we note that where information is specifically exempt under sections of FOIA other than Section 7(1)(c) and Section 7(1)(f), public bodies may issue denials relying upon such exemptions directly to the requester, without the need to submit the matter to the Public Access Counselor for pre-authorization. As such, this letter takes no position with regard to the applicability of Section 7(1)(a), 7(1)(b), and 7(1)(d)(iv) to withhold records, or portions of records, responsive to this FOIA request.

If you have any questions, please feel free to contact me at (217) 782-9078.

Sincerely,

Cara Smith
Public Access Counselor

By:



EXHIBIT 10 p.2

Matthew M. Sebek
Assistant Public Access Counselor

cc: Mr. Bill Malan
Via electronic mail to:
malanlaw@me.com

10046 pre-auth fi al 7(1)(c) 7(1)(f) priv and prelim draft sa

EXHIBIT 10 p.3

500 South Second Street, Springfield, Illinois 62706 • (217) 782-1090 • TTY: (217) 785-2771 • Fax: (217) 782-7046
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3 sex offenders found at Golden Moments during raid

[JAKE RUSSELL](#)

2010-05-25 23:07:26

The Illinois Attorney General's office found **three sex offenders** at Golden Moments Senior Care Center who did not have required risk assessment reports on file during an unannounced sweep of the Jacksonville facility.

The raid Monday was part of the Illinois Attorney Generals' "Operation Guardian" initiative.

The initiative, announced by Attorney General Lisa Madigan in February, calls for state agencies to step up efforts to protect vulnerable adults in nursing facilities, said Scott Mulford, spokesman for the Illinois Attorney General.

Various state agencies that have interest in the protection, safety, welfare and good health of residents look for different criteria in the compliance check.

The Illinois Attorney General was primarily interested in former offenders in the facility and making sure the required background checks were on file, Mulford said.

Reports are supposed to be on file shortly after the resident is admitted, Mulford said. The nursing home facility did not have the reports on file.

The group held a debriefing Tuesday to look at all the factors found, Mulford said. Some of those factors will be followed up in the near future.

A Department of Public Health investigator participated in the raid, spokeswoman Melaney Arnold said Tuesday.

Jacksonville Police Department provided the drug dog, though no city police officers participated in the raid, said Public Information Officer Tim Shea.

Golden Moments administrator Chris Robb could not be reached for comment.

The Jacksonville nursing home was the 11th compliance check conducted since February.

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Fugitive found in East St. Louis nursing home inspection

BY KEVIN McDERMOTT • Post-Dispatch Springfield Bureau > kmcdermott@post-dispatch.com > 217-782-4912 | Posted: Friday, June 25, 2010 12:13 am

EAST ST. LOUIS • Illinois Attorney General Lisa Madigan and other officials made an unannounced inspection of an East St. Louis nursing home Thursday morning, looking for potential danger from retired criminals.

What they found instead was a wanted one.

While reviewing the backgrounds of residents at the Virgil Calvert Nursing & Rehabilitation Center, 5050 Summit Avenue, investigators with Madigan's group discovered that one of the residents — identified by officials as Rothford Darden, 61, of St. Louis — was wanted on an active Missouri drug warrant. He was taken into custody by the St. Clair County sheriff's deputies, to be transferred to Missouri.

"He knew he was wanted. He seemed perfectly able-bodied," said Madigan spokesperson Cara Smith. "These nursing homes have been turning out to be the perfect place for hiding out. We've found wanted people in every one" checked so far.

In fact, the nursing home inspection program through Madigan's office — which started in December and wasn't specifically targeted at catching wanted felons — has so far led to the discoveries of 61 people under active warrants living in the 12 homes inspected so far, and 17 arrests on the spot. (Action on the others is pending.)

Nursing homes are required to do background checks on their residents and make special arrangements to separate and monitor those with dangerous criminal histories, such as sex offenders and others who could pose a threat to fellow residents.

Residents are "our parents and our grandparents ... One day they could be one of us," Madigan said.

She said she went along on Thursday's 10 a.m. inspection because the East St. Louis home had come under scrutiny earlier this year for health and safety issues. Her impression was that "they seem to be much better than they had been in the past," she said.

A woman who came to the phone at the nursing home referred all questions about the inspection back to Madigan's office.

Madigan's office began the surprise inspections, dubbed "Operation Compliance," after complaints that people in some homes around the state were being victimized by fellow residents. She was accompanied Thursday by St. Clair County Sheriff Mearl Justus and officials of the Illinois State Police, the Illinois Department of Public Health, the Illinois Department on Aging and the Illinois Department of Professional Regulation.

When asked whether she would be willing to put one of her own parents in that home, Madigan (daughter of Illinois House Speaker Michael Madigan) quipped, "It would be geographically inconvenient."

Madigan touts nursing home compliance checks

By [STEVE WHITWORTH](#)

2010-07-05 23:22:37



ALTON - Illinois Attorney General Lisa Madigan visited the Metro East as part of her office's crackdown on violations of state law at nursing homes.

On June 24, Madigan held a news conference in East St. Louis with St. Clair County Sheriff Mearl Justus to discuss the results of the most recent compliance check under the "Operation Guardian" initiative. The check was conducted at the Virgil Calvert Nursing and Rehabilitation Center, 5050 Summit Ave. in East St. Louis.

"When I announced Operation Guardian (in February), I put nursing home operators on notice that a team of state agencies will make unannounced visits to ensure that our elderly family members and friends who reside at these facilities are cared for in a safe environment," Madigan said at the news conference.

The compliance check was conducted by officials from the Illinois State Police, the Illinois Departments of Public Health and Financial and Professional Regulation, and the Illinois Department on Aging's Long Term Care Ombudsman Program.

The multi-agency checks allow officials to review safety and compliance issues at nursing homes. For example, nursing home operators who fail to identify fugitives living at their facility are in violation of state law. The Ombudsman Program ensures that residents' rights are not being violated. The Department of Public Health conducts compliance reviews of any identified offenders and reported incidents in the six months preceding the unannounced visit. And the Department of Financial and Professional Regulation interviews administrators and performs a license check of all professionals employed at the nursing facility.

"It has been appalling and enlightening," Madigan said about the effectiveness of the compliance checks during a brief stop later that day at The Telegraph newsroom. "Out of the first 11 facilities that we checked, we found a total of 61 people with active criminal warrants. Essentially, fugitives are using nursing homes as safe houses.

"We have a moral obligation to ensure that these residents are kept safe," she said. "You shouldn't have to worry about whether your family member in a nursing home is safe. Your concern should be whether they are getting good care, proper care."

Following the check at Virgil Calvert Nursing and Rehab, officials said they had found one resident who had an outstanding felony drug warrant in St. Louis.

Along with the wanted people found during the checks, Madigan noted that investigators have located eight missing persons.

The check of the East St. Louis facility was the 12th conducted since the effort began. Before that, the

most recent check was in Jacksonville.

In May, an Operation Guardian check found **three sex offenders** who did not have required risk assessment reports on file during an unannounced sweep of the Golden Moments Senior Care Center in Jacksonville. The sweep included the use of a **drug-detecting dog** from the Jacksonville Police Department to check for the presence of illegal drugs in the facility.

"Now, nursing home owners and operators around the state are on high alert because they know we could be dropping into the facility unannounced any day," Madigan said. "It does make a difference."

swhitworth@thetelegraph.com

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Two arrested during Peoria nursing home check

By **ANDY KRAVETZ** (akravetz@pjstar.com)
Of the **Journal Star**

Posted Jul 07, 2010 @ 08:24 PM
Last update Jul 08, 2010 @ 10:28 AM

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PEORIA — Two people were arrested on outstanding warrants Wednesday as part of a statewide check to see if nursing homes are complying with state regulations.

Attorney General Lisa Madigan said Sharon Health Care Willows, 3520 N. Rochelle Lane, appeared to be largely in compliance, but her team of local and state authorities did find five people who had warrants. **Two of them were Frank Risavy, 54, who was wanted on a misdemeanor assault charge, and Melinda Wiegand, 52, who was wanted on a charge of retail theft, also a misdemeanor.**

"When we are in the position of putting our grandparents into a nursing home, we want to know they will be safe," Madigan said at a news conference in Peoria after the early morning check at the nursing home.

She said people must thoroughly check out a nursing home: "Do their research" before moving a loved one there by meeting with the staff, touring the facility and go online to see if there are any reports about the nursing home.

Three others found to have warrants weren't arrested either because of bad health or because their warrants were issued in a county that was too far away for them to be taken there. The charges against those people weren't known.

Nursing homes, Madigan said, are required to get background check on their residents as well as their staff members, but warrants often don't show up on such a check or a person could pick up a warrant after moving in. That wasn't case in Peoria, as the two people arrested were picked up on warrants from 2008 and 2007, respectively. Statewide, 19 people, including the two in Peoria, were arrested.

Sharon Willows has one of the highest number of felons - **44 - living in its 219-bed facility, Madigan said. One is a sex offender, but officials with Madigan's office said that's allowed as long as the facility has a plan to insure other residents are safe.**

Among the requirements is that a sex offender not share a room with someone.

The inspection, which brought in the Illinois State Police, local police and fire as well as officials from Madigan's office and the state's Department of Aging, is part of Operation Guardian, an effort to ensure nursing homes are keeping up with their responsibilities to provide a safe living environment.

Wednesday's check at Sharon Willows was the 13th unannounced visit since the program began late last year. **At first, Operation Guardian was merely to check for code violations but the checks revealed that felons were using the homes to hide from warrants.**

Madigan didn't say where the next visit would be. Her office is taking calls from people who believe there is a problem at a particular nursing home. The office's tip line is (312) 814-8376.

Andy Kravetz can be reached at 686-3283 or akravetz@pjstar.com.

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