

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MONROE )

IN MONROE CIRCUIT COURT 1  
CASE NO: 53C01-2110-PL-002162

DAN COMBS, )  
Plaintiff, )  
vs )  
 )  
CITY OF BLOOMINGTON and )  
JOHN HAMILTON, )  
Defendants. )

**PLAINTIFF’S RESPONSE TO DEFENDANTS’ SECOND MOTION TO DISMISS**

Plaintiff Dan Combs, by counsel, now submits this Response to Defendants’ Second Motion to Dismiss and respectfully moves this Court to dismiss Defendants’ Motion to Dismiss. In support of his request, Plaintiff Combs states:

1. Defendants assert that Plaintiff’s multiple Requests for Public Records lacked reasonable particularity pursuant to IC 5-14-3-3-(a)(1) and, therefore, Plaintiff’s Complaint fails to state a claim upon which relief can be granted.
2. Section 1 of The Access to Public Records Act (ARPA) states that: “[I]t is the public policy of the state that all persons are entitled to *full and complete information* regarding the affairs of government and the official acts.”
3. In his effort to further the fair and open adjudication of this matter, Plaintiff sought to reduce the language of his original Complaint; not to hide the facts, but to reduce his claim to its most basic elements:
  - a. Combs has a right to request, inspect and copy public records.
  - b. The requested information was never provided by Defendants.
  - c. Defendants’ refusals, notwithstanding their denials, do not fall within any exception.

- d. Plaintiff Combs seeks a Court Order that requires Defendants to supply the requested information.
4. By alleging the items in 4a-d above, Combs has established a highly plausible, prima facie case to withstand Defendants' 12(b)(6) Motion.
5. In summary, if all Plaintiff's allegations are taken as true (see, *Huffman v. Indiana Office Env'tl. Adjudication* 811 NE2d 806 (Ind. 2004), Defendants' Motion to Dismiss can only be granted when "[W]hen the allegations present no possible set of facts upon which the complainant can recover. Put another way, dismissal under Rule 12(B)(6) will not be affirmed "unless it is apparent that the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances." *City E. Chicago v. East Chicago Sec. Cent*, 908 NE2d 611 (Ind. 2009), citing *Mart v. Hess*, 703 N.E.2d 190, 193 (Ind.Ct.App. 1998).
6. Plaintiff argues that his Amended Complaint adequately sets forth a jurisdictional basis for the court's power, the plaintiff's cause of action, and a demand for judicial relief.

WHEREFORE, Plaintiff Dan Combs respectfully moves this Court to dismiss Defendants' Second Motion to Dismiss.

Submitted this 27<sup>th</sup> day of February 2022.

s/ William R. Morris, Jr. Bar No. 31433-53  
William R. Morris, Jr.  
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**CERTIFICATE OF SERVICE**

I certify that a copy of this Amended Complaint has been served on Defendants by both E-FILE SYSTEM and by sending an email to Defendants' Counsel, Michael Rouker at

roukerm@bloomington.in.gov and Daniel Dixon at Daniel.Dixon @ Bloomington.in.gov on this on this 27th day of February 2022.

/s/ William R. Morris, Jr.