No. 122411 (consolidated with No. 122349)

IN THE
SUPREME COURT OF ILLINOIS

CHRISTOPHER J. PERRY and PERRY & ASSOCIATES, LLC Plaintiff-Appellants, vs. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION , Defendant-Appellee.	))))))))))

On Petition for Leave to Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-16-1780.
There Heard on Appeal from the Circuit Court
of Cook County, County Department, Chancery Division, No. 14 CH 17994,
The Honorable **Rita M. Novak**, Judge Presiding.

PLAINTIFF-APPELLANT PERRY'S BRIEF

ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

STATUTORY and REGULATORY PROVISIONS INVOLVED

Standard of Review

ARGUMENT

i. **The Retroactive Application Improperly Deprived Perry of his Vested Claim Against the Department for its Prior Conduct**

ii. **The trial court erred in failing to making a fact specific determination why the document could not be redacted**

iii- **The decision in the majority opinion based upon Kalven is in error, as it is based upon an incorrect assumption**

iv- **Retroactively applying the law can only prevent disclosure which is contrary to the public policy behind FOIA and the intent of transparency in the law**

NATURE OF THE CASE

This case arises from a structural engineer and his firm filing a FOIA request for a document submitted to the department by a fellow licensee that followed threats and press attention. After Perry was compelled to attend an investigatory hearing the IDFPR closed matter . Accordingly, since the allegations and complaint were not tendered at the investigation hearing, Perry sought to obtain the materials and filed a FOIA request in January 2013 identifying the documents sought.

Following the initial denial which was accompanied by non-binding Public Access Counselor guidance a second request was made in accordance with the guidance of the Counselor. After a more than a year without guidance from the Counselor on the second FOIA request, a suit was filed in Chancery.

In the Chancery court, the Department filed a general denial and orally requested that the trial court perform an *in camera* inspection of the documents. Both sides filed Summary Judgment motions and the trial court initially granted in part and denied in part Plaintiff's Motion for Summary Judgment. The trial court ordered the release of certain documents in the Plaintiffs/Appellants Perry and Associates, LLC and Christopher J. Perry, the principal of Perry & Associates, LLC (hereinafter referred to as "Perry") professional licensing file maintained by the Illinois Department of Financial and Professional Regulation (hereinafter" the IDFPR" or "the Department"). No findings were made as to why the documents withheld could not be redacted or otherwise produced.

Perry filed a motion to reconsider the partial denial based upon the Department's failure to offer proof or facts to establish why such documents could not be redacted as

required by its burden under the law. The IDFPR subsequently filed its own motion to reconsider based on a change in the law which took effect in the weeks after the judgment rendered by the trial court.

The trial court, relying upon *Kalven*, retroactively applied the change in law and reversed the prior grant of partial summary judgment denying Perry access to any documents relating to the complaint in the professional licensing file. The trial court also denied the motion to reconsider without addressing the issue of the attorney's fees for the IDFPR's conduct for the two years prior to the enactment of the law which Perry was entitled to a hearing on based on the initial grant of summary judgment in their favor.

The Appellate Court issued a majority opinion affirming the trial court. In its ruling the majority opinion relied upon *Kalven* as controlling and did not address this Court's opinions and guidance as provided in *J.T. Einoder* regarding the retroactive application of statutes.

ISSUES PRESENTED

The issues presented for review are:

i. Whether the majority opinion deprived Perry of the vested claim to both the documents sought and as relief based upon the prior conduct of the Department.

ii. Whether the majority opinion erred by failing to determine if the change was procedural or substantive.

iii. Whether the assumption that all relief under a FOIA review are "prospective forms of relief because they are concerned with restraining or requiring future actions rather than remedying past harms" is incorrect as it fails to fully account for the plain language of the statute which provides penalties for past actions of the denying agency.

iv. Whether the retroactive application of the law depriving persons of documents requested is contrary to the stated public policy behind the FOIA statute.

Statement of Jurisdiction

This administrative review action was resolved when the circuit court entered a dismissal with prejudice as to all Counts and entered judgment for the defendant and against the plaintiffs on May 25, 2016. R. C148; App at A78. Plaintiffs timely filed their notice of appeal on June 21, 2016. R. C149; App at A111. The Appellate Court issued its opinion on the decision affirming the dismissal of the action against the defendant the Illinois Department of Financial and Professional Regulation (hereinafter the Department) issued on April 14, 2017. *Perry v. Dep't of Fin. & Prof. Reg*., 2017 IL App (1st) 161780. On the same day the appellate court also released its opinion *Institute for Justice v. Dep't of Fin. & Prof. Reg.*, 2017 IL App (1st) 162141. Subsequently both cases filed Petitions for Rehearing referencing each other as they contain similar legal issues and timing as they are parallel cases it is requested that these matters be viewed together. The Petitions for Rehearing were each denied by the Appellate Court on May 18, 2017 and each timely filed their Petition for Leave before this Court which was granted on September 27, 2017 and which consolidated the cases for hearing. This court has jurisdiction pursuant to SCR 315.

STATUTORY and REGULATORY PROVISIONS INVOLVED

5 ILCS 140/7(d)(iv):

Sec. 7. Exemptions.

(1) When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying. Subject to this requirement, the following shall be exempt from inspection and copying:

(…words omitted…)

(d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

(…words omitted…)

> (iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;

20 ILCS 2105/2105-117 (Effective 8-3-15)

> Sec. 2105-117. Confidentiality. All information collected by the Department in the course of an examination or investigation of a licensee, registrant, or applicant, including, but not limited to, any complaint against a licensee or registrant filed with the Department and information collected to investigate any

such complaint, shall be maintained for the confidential use of the Department and shall not be disclosed. The Department may not disclose the information to anyone other than law enforcement officials, other regulatory agencies that have an appropriate regulatory interest as determined by the Director, or a party presenting a lawful subpoena to the Department. Information and documents disclosed to a federal, State, county, or local law enforcement agency shall not be disclosed by the agency for any purpose to any other agency or person. A formal complaint filed against a licensee or registrant by the Department or any order issued by the Department against a licensee, registrant, or applicant shall be a public record, except as otherwise prohibited by law.

5 ILCS 140/11(j)

(j) If the court determines that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty of not less than $2,500 nor more than $5,000 for each occurrence. In assessing the civil penalty, the court shall consider in aggravation or mitigation the budget of the public body and whether the public body has previously been assessed penalties for violations of this Act. The changes contained in this subsection apply to an action filed on or after the effective date of this amendatory Act of the 96th General Assembly.

STATEMENT OF FACTS

Background

The case arises from the retroactive application of a change in the Freedom of Information Act. In October 2010 Perry & Associates, LLC and Christopher J. Perry, a principal at Perry & Associates were notified that a complaint was made against Mr. Perry's professional license. (A24 ; R C25¶ 19) In September 2012, Mr. Perry was initially served with a notice compelling his appearance before a hearing board and ordering him to deliver various documents relating to a project he worked on in response to a complaint against his license. (A24; R C25 ¶20) The charging instrument contained no facts or details of what he purportedly did to warrant such action and in fact contained a citation to a non-existent section of Code as the claimed violation. Mr. Perry appeared at the hearing, was told by the panel he could not be informed of the nature of the allegation against him other than a vague insinuation he had done wrong. In January 2013 (A25; R C26¶ 21) Perry received a letter closing the matter but also advising Perry that the allegation would remain on his record and could later be used against him if any subsequent complaints were filed.

Initial FOIA Request

On January 21, 2013, Christopher Perry and Perry & Associates, LLC filed an initial FOIA request seeking information as to the nature of the documents submitted to IDFPR. (A25 ; R C 26¶ 22 That initial FOIA request was very specific, described the documents in detail and named the believed author of the complaint which appeared to have been made in personal retaliation against Perry relating to a particular project. On

January 23, 2013 the Department issued its denial replete with irrelevant boilerplate objections and thereafter, upon action of Perry, the matter was reviewed by a Public Access Counselor. (R99; R C102). The review took from March 2013 until August 21, 2013. It involved written arguments by both Perry and the Department as well as an interview of Perry.

The review by the Public Access Counselor agreed with only one objection, which was that by naming the author of the document in the request the, the responsive documents would necessarily disclose the name of the complainant against him.(R.C72-74)

Second FOIA Request

On August 26, 2013 Perry amended their FOIA request in accordance with the Public Access Counselor's guidance and sought the document subject to redaction. (A ; RC75) On September 5, 2013 the Department denied the request citing the Councilor's guidance. On September 10th, Perry appealed to the Counselor's office again by e-mail. That same day, September 10, 2013, the Department again issued a denial reverting from its reliance of the Counselor's guidance to again simply citing to most of the exceptions without elaboration. (R88, R90). After further investigation by Perry, they appealed that denial too. The Counselor's office accepted appeals of both the September 5th and September 10th denials (collectively the second denial). Eventually, after more than a year of waiting while the matter was "being reviewed" and assurances that guidance would be forthcoming "soon" Perry filed suit for administrative review.

Administrative Review Action

The Administrative review action was commenced and consisted of cross motions for Summary Judgment. On July 27, 2015, the trial court granted Perry's motion in part for summary judgment ruling that some of the attachments in the file were public documents and therefore subject to disclosure. (A36; R C133) The trial court refused to order the Department to turn over the complaint containing the allegations of conduct after the in camera inspection without comment as to why such documents could not be redacted. The only issues remaining after the July 27, 2015 order was the issue of whether the Department would appeal and the issue of attorneys' fees to Perry for the nearly two year delay in refusing to disclose public documents in Perry's file.

At the time of the ruling by the trial court the applicable law was 5 ILCS 140/7(d)(iv) which prevented disclosure only to the extent a document would "unavoidably" disclose the identity of a confidential source or a person who files an administrative complaint.

Thereafter, on August 3, 2015, the statute central to the analysis cited by the IDFPR as justification for refusing to comply with the 2013 FOIA request was 20 ILCS 2105/2105-117 which now explicitly exempted all information collected by the Department in the course of investigating a licensee except in response to a lawful subpoena.

Each side then filed motions to reconsider and in the hearing January 7, 2016, the trial court, *sua sponte* citing case law not raised by any brief, retroactively applied the August 3, 2015 change in the law relying upon the opinion in *Kalven v. City of Chicago*, 2014 IL App (1st) 121846 for the proposition that all FOIA requests are prospective in

nature and therefore subject to prospective substantive changes in the law during the trial of the claim.

Ruling of May 25, 2016

Perry timely filed a motion to re-consider the January 7, 2016 ruling and addressing this law, as such application of law had not been briefed as it was only raised by the trial court during oral argument and addressing the Kalven opinion cited by the trial court. That motion to reconsider was denied on May 25, 2016. The trial court dismissed the case in its entirety without addressing the issue of whether the IDFPR should have been subject to attorneys' fees for its conduct prior to the change in the law in August 3, 2015 which reversed the previous grant of summary judgment. An appeal was timely filed on June 21, 2016.

Perry sought review of a FOIA request that had been pending before the Public Access Counselor for an entire year following an initial boilerplate denial. The Department gave a blanket denial of the request and contended that as a rule all complaints and documents in an investigative file opened against a licensee were protected from disclosure and as a policy made no effort to redact such documents to comply with requests. Perry initially won partial summary judgment on certain materials in the file but after the ruling and before they were tendered the law changed. The Department filed a motion to reconsider based on the subsequent change in the law seeking retroactive application of the new statute. The plaintiffs relied upon this Court's holding that with regard to changes in the law "those that are procedural in nature may be applied retroactively, while those that are substantive may not." *People ex rel. Madigan*

v. J.T. Einoder, Inc., ¶32 2015 IL 117193 The trial court did not examine whether the change was substantive or procedural and did not consider consequence of the application of the new law nor the fact that 5 ILCS 140/11 (j) is based upon prior conduct of the agency to determine attorneys' fees. Instead the trial court relied upon *Kalven* to hold that all relief and actions FOIA requests are as a matter of law prospective and therefore retroactively applied the change in law and granted summary judgment for the Department. *Kalven v. City of Chicago*, 2014 IL App (1st) 121846

The Majority Opinion affirmed the trial court by applying *Kalven* and holding that all FOIA requests are prospective in nature and therefore are subject to retroactive application of the law. The Majority Opinion acknowledged *J.T. Einoder* but did not apply the test of procedural versus substantive. Opinion at ¶27. The appellate court's opinion emphasized *Kalven* in determining to apply the law retroactively predicated upon the belief that all relief under a FOIA review is prospective. The Majority Opinion did not address the substantive effect. Op. at ¶¶28,29 The dissenting opinion cited to this Court's decision in *J.T. Einoder* that such analysis allowing retroactive application was incorrect. Op. at ¶¶56-58;

Perry requested leave to appeal from the decision affirming the dismissal of their action against the defendant the Illinois Department of Financial and Professional Regulation (hereinafter the Department) which was issued on April 14, 2017. *Perry v. Dep't of Fin. & Prof. Reg.*, 2017 IL App (1st) 161780. On the same day the First District Appellate Court also released its opinion *Institute for Justice v. Dep't of Fin. & Prof. Reg*., 2017 IL App (1st) 162141. Subsequently both cases filed Petitions for Rehearing referencing each other as they contain similar legal issues and timing as they are parallel

cases it is requested that these matters be viewed together, which were denied. Thereafter both cases filed Petitions for Leave to Appeal to this Court referencing each other as they contain similar legal issues and timing as they are parallel cases and requested that these matters be viewed together. This Court consolidated the matters and granted leave for this appeal.

SUMMARY OF ARGUMENT

1. The retroactive application of the substantive change by majority opinion improperly deprived Perry of the vested claim to both the documents sought and relief as to the prior conduct of the Department.

2. The majority opinion erred by failing to determine if the change was procedural or substantive

3. The assumption that all relief under a FOIA review is "prospective" is contrary the plain language of the statute which provides penalties for past actions of the denying agency.

4. The retroactive application of the law depriving persons of documents requested is contrary to the stated public policy behind the FOIA statute and shields the department tasked with compliance from accountability.

ARGUMENT

Standard of Review

The standard of review is *de novo* for both the statutory construction and because this appeal arises from an order granting summary judgment. See *Stern v.Wheaton Warrenville Community Unit School District 200*, 233 Ill.2d 396, 910 N.E.2d 85, 331 Ill.Dec. 12 (2009) citing *O'Casek v. Children's Home & Aid Society*, 229 Ill.2d 421, 440, 323 Ill.Dec. 2, 892 N.E.2d 994 (2008). and *People ex rel. Director of Corrections v. Booth*, 215 Ill.2d 416, 423, 294 Ill.Dec. 157, 830 N.E.2d 569 (2005)

ARGUMENT

This case revolves around a change in the law governing the disclosure of the requested documents under FOIA. The new law did not explicitly designate that it was retroactively effective. As the law is silent as to whether it was retroactive in its application the question, based on this Court's prior opinions, involves whether the change was substantive or procedural. Here the change in the law affects the rights of the requestor, such rights having vested either at the time the request was made, which the law obligates the Department to comply with the request, or once suit was filed, which grants the courts jurisdiction to review the request and award damages for the prior conduct of the department. In either event the vested right was abrogated by the retroactive application of the law. It was a denial of claim without due process and contrary to the *Landgraf* test regarding substantive versus procedural for retroactive application. *Landgraf v. Usi Film Products, et al*, 511 U.S. 244, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994)There was no ongoing injunctive relief sought but rather a review of

whether certain documents should have been turned over and whether the Department's conduct was proper in denying the request.

i- The Retroactive Application Improperly Deprived Perry of his Vested Claim Against the Department for its Prior Conduct

Here prior to any retroactive application of the statute Perry was entitled to certain documents and a hearing on attorneys' fees for two years of conduct by the IDFPR. But by retroactively applying the change in law, Perry was denied those documents and further the Department's conduct was immunized.

> "¶ 45 In contrast to J.T. Einoder, Inc., the present case involves section 2105-117 of the Code, which only affects present or future disclosure of information and which does not impose any new liability on past conduct. As such, section 2105-117 has no impermissible retroactive effect and therefore was properly applied by the circuit court when ruling on the parties' reconsideration motions and dismissing plaintiffs' FOIA action." *Perry v. Dep't of Fin. & Prof. Reg.*, 2017 IL App (1st) 161780 ¶45. (A14)

Here the new law in question did not expressly provide for retroactive application and as such it is necessary to examine the application of the law.

> "As *Howard* explained, section 4 "is a general savings clause, which this court has interpreted as meaning that procedural changes to statutes will be applied retroactively, while substantive changes are prospective only." *Howard*, 2016 IL 120729, ¶ 20 (citing *People v. Glisson*, 202 Ill. 2d 499, 506-07 (2002)). Thus, if the temporal reach of the statute is not clearly indicated in its text, then the statute's temporal reach is provided by default in section 4 of the Statute on Statutes. *Id." People v. Hunter,* 2017 IL 121306, ¶22

The plain language of the Illinois "Statue on Statues" (5 ILCS 70/4) (from Ch. 1, par. 1103) prohibits a new law from repealing a right unless the new law expressly provides for such previous right "or claim arising under the former law…".

Plaintiff believes that the relief sought here was not prospective and further that retroactively applying the law deprived persons of their rights to relief which had vested, rights to relief based on prior conduct, not future conduct of the Department. Injunctive relief pertains to future actions and declaratory relief addresses past harms and rights. *Green v. Mansour*, 474 US 64 (1985)

Here the new law effective August 3, 2015 failed to expressly allow for retroactive application and therefore could not repeal the claims of Perry including the vested right in the documents or the claim for attorneys' fees. The Plaintiffs had a vested right in the requested documents. They sought redacted copies of documents in the public body's file, not created by said entity, but consisting of public knowledge and facts which were used against Perry in the hearing resulting in a warning in his file and threat of further action if he "repeats" such purported but undisclosed conduct. His rights in those documents accrued dating back to either the amended request as of August 26, 2013 or at the very least upon filing the action in Chancery on November 6, 2014. The issue is whether the denial of such documents was proper. Accordingly, the statute at either the time of filing or the time of the request which was denied should govern this matter, as that was when the action accrued

When this Court ruled in *Wisniewski* that it was applying the law retroactively it noted that it "would not impair anyone's rights with respect to past transactions".

Wisniewski v. Kownacki, 221 Ill.2d 453, 460, 303 Ill.Dec. 818, 851 N.E.2d 1243 at 1249 (2006) Here rights were impaired as a grant of summary judgment was reversed and therefore the relief under 5 ILCS 140/11(j) was taken from Perry. This new law made both a substantive change in the verdict and also rendered impossible any relief in to which the Plaintiffs were entitled to from a 5 ILCS 140/11(j) hearing. The change in the law guaranteed that the Department was the prevailing party regardless of their prior conduct. Therefore the new law impaired Perry's rights as they existed prior to the enactment of the statute. It removed Perry's rights to attorney's fees for the years of conduct by the Department.

The IDFPR was no longer subject to sanctions or fees regardless of how deliberate their refusal to comply with the prior law due to the retroactive application of the new law. This created a substantive change. This demonstrates a substantial impairment of not just Perry's rights in these documents but to a fair hearing on the merits under the 140/11(j) claim which should have vested at the time of filing or at worst at the time of entry of the summary judgment in his favor. The new law should not be allowed to shield the prior conduct and actions by the Department.

ii The Retroactive Application is contrary to this Court's Opinion *in J.T. Einoder, Inc.*

This retroactive application of 20 ILCS 2105/2105-117 not only violates the Statute on Statues Sec 4 but also this Court's direction for analysis as held in *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193 By not applying this Court's

directions and instead merely relying on *Kalven v. City of Chicago,* 2014 IL App (1st) 121846 in its analysis the majority opinion overlooked the holding which requires this Court to determine the effects of such application. The holding of our Supreme Court is controlling. *Blumenthal v. Brewer*, ¶28, 2016 IL 118781. Instead the majority relied upon a Ninth Circuit opinion to avoid this Court's direction. *Perry v. Dep't of Fin. & Prof. Reg.*, 2017 IL App (1st) 161780 ¶56. (A17)

The opinion does not address that the IDFPR admitted that 140/11(j) applies to past conduct. (IDFPR App. Resp. Br. 28) Namely, the Department had potential liability for its conduct in the three years where as a matter of policy it willfully refused to apply the law and redact and disclose as required but instead simply denied all such FOIA requests outright. The IDFPR concedes too that Perry had a right to hearing on its past conduct. (IDFPR App. Resp. Br. p30). That hearing was prevented from occurring due to the new law being retroactively applied. Once the trial court retroactively applied the law Perry was no longer a prevailing party. Thus retroactive application here affected and impaired Perry's rights. This loss of a right to a hearing on the prior conduct of the Department brings "inequitable" results and retroactive impact as contemplated by the guidance in *J.T. Einoder, Inc.*. *Id* at ¶59.(A19)

Here the Appellate Court's majority opinion overlooked the effect in both removing the IDFPR's liability for a vested claim and also the change deprived Perry of his right in a hearing based on the past conduct of the IDFPR relying upon *Kalven*.

This Court, in the time since *Kalven* was decided, gave further direction to our courts to utilize in determining whether to retroactively apply a statute. *J.T. Einoder, Inc.* states that with regard to changes in the law "those that are procedural in nature may be

applied retroactively, while those that are substantive may not." *People ex rel. Madigan v. J.T. Einoder, Inc.*, ¶32 2015 IL 117193 The Appellate Court's majority did not examine the substantive consequence of the application of the new law nor did it address that the change in the law here was not merely procedural.

The Appellate Court's majority did not engage in an inquiry as to the consequences of retroactive application of the new law. The opinion demonstrates that it only did a fact analysis to differentiate that holding from the present case without considering an application of the holding. See *Perry v. Dep't of Fin. & Prof. Reg.*, 2017 IL App (1st) 161780 ¶¶26-28. (A7-8) The Majority Opinion overlooked the issue of retroactive impact and inequitable consequences in applying 2105-117 and failed to follow *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193. The opinion did not address or explain the inequitable result or consequences of the retroactive application.

iii The decision in the majority opinion based upon *Kalven* is in error, as it is based upon an incorrect assumption

This assumption that 20 ILCS 2105/2105-117 affects only present and future disclosures is based on the erroneous reasoning that all declaratory actions and relief under FOIA are purely prospective as enshrined in *Kalven*. This error in reasoning needs to be addressed and corrected by this Court.

Kalven is based upon *Bartlow v. Costigan*, 2014 IL 115152 in which this Court did not hold that such declaratory relief is as a matter of law prospective or that the new law was retroactive. Instead this Court made a fact specific inquiry and determined that in

that case the injunctive relief sought was prospective enforcement which was moot in light of the changes in the pertinent act in that litigation.

The majority's opinion, in relying upon *Kalven* based their reasoning upon a fallacy that all FOIA relief is prospective. There is a distinction that the U.S. Supreme Court discussed in *Green v. Mansour*, 474 US 64 (1985) wherein that Court differentiated between injunctive relief as pertaining to future actions and declaratory relief which addresses past harms and rights. Further as the Majority Opinion noted in Perry, 5 ILCS 140/11(a) allows for declaratory and / or injunctive relief. This implies that such actions brought may include either a determination of past conduct and rights or future relief or both. Thus when the Majority Opinion relies upon the logic in *Kalven* that all FOIA relief, both declaratory and injunctive, is prospective is error. Declaratory relief seeks a judgment that party violated law in the past or determines prior rights. Declaratory relief is the procedure for the court to addresses the question of past violations. *Id.*

The issue of attorneys' fees must be declaratory as well as the plain language of 5 ILCS 140/11(j) applies to the past conduct of the Department. This point was explicitly conceded by the IDFPR but not addressed by the majority opinion. (IDFPR App. Resp. Br. p 21) As 5 ILCS 140/11 (j) imposes penalties for past conduct it cannot be prospective but is retrospective in nature.

As the FOIA statute provides relief for past conduct logically all FOIA cases are not purely prospective. Perry argued that the delay and denial by the IDFPR was improper and therefore there should have been a hearing on attorneys' fees. The hearing on attorneys' fees dealt with "past harms". With the entry of partial summary judgment

in the July ruling, Perry was entitled to a hearing on attorneys' fees. As a result of the retroactive application of law, his right to that hearing for monetary relief based on the Department's prior conduct was taken away.

In point of fact the IDFPR conceded Perry was right and that there should have been a hearing, and further that Perry had a right to the hearing regarding the past harms. (IDFPR App. Resp. Br. 28, 30)

Thus when the majority in ¶41 states that retroactive application of the new 20 ILCS 2105/2105-117 of the Code does not impair any rights, the majority does not address the specific impacts of the retroactive application. *Perry v. Dep't of Fin. & Prof. Reg.*, 2017 IL App (1st) 161780 at ¶¶ 41, 59. (A13, A19) The change in law not only prevented Perry from obtaining documents, as is the focus of the majority opinion, but it also deprived Perry of a hearing on attorney's fees to which the plaintiffs were entitled under the old law. That hearing would have addressed the prior conduct of the Department and its blanket refusal to comply with the plain language of the FOIA statute for years. Perry was seeking attorneys' fees and costs as permitted as part of the relief to which he was entitled to prior to the enactment of the amendment.

The relief provided under 5 ILCS 140/11 (j) addressed past harms and the claim for relief under that statute should have vested at the time of filing. The IDFPR admitted that 140/11(j) is not prospective. (IDFPR App. Resp. Br. 28)

Here prior to any retroactive application of the statute, Perry was entitled to certain documents and to a hearing on attorneys' fees for two years of conduct by the Department. But by retroactively applying the change in law, Perry was denied those documents and further the Department's conduct was immunized. Further the relief

sought here was declarative in nature. Namely whether the IDFPR should have turned over the documents requested and whether the Department's failure to do so as a result of a general policy prohibiting the disclosure of all such documents without inquiry was improper. There was no prospective relief sought, merely adjudication of past rights.

Even the IDFPR implicitly concedes that the *Kalven* opinion creates an unsustainable paradox when viewing declaratory relief the same as injuctive:

Proposition #1 - The IDFPR states that issue of the sanctions for the Department's past conduct is "retrospective relief" under section 11(j). (IDFPR App. Resp. Br. p29)

Proposition #2 - The IDFPR explicitly admits that Perry was entitled to a hearing as to the conduct of the Department "*To be sure, circuit court was mistaken in its belief that it need not decide whether the Department willfully violated FOIA*". (IDFPR App. Resp. Br. p30)

Proposition #3 - The IDFPR the asserts that even if Perry could prove willful delay and frivolous filings (such as the nonsensical denials) Perry was not entitled to any relief under section 11(j) and they could not be not a prevailing party due to the application of new law which can only be applied to "prospective relief". (IDFPR App. Resp. Br. p34)

Proposition #1 is agreed by the parties in the appeal as true. If Proposition #3 is correct then Proposition #2 is in error. If Proposition #2 is correct then Proposition #3 is in error.

Perry was not a prevailing party due to the trial court's subsequent retroactive application of the new law. The retroactive application reversed the grant of summary

judgment. Thus the application of the new law therefore would, according to the IDFPR, deny Perry any recovery under the hearing regarding 5 ILCS 140/11 (j) which the IDFPR admits was an error not to hold. The IDFPR avers that section 140//11 (j) is "retrospective relief" for the Department's past conduct. Therefore the retroactive application of law was used by the trial court to deny hearings on vested claims for past conduct when the IDFPR concedes such application only applies to prospective relief.

To the extent that the statute allows for a review of whether the Department's conduct was correct, it too is a remedy for a past harm to the aggrieved party. To allow only prospective application would render 5 ILCS 140/11(j) meaningless. Thus the opinion in *Kalven* is clearly in plain error with its pronouncement that all relief under FOIA is prospective.

iv Retroactively applying the law can only prevent disclosure which is contrary to the public policy behind FOIA and the intent of transparency in the law

The FOIA Act itself, in Sec 1, states that "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" 5 ILCS 140/1. As this Court has previously noted the intent of the Legislature in enacting the Freedom of Information Act statute:

> "The "purpose of the FOIA is to open governmental records to the light of public scrutiny." *Bowie v. Evanston Community Consolidated School District No. 65*, 128 Ill.2d 373, 378, 131 Ill.Dec. 182, 538 N.E.2d 557 (1989). Accordingly, under the FOIA, "public records are presumed to be open and accessible." *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill.2d 401, 407, 223 Ill.Dec. 641, 680 N.E.2d 374 (1997); see also *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill.2d 456, 462-63, 274 Ill.Dec. 430, 791 N.E.2d 522 (2003)." *Southern Illinoisan v. Dept. of Pub. Health*, 844 N.E.2d 1 at 15, 218 Ill.2d 390, 300 Ill.Dec. 329 (Ill., 2006)

The exceptions to disclosure are narrow to comport with the laws purpose and the law is to be liberally construed to allow access to records. *Id.* (citing *Bowie,* 128 Ill.2d at 378, 131 Ill.Dec. 182, 538 N.E.2d 557., *Illinois Education Ass'n,* 204 Ill.2d at 463, 274 Ill.Dec. 430, 791 N.E.2d 522; Lieber, 176 Ill.2d at 407, 223 Ill.Dec. 641, 680 N.E.2d 374; *American Federation of State, County & Municipal Employees (AFSCME) v. County of Cook,* 136 Ill.2d 334, 341, 144 Ill.Dec. 242, 555 N.E.2d 361 (1990).)

> "Accordingly, in light of the intent of the law and liberal bias towards disclosure and narrow exceptions, it is the Department's burden to demonstrate that the documents should be withheld. *Illinois Education Ass'n.*, 204 Ill.2d at 464, 274 Ill.Dec. 430, 791 N.E.2d 522. " Jurisprudence requires a sufficiently detailed basis to allow for adversarial testing of the claimed exemption." *Day v. City of Chicago,* 902 N.E.2d 1144 at 1148, 388 Ill.App.3d 70 (Ill. App., 2009)

In the event of a more restrictive law, documents requested that should have been disclosed can simply be stalled until the new law takes effect and since the new law's enactment prevents the requestor from being a prevailing party under the statute the departments willful and deliberate refusal would have no consequences. However, if the new law were more expansive, applying the law at the time of the request would do no harm as a new request could be filed and it would be governed by the new statute as to disclosures.

Here Perry was seeking the contents of a file which the governmental body has stated it may hold against him. At the time of the request in this matter there was no prohibition against disclosure as otherwise the new law under 2105-117 has no purpose. To hold that the governmental agency may withhold and secret information against an

individual without charges or disclosure violates both the spirit of the law and a very fundamental element of justice and fair play.

Here the IDFPR is saying it can compel a citizen of the State to appear, demand their compliance and production of documents and refuse to tell a citizen why they are being questioned. Then the Department issues threat of future actions against their profession and livelihood without any transparency. It is contrary to the stated policies underlying FOIA and the law as it existed at the time of the request.

Further the Act as noted by the Court requires affidavits to establish the basis for the reasons such document cannot be produced and/ or redacted. *Day v. City of Chicago*, 902 N.E.2d 1144 at 1149, 388 Ill.App.3d 70 (Ill. App., 2009) The intent of the law towards disclosure and limited exceptions render it the Department's burden to demonstrate that the documents should be withheld as "the agency must provide a *detailed* justification for its claimed exemption" *(Emphasis in original) Id* at 1148 citing *Illinois Education Ass'n.*, 204 Ill.2d at 464, 274 Ill.Dec. 430, 791 N.E.2d 522, quoting *Baudin v. City of Crystal Lake*, 192 Ill.App.3d 530, 537, 139 Ill.Dec. 554, 548 N.E.2d 1110 (1989).

Here the Department failed to provide any justification other than a policy to deliberately not comply with any such request prior to the enactment of 2105-117. It did not identify or demonstrate with any specificity the actual claimed exemption beyond a mere blunderbuss boilerplate citation to various general provisions of 5 ILCS 140/7 and failed to identify any subpart or subparagraph it claims is applicable to the subject FOIA request. (See RC146 ln23 to RC148 ln3) The policy enacted and relied upon as evidenced by their documents reflects they refused to tender such materials as a matter of

policy. In order to appear to comply with the mandates of the law the IDFPR issued denial letters replete with boilerplate refusals which the trial court pointed out "are not helpful." The record clearly shows the absence of any such detailed justification and or other action to satisfy the required legal burden on the Department.

The Department failed to address "the requested documents specifically and in a manner allowing for adequate adversary testing". The Department failed to establish the requirements needed to exclude the documents from disclosure. Therefore the Appellants should have been awarded such materials in July 2015.

The only evidence the Department offered as basis for withholding the Documents was provided in the denial letter of September 5, 2013 and the three general Affirmative Defenses in this cause. No affidavit was provided as to the Affirmative Defenses. Instead the Department merely orally requested an in camera inspection absent any basis. (R.C132)

Further objections raised in the denial letter were boilerplate and irrelevant to the later stated denial. The IDFPR instead stated that as a matter of law all complaints against a license holder were protected from disclosure as they were part of the investigative file. (R C96; R C121-122) The statute, at the time, did not prevent their disclosure. More specifically the Act as written during the period relevant to the request and the litigation through the July 25, 2015 summary judgment hearing specifically allowed for redaction of names in the disclosure of certain complaints. It was only during the rehearing after August 3, 2015 that the law changed to specifically exclude such documents.

Either the change in the statute was meaningless and the Department was correct or the statute has its plain meaning and therefore such documents were not as a mere threshold matter withheld from disclosure. The appropriate legal maxim: "*Expressio unius est exclusio alterius*" is a canon of construction meaning that the expression of one thing is the implied exclusion of the other. Black's Law Dictionary 602 (7th ed.1999). *Gekas v. Williamson*, 912 N.E.2d 347 at 358, 393 Ill. App. 3d 573 (Ill. App., 2009). For example, logically complaints must be able to be disclosed if the names of complaining witnesses may be excluded by statute.

5 ILCS140/7(1)(d)(iv) specifically provides that the only exception to the disclosure is that portion which identifies the complaining witness. The plain language is clear and direct that the withholding is limited "*only* to the extent that disclosure would ... unavoidably disclose the identity of ... persons who file complaints" (*emphasis added*).

Thus when the FOIA request was revised and submitted in August 2013 to comply with the terms of the Public Access Counselor's guidance, the Department should have redacted the name (and the letterhead apparently) and disclosed the complaint. Instead it withheld all of the documents and refused to comply with the law. The only reason the summary judgment directing them to turn over certain documents and subjecting the Department to attorneys' fees was reversed was due to an amendment in the General Assembly introduced on May 5, 2015 after nearly two years of failing to comply.

The Department and the trial court never addressed how a redacted document with proper names omitted would disclose any person's identity. In fact the Department never, despite having the burden, stated what section, portion or provision of that statute

is applicable. Instead the Department admitted a policy of refusing to comply with the law and its intent, and by retroactively applying the law such improper conduct is shielded.

CONCLUSION

Plaintiffs- Appellants Christopher J. Perry and Perry & Associates LLC, request that the grant of summary judgment for the Illinois Department of Financial and Professional Regulation be reversed with direction to provide the documents as redacted and further that this matter be remanded for further hearings as to the application and assessment of costs as permitted under 5 ILCS 140/11(j) or other such relief as this Court deems just and proper.

Respectfully submitted.

/s/ Gregory F. Ladle

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CERTIFICATE OF COMPLIANCE

I, Gregory F. Ladle, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(l) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under 342(a), is 28 pages.

/s/ Gregory F. Ladle
_____
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PROOF OF FILING / SERVICE

I, Gregory F. Ladle, an attorney, certify that on the 5th day of December , 2017, we have caused to be electronically filed with the Clerk of the Supreme Court of Springfield, Illinois, via its e-filing system the following: a **PLAINTIFF-APPELLANT PERRY'S BRIEF**, a copy of which is attached hereto.

I, Gregory F. Ladle, an attorney, further certify that I served a copy of this **PLAINTIFF-APPELLANT PERRY'S BRIEF** and **Proof of Service** upon:

Attorney for Illinois Department of Financial and Professional Regulation
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the parties of record by emailing copies of the same to all primary and secondary email addresses of record on the 5th day of December, 2017.

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 .

/s/ Gregory F. Ladle

Gregory F. Ladle

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INDEX TO APPENDIX

2017 IL App (1st) 161780
Opinion filed: April 14, 2017

SIXTH DIVISION

No. 1-16-1780

CHRISTOPHER J. PERRY and PERRY & ASSOCIATES, LLC,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 14 CH 17994
THE DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION,	)	Honorable Rita M. Novak,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court, with opinion.
Justice Cunningham concurred in the judgment and opinion.
Justice Delort dissented, with opinion.

OPINION

¶ 1 Plaintiffs-appellants, Christopher J. Perry and Perry & Associates, LLC (collectively referred to as plaintiffs), filed an action in the circuit court under the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq*. (West 2010)), against defendant-appellee, the Department of Financial and Professional Regulation, seeking the disclosure of a complaint filed with defendant against Mr. Perry's structural engineer's license, as well as reasonable attorney fees, and a finding for civil penalties on the basis that defendant had acted in bad faith by failing to disclose the complaint. Plaintiffs moved for summary judgment. The circuit court granted plaintiffs' motion in part and denied it in part. The court ruled that the complaint was not disclosable, but it ordered the release of certain exhibits attached to the complaint. Both parties moved for reconsideration. The circuit court granted defendant's motion for reconsideration and dismissed plaintiffs' FOIA action, in its entirety, ruling that a new statute under the Civil Administrative Code of Illinois (Code) (20 ILCS 2105/2105-117 (West Supp. 2015)), precluded the release of either the complaint or its exhibits to plaintiffs. The circuit court also dismissed plaintiffs' claims

for attorney fees and civil penalties. Plaintiffs moved for reconsideration. The circuit court denied plaintiffs' motion. Plaintiffs appeal. We affirm.

¶ 2 I. Background Information

¶ 3 The FOIA provides that "[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 (West 2014). If denied information by the public body, the requestor may bring either a request for review by the Public Access Counselor (PAC) established in the office of the Attorney General under section 9.5(a) of the FOIA (5 ILCS 140/9.5(a) (West 2014)), or an action in the circuit court for declaratory or injunctive relief under section 11(a) of the FOIA (5 ILCS 140/11(a) (West 2014)), or may pursue both. When the requestor seeks PAC review, the PAC may, in its discretion, issue either a nonbinding or binding opinion. 5 ILCS 140/9.5(f) (West 2014). A binding opinion issued by the PAC is considered a final decision of an administrative agency for purposes of administrative review. 5 ILCS 140/11.5 (West 2014).

¶ 4 By contrast, an action in the circuit court under section 11 of the FOIA is a *de novo* action, not an action for administrative review. 5 ILCS 140/11(f) (West 2014). In pertinent part, section 11(d) provides that the circuit court "shall have the jurisdiction to enjoin the public body from withholding public records and to order the production of any public records improperly withheld from the person seeking access." 5 ILCS 140/11(d) (West 2014). Section 11(i) 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) (West 2014). Section 11(j) provides that "[i]f the court determines that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad

faith, the court shall also impose upon the public body a civil penalty of not less than $2,500 nor more than $5,000 for each occurrence." 5 ILCS 140/11(j) (West 2014).

¶ 5 II. Plaintiffs' FOIA Request

¶ 6 Plaintiffs' FOIA request stems from a complaint filed with defendant against Mr. Perry's structural engineer's license by an individual whose identity was not disclosed to Mr. Perry. Mr. Perry appeared at an administrative hearing in response to the complaint, and he claims that he was told by the panel that he could not be informed of the nature of the allegation against him other than a vague insinuation that he had "done wrong." Mr. Perry ultimately received a letter in January 2013 closing the matter with no adverse consequences but, also, advising him that the allegation would remain on his record and could later be used against him if any subsequent complaints were filed.

¶ 7 On January 21, 2013, plaintiffs filed their initial FOIA request with defendant, seeking disclosure of the complaint made against Mr. Perry's license. On January 23, 2013, defendant denied the request.

¶ 8 Plaintiffs sought review of defendant's denial with the PAC pursuant to section 9.5(a) of the FOIA. 5 ILCS 140/9.5(a) (West 2014).

¶ 9 On August 21, 2013, in a non-binding opinion letter, the PAC concluded that defendant properly refused to disclose the complaint against Mr. Perry's license under section 7(1)(d)(iv) of the FOIA (5 ILCS 140/7(1)(d)(iv) (West 2014)). Section 7(1)(d)(iv) exempts information from disclosure, where disclosure would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or

penal agencies." *Id*. The PAC determined that disclosure of the complaint would unavoidably identify the person who filed the complaint with defendant in violation of section 7(1)(d)(iv).

¶ 10 On August 26, 2013, plaintiffs amended the FOIA request in accordance with the PAC's opinion and requested that defendant disclose the complaint "redacted to exclude proper names and 'confidential information" pursuant to section 7(1) of the FOIA. Section 7(1) provides that "[w]hen a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt." 5 ILCS 140/7(1) (West 2014). Defendant denied the request.

¶ 11 On November 6, 2014, plaintiffs filed an action against defendant in the circuit court pursuant to section 11 of the FOIA. Plaintiffs requested that the court order defendant to produce the redacted complaint against Mr. Perry's license pursuant to section 11(d), and also sought an award of attorney fees pursuant to section 11(i), as well as the imposition of a civil penalty pursuant to section 11(j) for defendant's willful and bad-faith failure to comply with the FOIA. See 5 ILCS 140/11(d), (i), (j) (West 2014).

¶ 12 Plaintiffs moved for summary judgment or, in the alternative, for an *in camera* inspection of the complaint against Mr. Perry's license pursuant to section 11(f) of the FOIA. A hearing was held on July 27, 2015. The circuit court concluded, after an *in camera* inspection, that the complaint was exempt from disclosure under section 7(1)(d)(iv) of the FOIA, but that two exhibits to the complaint could be disclosed because they had previously been made available to third parties. Accordingly, the court granted in part and denied in part plaintiffs' motion for summary judgment.

¶ 13 Plaintiffs moved for reconsideration, arguing that the court should have ordered disclosure of the complaint with any names redacted that would have disclosed the complainant's identity.

¶ 14 Defendant also moved for reconsideration, arguing that the court should not have ordered the disclosure of the exhibits to the complaint, as those exhibits would necessarily reveal the complainant's identity in violation of section 7(1)(d)(iv) of the FOIA. Defendant also raised section 2105-117 of the Code (20 ILCS 2105/2105-117 (West Supp. 2015)), a statutory amendment that took effect on August 3, 2015, as a basis to find that the complaint and attached exhibits were exempt from disclosure even if all names and confidential information was redacted. Section 2105-117 provides:

> "All information collected by the Department in the course of an examination or investigation of a licensee, registrant, or applicant, including, but not limited to, any complaint against a licensee or registrant filed with the Department and information collected to investigate any such complaint, shall be maintained for the confidential use of the Department and shall not be disclosed." *Id.*

¶ 15 Plaintiffs responded that section 2105-117 does not apply in this case because it was not in effect at the time plaintiffs made the FOIA request or when the circuit court issued its ruling on plaintiffs' summary judgment motion.

¶ 16 A hearing was held on the motions to reconsider on January 7, 2016. The circuit court noted that section 2105-117 had become effective about one week after its earlier ruling on plaintiffs' summary judgment motion, and thus the court could not have applied section 2105-117 when ruling on the motion. However, the court also noted it had retained jurisdiction over this case to consider the parties' motions for reconsideration, and that it was required under

Kalven v. City of Chicago, 2014 IL App (1st) 121846, to apply the law currently in effect, *i.e.*, section 2105-117, when ruling on the reconsideration motions. The court determined that under section 2105-117, plaintiffs were not entitled to the disclosure of either the redacted complaint against Mr. Perry's license or the exhibits attached to the complaint. Accordingly, the court granted defendant's motion for reconsideration and dismissed plaintiffs' FOIA action.

¶ 17 Plaintiffs filed a motion to reconsider the January 7, 2016, judgment, arguing that the court erred by applying section 2105-117, by failing to specifically address their claim for attorney fees under section 11(i) of the FOIA, and by failing to specifically address their claim for a civil penalty against defendant under section 11(j) of the FOIA.

¶ 18 The circuit court denied plaintiffs' motion to reconsider and reaffirmed its dismissal of plaintiffs' FOIA action, ruling that section 2105-117 prevented the disclosure of the redacted complaint against Mr. Perry's license or the exhibits attached to the complaint.

¶ 19 The circuit court also dismissed plaintiffs' claim for attorney fees under section 11(i) of the FOIA because plaintiffs were not prevailing parties.

¶ 20 Finally, the circuit court dismissed plaintiffs' claim for a civil penalty against defendant under section 11(j) of the FOIA.

¶ 21 III. Plaintiffs' Appeal

¶ 22 Initially, we note that plaintiffs characterize their action here as one for administrative review. Plaintiffs' characterization is incorrect, as they appeal the circuit court's granting of defendant's motion for reconsideration of its earlier summary judgment ruling and dismissing plaintiffs' claim for injunctive relief under section 11(d) of the FOIA which, as discussed earlier in this order, is a *de novo* action and not an administrative review action.

¶ 23 We proceed to address plaintiffs' appeal.

¶ 24 The parties agree that, if applicable, section 2105-117 of the Code prevents the disclosure of the redacted complaint against Mr. Perry's structural engineer's license and the attached exhibits to the complaint. However, plaintiffs argue that the circuit court erred in applying section 2105-117 retroactively to their FOIA action. Whether a statutory amendment will be applied prospectively or retrospectively is a matter of statutory construction that is reviewed *de novo*. *Thomas v. Weatherguard Construction Co.*, 2015 IL App (1st) 142785, ¶ 63.

¶ 25 Plaintiffs contend that the circuit court misapplied the test set forth in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), in determining whether an amended statute may be applied retroactively. Under the *Landgraf* test, "if the legislature has clearly indicated the temporal reach of the amended statute, that expression of legislative intent must be given effect, absent a constitutional prohibition. If, however, the amended statute contains no express provision regarding its temporal reach, the court must go on to determine whether applying the statute would have a retroactive impact, 'keeping in mind the general principle that prospectivity is the appropriate default rule.' " *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 29 (quoting *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318, 330-31 (2006)).

¶ 26 Under *Landgraf*, "[a]n amended statute will be deemed to have retroactive impact if application of the new statute would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. [Citations.] If the court finds that retrospective application of the new law would have a retroactive impact or result in inequitable consequences, 'the court must presume that the legislature did not intend that it be so applied.' " *Id.* ¶ 30 (quoting *Caveney v. Bower*, 207 Ill. 2d 82, 91 (2003)).

¶ 27 However, Illinois courts rarely look beyond the first step of the *Landgraf* analysis. *Bower*, 207 Ill. 2d at 94. "This is because an amendatory act which does not, itself, contain a clear indication of legislative intent regarding its temporal reach, will be presumed to have been framed in view of the provisions of section 4 of our Statute on Statutes (5 ILCS 70/4 (West 2000))." *J.T. Einoder, Inc*., 2015 IL 117193, ¶ 31. Section 4 is a general savings clause, which the supreme court has interpreted as meaning that "procedural changes to statutes will be applied retroactively, while substantive changes are prospective only." *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 20.

¶ 28 In the present case, plaintiffs argue that section 2105-117 (which contains no express provision regarding its temporal reach) is a substantive amendment that exempts from disclosure all complaints, even redacted ones, against a licensee filed with defendant, and also exempts from disclosure all information collected to investigate any such complaint, even information that is not confidential. Plaintiffs contend the application of section 2105-117 would have a retroactive impact on plaintiffs by impairing their rights to examine the complaint (and attached exhibits) filed against Mr. Perry's structural engineer's license. Accordingly, plaintiffs argue that, under *Landgraf* and section 4 of the Statute on Statutes, section 2105-117 may not be retroactively applied.

¶ 29 We disagree with plaintiffs' argument, finding *Kalven, Center For Biological Diversity v. United States Department of Agriculture*, 626 F.3d 1113 (9th Cir. 2010), and *Wisniewski v. Kownacki*, 221 Ill. 2d 453 (2006), to be controlling.

¶ 30 In *Kalven*, the plaintiff submitted FOIA requests to the Chicago police department (CPD), seeking disclosure of two types of documents related to complaints of police misconduct.

CPD denied the requests, and the plaintiff filed suit seeking an injunction requiring CPD to produce the documents. *Kalven*, 2014 IL App (1st) 121846, ¶ 2.

¶ 31 The parties filed cross-motions for summary judgment. *Id*. ¶ 7. The circuit court found that one type of document was exempt from disclosure under the FOIA, but that the other type was not exempt. *Id*. Both parties appealed. *Id*.

¶ 32 The appellate court noted that the threshold question to be resolved is which version of the FOIA applies to this case. *Id*. ¶ 8. The plaintiff requested the documents from the CPD in November 2009, and after CPD denied the request, the plaintiff filed suit on December 22, 2009. *Id*. While the case was pending in the circuit court, an amended version of the FOIA went into effect on January 1, 2010. *Id*. The plaintiff argued on appeal that the appellate court should apply the 2009 version of the FOIA because it was in effect when the FOIA request was denied by the CPD; however, defendants argued that the 2010 version of the statute should be applied. *Id*.

¶ 33 The appellate court held:

"Injunctive and declaratory relief are prospective forms of relief because they are concerned with restraining or requiring future actions rather than remedying past harms." *S*ee, *e.g*., *PHL, Inc. v. Pullman Bank & Trust Co*., 216 Ill. 2d 250, 267-68 (2005) (discussing the difference between an injunction and present claims for damages in the context of sovereign immunity). When claims are prospective, a court must apply the law that is in effect at the time of its decision. See, *e.g.*, *Bartlow v. Costigan*, 2014 IL 115152, ¶¶ 30-31 (in the context of a suit seeking a declaration that a statute is unconstitutional and an injunction prohibiting its enforcement, amended version of the statute must be examined in order to determine whether the plaintiff is entitled to relief); see also *Forest Preserve District of Kane County v. City of Aurora*, 151 Ill. 2d 90, 94-95 (1992) (same). In this case, although the 2009 FOIA statute was in effect

when plaintiff filed suit, the statute has since been amended. In order to determine whether plaintiff is entitled to production of the documents, we must therefore apply the version of the statute that is currently in effect." *Kalven*, 2014 IL App (1st) 121846, ¶ 10.

¶ 34 In *Center for Biological Diversity*, the Center for Biological Diversity submitted an FOIA request to the Animal and Plant Health Inspection Service (APHIS) for the specific GPS coordinates of certain wolf attacks. *Center for Biological Diversity*, 626 F.3d at 1115. APHIS refused to provide the GPS coordinates, and the Center brought suit against APHIS and the United States Department of Agriculture (collectively, the USDA). *Id*.

¶ 35 The district court granted the Center's motion for summary judgment and denied that of the USDA, finding that the GPS coordinates must be disclosed. *Id*. The district court held that section 8791 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. § 8791 (Supp. II 2009)), which exempted the disclosure of the GPS coordinates, did not apply because it was enacted after the USDA withheld the GPS coordinates. *Center for Biological Diversity*, 626 F.3d at 1115. The USDA appealed. *Id*. at 1116.

¶ 36 The Ninth Circuit Court of Appeals (Ninth Circuit) reversed. *Id*. at 1118-19. The Ninth Circuit noted the two-step test set forth in *Landgraf* for determining the applicability of legislation enacted after the acts that gave rise to the suit, and found under the first step that Congress had not expressly prescribed section 8791's temporal reach. *Id*. at 1117. As to the second step, whether section 8791 would have retroactive effect, the Ninth Circuit cited an earlier case in which a conservation group brought an FOIA action to compel the Forest Service to release location data about an endangered bird. *Southwest Center for Biological Diversity v. United States Department of Agriculture*, 314 F.3d 1060, 1061 (9th Cir. 2002). While the action was pending in the district court, Congress passed new legislation permitting the withholding of

such information from the public. *Id*. In determining whether the new legislation applied in that case, the appellate court concluded there was no impermissible retroactive effect because "the 'action' of the [conservation group] was merely to request or sue for information; it was not to take a position in reliance upon existing law that would prejudice the [conservation group] when that law was changed." *Id*. at 1062. As a result, the new legislation applied. *Id*.

¶ 37 The Ninth Circuit held that "*Southwest* requires the conclusion that there is no impermissible retroactive effect in applying Section 8791 to the Center's pending FOIA action. As in *Southwest*, the only action the Center took was to request information and file suit. It engaged in no other action in reliance on then-existing law. We have already explicitly rejected the theory that there is an impermissible retroactive effect just because 'the Center had a right to the information when it filed its suit *** and it loses that right by application of the new exemption.' [Citation.] *** '[W]hen the intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive.' [Citation.] Here, the Center seeks the prospective relief of an injunction directing the USDA to provide it with certain information. Section 8791 merely affects the propriety of this prospective relief and is therefore not impermissibly retroactive when applied in this case." *Center for Biological Diversity*, 626 F.3d at 1118.

¶ 38 In *Wisniewski*, the plaintiff filed a lawsuit alleging that defendant Kownacki, a priest, had sexually abused him. *Wisniewski*, 221 Ill. 2d at 455. The plaintiff sought discovery of the records of Kownacki's mental health treatment and alcohol-abuse counseling. *Id*. The defendants objected to the disclosure of the records, asserting that the records were privileged under the Mental Health and Developmental Disabilities Confidentiality Act (Confidentiality Act) (740 ILCS 110/1 *et seq*. (West 2002)) and the Alcoholism and Other Drug Abuse and Dependency

Act (Dependency Act) (20 ILCS 301/30-5 *et seq*. (West 2002)). *Wisniewski*, 221 Ill. 2d at 455-56. The circuit court concluded that neither statute applied to records created prior to the effective dates of the statutes and ordered that the records be turned over. *Id.* at 456. Defendants refused to turn over the records, and the circuit court held defendants in contempt. *Id*. Defendants ultimately appealed to the supreme court. *Id*.

¶ 39 In pertinent part, our supreme court stated:

> "Plaintiff argues that applying the nondisclosure provisions of the Confidentiality Act and the Dependency Act to Kownacki's preenactment treatment records would have a retroactive impact because it would impose new duties with respect to documents and transactions completed years before the statutes' enactment. We reject this argument and conclude that the applicability of the Confidentiality Act and the Dependency Act to Kownacki's treatment records does not hinge upon a retroactivity analysis. Disclosure, which is the act regulated by both statutes, takes place only in the present or the future. Thus, any new duties regarding disclosure or nondisclosure would likewise be imposed only in the present or the future, not in the past. In other words, applying the nondisclosure provisions of the Confidentiality Act and the Dependency Act to preenactment treatment records and communications would not impair anyone's rights with respect to past transactions. Neither statute impacts any actions that may have taken place in the past with regard to Kownacki's records. For these reasons, we conclude that the Confidentiality Act and the Dependency Act are applicable to treatment records and communications that were created pursuant to treatment given prior to the effective dates of those statutes." *Id*. at 462-63.

¶ 40 *Kalven*, *Center for Biological Diversity*, and *Wisniewski* compel the conclusion that when a statutory amendment only affects the present or future disclosure of information (either by allowing for its disclosure or exempting it from disclosure), and does not otherwise impair anyone's rights with respect to completed transactions made in reliance on the prior law, the application of the amendment has no impermissible retroactive effect and therefore the amendment must be applied by the court if it is in effect at the time of the court's decision.

¶ 41 In the present case, as section 2105-117 of the Code only exempts the complaint and exhibits requested by plaintiffs from present or future disclosure, and does not otherwise impair plaintiffs' rights with respect to any completed transactions made in reliance on any prior law, its application has no impermissible retroactive effect. Therefore, the court properly applied section 2105-117 when ruling on the reconsideration motions and dismissing plaintiffs' FOIA request.

¶ 42 Our holding is further bolstered because plaintiffs sought injunctive relief, which is a prospective form of relief for which the circuit court must apply the law in effect at the time of its decision, *i.e.*, section 2105-117. *Kalven*, 2014 IL App (1st) 121846, ¶ 10

¶ 43 Plaintiffs argue that *J.T. Einoder, Inc*., compels a different result. In *J.T. Einoder, Inc*., the office of the Illinois Attorney General filed a complaint against the defendants alleging they had been violating the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq*. (West 2000)), by engaging in open dumping and by permitting the deposit of construction and demolition debris waste above grade without a permit. *J.T. Einoder, Inc*., 2015 IL 117193, ¶¶ 1-2. In addition to monetary penalties, the State sought a mandatory injunction pursuant to section 42(e) of the Act requiring the defendants to remove the above-grade waste pile. *Id*. ¶ 17. The defendants argued that the version of section 42(e) of the Act in effect at the time of the violations did not allow for mandatory injunctive relief. *Id*. The State responded that the

amended version of section 42(e), which permits courts to issue mandatory injunctions, applied in this case. *Id*. The circuit court ruled that amended section 42(e) applied, and accordingly the court granted the State's request for a mandatory injunction. *Id*. ¶ 19. The appellate court affirmed. *Id*. ¶ 20.

¶ 44 Our supreme court reversed the appellate court's finding that amended section 42(e) of the Act may be applied retroactively, noting that the amended section "creates an entirely new type of liability—a mandatory injunction—which was not available under the prior statute. Applying it retroactively here would impose a new liability on defendants' past conduct. For that reason, it is a substantive change in the law and cannot be applied retroactively." *Id*. ¶ 36.

¶ 45 In contrast to *J.T. Einoder, Inc*., the present case involves section 2105-117 of the Code, which only affects present or future disclosure of information and which does *not* impose any new liability on past conduct. As such, section 2105-117 has no impermissible retroactive effect and therefore was properly applied by the circuit court when ruling on the parties' reconsideration motions and dismissing plaintiffs' FOIA action.

¶ 46 Next, plaintiffs argue that the circuit court erred in dismissing their claim for attorney fees under section 11(i) of the FOIA. Section 11(i) only allows the recovery of attorney fees when "a person seeking the right to inspect or receive a copy of a public record *prevails* in a proceeding under this Section." (Emphasis added.) 5 ILCS 140/11(i) (West 2014). Plaintiffs here did not prevail in their FOIA proceeding, and therefore the circuit court did not err by dismissing plaintiffs' claim for attorney fees.

¶ 47 Finally, on the conclusion page of their appellants' brief, plaintiffs cursorily argue that the matter should be remanded for a hearing on the application of civil penalties against defendant under section 11(j) of the FOIA. Plaintiffs forfeited review by failing to make an

adequate argument regarding the imposition of civil penalties under section 11(j). See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 49 Affirmed.

¶ 50 JUSTICE DELORT, dissenting.

¶ 51 On January 21, 2013, and again on August 26, 2013, the plaintiffs requested records from the Illinois Department of Financial and Professional Regulation pursuant to FOIA. The Department ultimately denied their request. On November 6, 2014, plaintiffs filed this action to obtain the records. Almost a year later, on August 3, 2015, the General Assembly enacted a law which exempted the records from disclosure. The circuit court dismissed the plaintiff's complaint on the sole basis of the new law. This case thus presents the issue of whether the General Assembly can thwart a FOIA request by passing a new law exempting those records from disclosure, after the records were denied by the agency holding the records and while the matter is in litigation. I believe that the trial court erred by applying the new statute to bar the plaintiffs' request and, therefore, respectfully dissent.

¶ 52 Our supreme court has explained that the retroactive application of a statute is determined under the test set forth in *Landgraf*, 511 U.S. 244, 280 (1994). Under the first part of the test, "if the legislature has clearly prescribed the temporal reach of the statute, the legislative intent must be given effect absent a constitutional prohibition." *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 23. The second part of the test provides that if the new law contains no "express provision regarding the temporal reach, the court must determine whether applying the statute would have a 'retroactive' or 'retrospective' impact; that is, 'whether it would *impair rights a party possessed* when he acted.' " (Emphasis added.) *Id.*

(quoting *Landgraf*, 511 U.S. at 280). If "applying the statute would have a retroactive impact, then the court must presume that the legislature did not intend that it be so applied." *Id.* (citing *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 38 (2001)); see also *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 30 (applying same analysis).

¶ 53 "Illinois courts will rarely, if ever, need to go beyond step one of the *Landgraf* analysis. This is because an amendatory act which does not, itself, contain a clear indication of legislative intent regarding its temporal reach, will be presumed to have been framed in view of the provisions of section 4 of our Statute on Statutes." *Id*. ¶ 31. Section 4 of the Statute on Statutes, in turn, provides: "[n]o new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to *** *any right accrued*, or claim arising under the former law." (Emphasis added.) 5 ILCS 70/4 (West 2014). The law at issue here, section 2105-117 of the Code (20 ILCS 2105/2105-117 (West Supp. 2015)), contains no language suggesting that its temporal reach was intended to be retroactive so that it would affect record requests validly made before its enactment. Accordingly, section 4 of the Statute on Statutes suggests the plaintiffs are entitled to consideration of their FOIA request on the merits regardless of the later enactment of section 2105-117 of the Code.

¶ 54 In considering whether section 2105-117 should be construed to be retroactive, we should also be guided by section 1 of FOIA itself, which states:

> "The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." 5 ILCS 140/1 (West 2014).

¶ 55 Public bodies are required to fulfill valid FOIA requests within a few weeks, at most. 5 ILCS 140/3 (West 2014). Additionally, FOIA requires courts to prioritize FOIA litigation over other types of cases. 5 ILCS 140/11(h) (West 2014) ("Except as to causes the court considers to be of greater importance, proceedings arising under this Section 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."). When, as here, public bodies fail to fulfill FOIA requests "expediently" and require requestors to seek judicial relief to vindicate their rights, the public policy enunciated in FOIA demands that those rights not be thwarted by an unduly strained interpretation of our state's retroactivity jurisprudence.

¶ 56 To avoid this result, the majority cites several authorities, none of which are persuasive. *Wisniewski* concerned the release of medical records *created* before the enactment of statutes shielding them from disclosure. The request for the records was first made as part of discovery in the underlying lawsuit. The lawsuit itself was not filed until years after the statutes had been enacted. Our supreme court held that the records need not be released, reasoning that:

> "Disclosure, which is the act regulated by both statutes, takes place only in the present or the future. Thus, any new duties regarding disclosure or nondisclosure would likewise be imposed only in the present or the future, not in the past. In other words, applying the nondisclosure provisions of the [statutes] to preenactment treatment records and communications would not impair anyone's rights with respect to past transactions. Neither statute impacts any actions that may have taken place in the past with regard to Kownacki's records." *Wisniewski*, 221 Ill. 2d at 463.

Here, in contrast, the plaintiffs' request was filed and denied before section 2105-117 of the Code was enacted. *Wisniewski* is therefore distinguishable.

¶ 57 The majority also relies on a case interpreting the federal FOIA, *Center for Biological Diversity*. There, the court held that amendments to the federal version of FOIA enacted while the lawsuit was pending barred disclosure of documents requested before the amendment's enactment. This case is distinguishable for several reasons. First, the federal version of FOIA does not include the strong statement of public policy and the specific declaration of citizens' "right[s]" contained in the Illinois FOIA. Compare 5 U.S.C. § 552 (2012), with 5 ILCS 140/1 (West 2014). Second, while cases interpreting the federal version of FOIA are often helpful in interpreting identical provisions in the Illinois FOIA, "Illinois courts have repeatedly noted that the Illinois version of the FOIA is different from the federal version and is, therefore, subject to a different interpretation." *Rockford Police Benevolent & Protective Ass'n, Unit No. 6 v. Morrissey*, 398 Ill. App. 3d 145, 153 (2010). Similarly, in *American Federation of State, County & Municipal Employees (AFSCME), AFL-CIO v. County of Cook*, 136 Ill. 2d 334, 345 (1990), our supreme court stated: "we decline to interpret the Illinois [FOIA] as narrowly as [the Court of Appeals for the District of Columbia Circuit] interpreted the Federal Freedom of Information Act."

¶ 58 The majority also relies on *Kalven*, in which the court held that a court hearing an appeal from a FOIA denial should apply the version of FOIA in existence at the time of its ruling. *Kalven*, 2014 IL App (1st) 121846, ¶ 10. I was on the panel that decided *Kalven* but did not join that part of the opinion. Instead, I specially concurred, stating: "I would instead find that the plaintiff's rights to the records vested when he made the request and could not later be rescinded by legislative action. To hold otherwise would encourage governmental bodies to stall FOIA responses until some future time when the legislature might amend the statute in a favorable manner, or to actively lobby for an amendment which shields particular embarrassing records

from disclosure." *Id.* ¶ 36 (Delort, J., specially concurring). The *Kalven* opinion does not discuss the key—and highly relevant—declaration in section 4 of the Statute on Statutes that "[n]o new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to *** *any right accrued*, or claim arising under the former law." (Emphasis added.) 5 ILCS 70/4 (West 2014).

¶ 59 Also, the *Kalven* court did not have the benefit of the more recent Illinois Supreme Court case of *J.T. Einoder, Inc*., in which the court found that a new law cannot apply retrospectively where it would "have a retroactive impact or result in inequitable consequences." *J.T. Einoder, Inc*., 2015 IL 117193, ¶ 30. Here, the Department eventually denied the plaintiffs' request, requiring the plaintiffs to seek judicial relief to vindicate their rights under FOIA. Under these facts, applying section 2015-117 of the Code retroactively would, indeed, have "inequitable consequences."

¶ 60 Accordingly, I must respectfully dissent. I would instead reverse the order dismissing the complaint and remand for further proceedings.

Nos. 1-16-1780

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHRISTOPHER J. PERRY and PERRY & ASSOCIATES, LLC,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 14 CH 17994
THE DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION,	)	Honorable Rita M. Novak,
Defendant-Appellee.	)	Judge Presiding.

ORDER

This cause coming to be heard upon the petition for rehearing of plaintiffs-appellants, CHRISTOPHER J. PERRY, *et al.*, which includes a request to grant a certification of importance pursuant to Ill. S. Ct. R. 316 (eff. Dec. 6, 2006, as amended), all parties having been notified, and this court being fully advised in the premises;

IT IS HEREBY ORDERED that the petition for rehearing and the request to grant a certification of importance are DENIED.

ORDER ENTERED
MAY 18 2017
APPELLATE COURT, FIRST DISTRICT

JUSTICE

JUSTICE

JUSTICE

I would grant rehearing but agree to deny the request for a certificate of importance.

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

CHRISTOPHER J. PERRY, an Individual and PERRY & ASSOCIATES, LLC an Illinois limited liability company,	)	
Plaintiffs,	)	
vs.	)	No. 14 CH 17994
ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION,	)	Judge Rita M. Novak
	)	Calendar 9
Defendant.	)	

DEFENDANT'S ANSWER TO COMPLAINT

NOW COMES the Defendant, ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, by and through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, and file this Answer to Plaintiffs' Complaint as follows:

NATURE OF THE ACTION

1. The Plaintiffs were involved in the structural review of a school building which eventually became the subject of some media attention due to the actions of others.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 1 of the Complaint.

2. Subsequent to the media attention, a fellow licensee demanded that Perry participate in that licensee's media strategy. Perry declined to participate and made no public statements.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 2 of the Complaint.

3. A complaint was thereafter filed with the Department against Perry.

ANSWER: Defendant admits that a Complaint was filed with the Department of Financial and Professional Regulation against Plaintiff. 4. The Department held a

hearing and dismissed the complaint. Once the complaint was entirely dismissed, Perry filed a FOIA request with the Department's FOIA officer.

ANSWER: Defendant admits that it dismissed the complaint and that Plaintiff then filed a FOIA request. Defendant denies the remaining allegations of paragraph 4 of the Complaint.

5. The Department denied Perry's request and he appealed to the Public Access Counselor. The Counselor denied his request citing particular grounds. Perry then refiled his request adopting the Counselor's guidance. The Department denied the request and Perry again appealed to the Counselor's office. The matter remains pending at the Counselor's office for more than a year.

ANSWER: Defendant admits that it denied Plaintiff's request to obtain documents specifically exempt from disclosure under FOIA and that Plaintiff sought review by the Public Access Counselor. Defendant admits that the Public Access Counselor denied Plaintiff's request. Defendant admits that Plaintiff submitted a second FOIA request and that the Defendant denied the second request as well. Defendant admits that Plaintiff again sought review by the Public Access Counselor. Defendant denies the remaining allegations of paragraph 5 of the Complaint.

6. This is a claim under the Illinois Freedom of Information ACT ("FOIA") 5 ILCS 140/1 *et seq.* In violation of FOIA, the IDFPR has refused to produce certain records and the Public Access Counselor's office has engaged in a deliberation of an impermissibly extraordinary duration that has the effect of denying the disputed documents to Perry.

ANSWER: Defendant admits that Plaintiff brings a claim under the Illinois Freedom of Information Act and admits that it has refused to produce certain documents but denies that it has violated the Illinois Freedom of Information Act. Defendant denies the remaining allegations of par. 6.

7. All public records of a public body, including recorded received from outside entities, 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.

ANSWER: Defendant admits that paragraph 7 of the Complaint is a correct statement of the law.

8. The Defendant IDFPR has violated FOIA by refusing to produce the non-exempt documents received from outside parties.

ANSWER: Defendant denies the allegations of paragraph 8 of the Complaint.

PARTIES

9. The Plaintiffs consist of Christopher J. Perry is an individual adult citizen and resident of Cook County in the State of Illinois. Perry & Associates, LLC is an Illinois limited liability company formed in 1998. Christopher J. Perry is the sole beneficiary owner of Perry & Associates, LLC. Perry & Associates, LLC is an employer currently employing approximately 14 employees in Cook County engaged in the practice of structural engineering, professional engineering and architecture. Its principal place of business is the City of Chicago, County of Cook, State of Illinois

ANSWER: Defendant does not have sufficient information or knowledge to admit or deny the allegations set forth in paragraph 9 of the Complaint'.

10. The Illinois Department of Financial and Professional Regulation is a component of the Executive Branch of the State of Illinois created pursuant to 20 ILCS 2105 with a principal place of business of 100 W. Randolph St., Chicago, Illinois 60601. The Department administers licenses held by Perry.

ANSWER: Defendants admits the first sentence of paragraph 10. Defendant further admits that it regulates at least one license held by the Plaintiff Perry but is without sufficient information or knowledge to admit or deny that it administers all licenses held by Plaintiff Perry.

11. The Department has the power to administer the provisions of 225 ILCS 340, the Structural Engineering Practice Act of 1989.

ANSWER: Defendant admits the allegations of paragraph 11 of the Complaint.

12. The Department is a "public body" as defined by the Illinois Freedom of Information Act (5 ILCS 140/2).

ANSWER: Defendant admits the allegations of paragraph 12 of the Complaint.

VENUE

13. Venue is proper because both Claimants are domiciled in Cook County Illinois and the Respondent is a component of the Executive Branch principally based in Cook County.

ANSWER: Defendant admits that venue is proper and that it has a principal place of business in Cook County but Defendant is without sufficient information or knowledge to admit or deny the remaining allegations in paragraph 13 of the Complaint.

JURISDICTION

14. Jurisdiction is proper because any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief. Where the denial is from a public body of the State, suit may be filed in the circuit court for the county where the

public body has its principal office or where the person denied access resides. Both locations are Cook County. (5 ILCS 140/11).

ANSWER: Defendant admits that the court has jurisdiction but denies that it denied Plaintiff access to inspect or copy a public record subject to disclosure under FOIA.

15. 5 ILCS 100/10-55 provides, that in "any contested case" by "any agency" that includes an allegation "without reasonable cause" and proved "untrue" the agency shall pay "reasonable expenses" which include "reasonable attorney's fees". "The claimant shall make a demand for litigation expenses to the agency".

ANSWER: Defendant admits that §10-55 contains the quoted words set out in paragraph 15 of the Complaint, but denies that Plaintiffs are entitled to any fees under §10-55.

16. Perry's request for documents has been pending since at least August 26th, 2013 or more than one year.

ANSWER: Defendant denies the allegations set forth in paragraph 16 of the Complaint.

17. A controversy exists between the Christopher J. Perry and Perry & Associates, LLC on the one hand and the Illinois Department of Professional Regulation on the other hand.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 17 of the Complaint.

18. All other remedies have been exhausted.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 18 of the Complaint.

PROCEDURAL BACKGROUND

19. In October 2010 a complaint was made against Mr. Perry's structural engineering license by a fellow licensee.

ANSWER: Defendant admits that a complaint was submitted to the Department concerning Plaintiff. Regarding the remaining allegations set forth in paragraph 19 of the Complaint, Defendant cannot admit or deny the allegations without disclosing confidential information and therefore denies.

20. In September 2012, the Department notified Mr. Perry of the complaint and shortly thereafter conducted a hearing at which at the James R. Thompson Center at which secret documents were discussed but not tendered to Perry for analysis or rebuttal.

ANSWER: Defendant admits that it notified Plaintiff of the complaint against his license. Defendant denies the remaining allegations contained in paragraph 20 of the Complaint.

21. In January 2013, the Department dismissed the complaint without allowing Mr. Perry to analyze or respond to the complaint.

ANSWER: Defendant admits the allegations in paragraph 21 of the Complaint.

22. On January 21, 2013 Perry submitted to IDFPR a FOIA request that in substance requested the complaint that had been made against his license so that he could respond. The request was very specific, described the document in detail and named the author.

ANSWER: Defendant admits that Perry submitted a FOIA request on or about January 21, 2013, seeking production of a complaint filed against his license. Defendant is without sufficient information or knowledge to admit or deny the remaining allegations contained in paragraph 22 of the Complaint.

23. On January 23, 2013 IDFPR denied the request in its entirety citing nearly every exception of the FOIA law, but providing no analysis or applicable reasons.

ANSWER: Defendant admits that on or about January 23, 2013, it denied the request citing multiple exemptions of FOIA and denies the remaining allegations of paragraph 23 of the Complaint.

24. A person whose request to inspect or copy a public record is denied by a public body, except the General Assembly and committees, commissions, and agencies thereof, may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the date of the final denial. The request for review must be in writing, signed by the requester, and include (i) a copy of the request for access to records and (ii) any responses from the public body. (5 ILCS 140/9.5).

ANSWER: Defendant admits that paragraph 24 of the Complaint is a correct statement of the law.

25. On January 26, 2013 Perry submitted the denial to the Public Access Counselor.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 25 of the Complaint.

26. The Public Access Counselor determined that "further action was warranted". She requested documents from both IDFPR and Perry and conducted an interview of Perry in March 2013. (5 ILCS 140/9.5).

ANSWER: Defendant admits that the Public Access counselor determined that "further action was warranted" and that it received a request for records. Defendant is without

sufficient information or knowledge to admit or deny the remaining allegations contained in paragraph 26 of the Complaint.

27. Unless the Public Access Counselor extends the time by no more than 30 business days by sending written notice to the requester and the public body that includes a statement of the reasons for the extension in the notice, or decides to address the matter without the issuance of a binding opinion, the Attorney General shall examine the issues and the records, shall make findings of fact and conclusions of law, and shall issue to the requester and the public body an opinion in response to the request for review within 60 days after its receipt. The opinion shall be binding upon both the requester and the public body, subject to administrative review under Section 11.5. (5 ILCS 140/9.5).

ANSWER: Defendant admits that paragraph 27 of the Complaint is a correct statement of the law.

28. On August 21, 2013 the Public Access Counselor issued a determination letter pursuant to section 9.5(f) of the FOIA Act denying Perry's request. She explained that "the very nature" of Mr. Perry's request would violate PAC 17520 (a Public Access Counselor opinion).

ANSWER: Defendant admits that it received from the Illinois Attorney General's Public Access Bureau a letter dated August 21, 2013, pursuant to section 9.5(f) of FOIA, denying Plaintiff Perry's request. Defendant is without sufficient information or knowledge to admit or deny the remaining allegations of paragraph 28 of the Complaint.

29. On August 26, 2013 Perry amended his FOIA request to IDFPR such that the proper names were omitted and conceding that "confidential information" could be omitted, and reminding the Department that "otherwise known" information cannot be a basis for FOIA denial. The submission was made by messenger and received by the Department on August 26th.

ANSWER: Defendant admits that on or about August 27, 2014, the Defendant received a FOIA request to "Provide the complaint received from any source in case 201007953 redacted to exclude proper names and 'confidential information.'" Regarding the remaining averments of paragraph 29, Defendant is without sufficient information or knowledge to admit or deny the allegations.

30. On September 5th, 2013 the Department denied the request again citing nearly every FOIA Sec. 7 exception with no applicability analysis.

ANSWER: Defendant admits that on or about September 5, 2014, it denied the request citing multiple exemptions of FOIA. Defendant denies the remaining allegations of paragraph 30 of the Complaint.

31. Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is

properly extended. The Department's reply was issued seven days after it was received (two days late).

ANSWER: Defendant admits that paragraph 31 of the Complaint contains a correct statement of the law. Defendant admits that it issued its denial of the request on September 5, 2013. However, because September 1, 2013 was a holiday, the response would have been only six business days after receipt of the request.

32. On September 10th, 2013 Perry submitted the September 5th denial to the Public Access Counselor. The request was submitted by e-mail at about 1:32 a.m. Central Time.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 32 of the Complaint.

33. On September 10th, 2013 - that very same day - the Department again denied Mr. Perry's September 5th FOIA request. The denial is very similar to the September 5th denial but omits the date of the request.

ANSWER: Defendants admits that, due to an administrative error, a second letter denying the FOIA request was issued and that the letter asserted some of the same grounds as the previous letter.

34. On September 17th, Perry received from the Public Access Counselor's office documents that elaborated on PAC 17520 in response to a FOIA request to the Counselor.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 34 of the Complaint.

35. Upon receipt of a request for review, the Public Access Counselor shall determine whether further action is warranted. If the Public Access Counselor determines that the alleged violation is unfounded, he or she shall so advise the requester and the public body and no further action shall be undertaken. In all other cases, the Public Access Counselor shall forward a copy of the request for review to the public body within 7 business days after receipt and shall specify the records or other documents that the public body shall furnish to facilitate the review. (5 ILCS 140/9.5(c)),

ANSWER: Defendant admits that paragraph 35 of the Complaint is a correct statement of the law.

36. Perry received no reply from the Public Access Counselor.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 36 of the Complaint.

37. On October 8th, 2013 Perry submitted the September 10th denial for review and amplified his arguments in light of the Counselor's explanation of PAC 17520.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 37 of the Complaint.

38. Perry received no reply from the Public Access Counselor.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 38 of the Complaint.

39. Unless the Public Access Counselor extends the time by no more than 30 business days by sending written notice to the requester and the public body that includes a statement of the reasons for the extension in the notice, or decides to address the matter without the issuance of a binding opinion, the Attorney General shall examine the issues and the records, shall make findings of fact and conclusions of law, and shall issue to the requester and the public body an opinion in response to the request for review within 60 days after its receipt. The opinion shall be binding upon both the requester and the public body, subject to administrative review. (5 ILCS 140/9.5(f).

ANSWER: Defendant admits that paragraph 39 of the Complaint is a correct statement of the law.

40. In November 2013, Perry contacted the Counselor's office and requested a status on his requests. An assistant attorney general replied by e-mail on November 17th, 2013 that the matter had been accepted as PAC 26006 (a case number) and assigned to her.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 40 of the Complaint.

41. On December 9th, 2013 (about sixty days from submission), Perry requested a status update. The next day, the PAC's office replied that the matter was still under review.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 41 of the Complaint.

42. On January 7th, 2014 (about ninety days from submission), Perry requested a status update. The next day, the PAC's office replied that the matter was still under review.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 42 of the Complaint.

43. On March 14th, 2014, Perry requested a status update. On March 17th, 2014 the PAC's office replied that the matter was still under review.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 43 of the Complaint.

44. On July 3rd, 2014, Perry requested a status update. On July 11th, the PAC's office replied that the matter was still under review.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 44 of the Complaint.

45. Allegedly the matter is still under review at the Public Access Counselor's office. No substantive disposition has been offered. There is no public docket for the Public Access Counselor.

ANSWER: Defendant denies the allegations contained in paragraph 45 of the Complaint.

46. The Public Access Counselor has issued no notice of time extension (of only 30 days) pursuant to 5 ILCS 140/9.5(f).

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 46 of the Complaint.

CLAIM FOR RELIEF UNDER ILLINOIS FREEDOM OF INFORMATION ACT

47. Perry incorporates by references paragraphs 1 through 44 of this Complaint.

ANSWER: Defendant incorporates its responses to the paragraphs referenced by Plaintiff as if fully set forth herein.

48. In this FOIA enforcement lawsuit, Perry seeks disclosure of the records enumerated above in paragraph 19, all of which are subject to disclosure pursuant to Perry, are not subject to any FOIA exemptions, are subject to the Perry's initial FOIA request in August 2013, and are also subject to the specific Perry follow-up requests described above.

ANSWER: Defendant admits that Perry seeks disclosure of records but denies the remaining allegations of paragraph 48 of the Complaint as the requested documents are not subject to disclosure under FOIA. Without waiving any other potential bases for objecting to the disclosure of the requested documents, Defendant asserts that the disclosure of records at issue would unavoidably identify the individual who purportedly filed the complaint with the Department and the requested documents are part of the investigative materials, all of which are exempt from disclosure.

49. This court has jurisdiction "to enjoin [the IDFPR] from withholding public records and to order the production of any public records improperly withheld from the person seeking access." 5 ILCS 140/11(d).

ANSWER: Defendant admits that the court has authority under §11(d) to enforce the provisions of FOIA but denies that the Plaintiffs are entitled to relief and denies the remaining allegations of paragraph 49 of the Complaint.

50. Perry is entitled to recover its reasonable attorney's fees pursuant to 5 ILCS 140/11(i).

ANSWER: Defendant denies the allegations of paragraph 50 of the Complaint.

51. Perry requests a finding that the department willfully violated the Act and/or acted in bad faith.

ANSWER: Regarding the allegations of paragraph 51 of the Complaint, Defendant denies that it willfully violated the Act and/or acted in bad faith.

Any averment not specifically admitted is hereby expressly denied.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses to Plaintiff's Complaint.

1. The requested documents are not subject to disclosure under the Freedom of Information Act. More specifically, 5 ILCS 140/7 exempts from disclosure records that would unavoidably identify an individual who purportedly filed a complaint with an administrative agency.

2. Defendant denied the request upon the good faith belief that the requested documents were not subject to disclosure pursuant to the Freedom of Information Act.

3. Defendant reasonably relied upon the opinion issued by the Public Access Counselor dated August 21, 2013 and the reasoning and authorities set forth therein.

Respectfully Submitted,

LISA MADIGAN
Attorney General of Illinois
Attorney Code: 99000

By: _____

Thor Y. Inouye
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(312) 814-5159

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

CHRISTOPHER J. PERRY, an Individual and PERRY & ASSOCIATES, LLC an Illinois limited liability company,	)	
Plaintiffs,	)	
vs.	)	No. 14 CH 17994
ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION,	)	The Honorable Judge Rita M. Novak
	)	Calendar 9
Defendant.	)	

AFFIDAVIT PURSUANT TO 735 ILCS 5/2-610

The Affiant, Mark Thompson, being duly sworn, do hereby depose and state:

A. I am over the age of eighteen (18) years and am a resident of the State of Illinois.

B. I have personal knowledge of the facts herein and, if called as a witness, could competently testify thereto.

C. In response to the Complaint in the above captioned matter, the Illinois Department of Financial and Professional Regulation submits the Answer to which this Affidavit is attached.

D. Contained within the Answer are several allegations to which the Illinois Department of Financial and Professional Regulation have stated that it does not have knowledge sufficient to form a belief as to the truth or falsity of the allegation.

E. Affiant states that the Answer truthfully states that Illinois Department of Financial and Professional Regulation does not have knowledge sufficient to form such belief.

F. More specifically, Affiant attests to the truth of the following responses to allegations set forth below.

1. The Plaintiffs were involved in the structural review of a school building which eventually became the subject of some media attention due to the actions of others.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 1 of the Complaint.

C

2. Subsequent to the media attention, a fellow licensee demanded that Perry participate in that licensee's media strategy. Perry declined to participate and made no public statements.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 2 of the Complaint.

9. The Plaintiffs consist of Christopher J. Perry is an individual adult citizen and resident of Cook County in the State of Illinois. Perry & Associates, LLC is an Illinois limited liability company formed in 1998. Christopher J. Perry is the sole beneficiary owner of Perry & Associates, LLC. Perry & Associates, LLC is an employer currently employing approximately 14 employees in Cook County engaged in the practice of structural engineering, professional engineering and architecture. Its principal place of business is the City of Chicago, County of Cook, State of Illinois

ANSWER: Defendant does not have sufficient information or knowledge to admit or deny the allegations set forth in paragraph 9 of the Complaint'.

10. The Illinois Department of Financial and Professional Regulation is a component of the Executive Branch of the State of Illinois created pursuant to 20 ILCS 2105 with a principal place of business of 100 W. Randolph St., Chicago, Illinois 60601. The Department administers licenses held by Perry.

ANSWER: Defendants admits the first sentence of paragraph 10. Defendant further admits that it regulates at least one license held by the Plaintiff Perry but is without sufficient information or knowledge to admit or deny that it administers all licenses held by Plaintiff Perry.

13. Venue is proper because both Claimants are domiciled in Cook County Illinois and the Respondent is a component of the Executive Branch principally based in Cook County.

ANSWER: Defendant admits that venue is proper and that it has a principal place of business in Cook County but Defendant is without sufficient information or knowledge to admit or deny the remaining allegations in paragraph 13 of the Complaint.

17. A controversy exists between the Christopher J. Perry and Perry & Associates, LLC on the one hand and the Illinois Department of Professional Regulation on the other hand.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 17 of the Complaint.

18. All other remedies have been exhausted.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 18 of the Complaint.

22. On January 21, 2013 Perry submitted to IDFPR a FOIA request that in substance requested the complaint that had been made against his license so that he could respond. The request was very specific, described the document in detail and named the author.

ANSWER: Defendant admits that Perry submitted a FOIA request on or about January 21, 2013, seeking production of a complaint filed against his license. Defendant is without sufficient information or knowledge to admit or deny the remaining allegations contained in paragraph 22 of the Complaint.

25. On January 26, 2013 Perry submitted the denial to the Public Access Counselor.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 25 of the Complaint.

26. The Public Access Counselor determined that "further action was warranted". She requested documents from both IDFPR and Perry and conducted an interview of Perry in March 2013. (5 ILCS 140/9.5).

ANSWER: Defendant admits that the Public Access counselor determined that "further action was warranted" and that it received a request for records. Defendant is without sufficient information or knowledge to admit or deny the remaining allegations contained in paragraph 26 of the Complaint.

28. On August 21, 2013 the Public Access Counselor issued a determination letter pursuant to section 9.5(f) of the FOIA Act denying Perry's request. She explained that "the very nature" of Mr. Perry's request would violate PAC 17520 (a Public Access Counselor opinion).

ANSWER: Defendant admits that it received from the Illinois Attorney General's Public Access Bureau a letter dated August 21, 2013, pursuant to section 9.5(f) of FOIA, denying Plaintiff Perry's request. Defendant is without sufficient information or knowledge to admit or deny the remaining allegations of paragraph 28 of the Complaint.

29. On August 26, 2013 Perry amended his FOIA request to IDFPR such that the proper names were omitted and conceding that "confidential information" could be omitted, and reminding the Department that "otherwise known" information cannot be a basis for FOIA denial. The submission was made by messenger and received by the Department on August 26th.

ANSWER: Defendant admits that on or about August 27, 2014, the Defendant received a FOIA request to "Provide the complaint received from any source in case 201007953 redacted to exclude proper names and 'confidential information.'" Regarding the remaining averments of paragraph 29, Defendant is without sufficient information or knowledge to admit or deny the allegations.

32. On September 10th, 2013 Perry submitted the September 5th denial to the Public Access Counselor. The request was submitted by e-mail at about 1:32 a.m. Central Time.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 32 of the Complaint.

34. On September 17th, Perry received from the Public Access Counselor's office documents that elaborated on PAC 17520 in response to a FOIA request to the Counselor.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 34 of the Complaint.

36. Perry received no reply from the Public Access Counselor.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 36 of the Complaint.

37. On October 8th, 2013 Perry submitted the September 10th denial for review and amplified his arguments in light of the Counselor's explanation of PAC 17520.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 37 of the Complaint.

38. Perry received no reply from the Public Access Counselor.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 38 of the Complaint.

40. In November 2013, Perry contacted the Counselor's office and requested a status on his requests. An assistant attorney general replied by e-mail

on November 17th, 2013 that the matter had been accepted as PAC 26006 (a case number) and assigned to her.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 40 of the Complaint.

41. On December 9th, 2013 (about sixty days from submission), Perry requested a status update. The next day, the PAC's office replied that the matter was still under review.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 41 of the Complaint.

42. On January 7th, 2014 (about ninety days from submission), Perry requested a status update. The next day, the PAC's office replied that the matter was still under review,

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 42 of the Complaint.

43. On March 14th, 2014, Perry requested a status update. On March 17th, 2014, the PAC's office replied that the matter was still under review.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 43 of the Complaint.

44. On July 3rd, 2014, Perry requested a status update. On July 11th, the PAC's office replied that the matter was still under review.

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 44 of the Complaint.

46. The Public Access Counselor has issued no notice of time extension (of only 30 days) pursuant to 5 ILCS 140/9.5(f).

ANSWER: Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 46 of the Complaint.

Executed this 15th Day of December, 2014 in Chicago, Illinois.

By: Mark Thompson
General Counsel
Division of Professional Regulation
Department of Financial and Professional Regulation

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Perry & Associates

v.

Ill Dept of Prof. or Regulations

No. 14 CH 17994

5260-P
4360-P
4315

ORDER

This matter coming to be heard on Plaintiff's Motion for Summary Judgment, the matter being fully briefed and oral argument being heard, the Court being advised in the premises and having jurisdiction over the subject matter, it is hereby ORDERED THAT:

(1) Motion for Summary Judgment denied in part as to Invoice and submission sheet and Granted in part to the extent of the exhibits for reasons stated on the record.

(2) This matter and disclosure stayed until next court date July 31, 2015 10:00

JUDGE RITA M. NOVAK

ENTERED:

JUL 27 2015

Dated: July 27, 2015

Circuit Court-1741

Judge Judge's No.

Atty. No.: 25742

Name: John L. Ladle P.C.

Atty. for: Plaintiff

Address: 177 N. Stoff St. #300

City/State/Zip: Chicago IL 60601

Telephone: 312-782-9026

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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

CHRISTOPHER J. PERRY, an individual; and PERRY & ASSOCIATES, LLC, an Illinois limited liability company,
Plaintiffs,
-vs-
ILLINOIS DEPARTMENT OF FINANCE and PROFESSIONAL REGULATION,
Defendant.
) No. 14 CH 17994

TRANSCRIPT OF PROCEEDINGS had in the above-entitled cause on the 27th day of July, A.D. 2015, at 10:35 a.m.

BEFORE: HONORABLE RITA NOVAK.

APPEARANCES:

JOHN L. LADLE, P.C.,
(177 North State Street, Suite 300,
Chicago, Illinois 60601,
312-782-9026), by:
MR. JOHN L. LADLE,
gladle-law@att.net,
appeared on behalf of the Plaintiffs;

OFFICE OF THE ATTORNEY GENERAL,
(100 West Randolph Street, 13th Floor,
Chicago, Illinois 60601,
312-814-3632), by:
MR. THOR YUKINOBU INOUYE,
tinoye@atg.state.il.us,
appeared on behalf of the Defendant.

REPORTED BY: LISA C. HAMALA,
Illinois CSR No. 84-3335.

THE COURT: Good morning.

MR. LADLE: John Ladle on behalf of Petitioner Perry & Associates.

MR. INOUYE: Thor Inouye for the Attorney General on behalf of IDFPR.

THE COURT: The matter before the Court today is on a motion for summary judgment, plaintiff's motion in this FOIA case.

I have read the briefs, the principal case relied on, Southern Illinois versus the Department of Public Health, and I have reviewed the documents in-camera because I felt that that was a request that was made to the Court, and it would be the most expeditious resolution to the matter.

You can present your argument.

MR. LADLE: Briefly, Your Honor.

The burden is on the Department to say why this should be excluded from disclosure, and they haven't.

Their rationale has changed. Initially, they said that all investigative matters are not to be disclosed.

The FOIA request in this matter suggests

that it can be redacted. The Department has not said why it cannot be. Just, simply, that it cannot be redacted.

There's no indication why the document on its face would reveal who made the Complaint. The investigative matter is closed.

With regard to whether Mr. Perry could identify who made the Complaint based on certain allegations, the only way Mr. Perry could identify who made the allegations would be based on the very publicly-made statements by Mr. Floody.

Apparently, that seems to be where this all comes down to. Mr. Floody made those allegations publicly.

The Department cannot make private that which was already made public. There's no indication that the Complaint in its nature is such that it couldn't be redacted and disclosed.

There's simply been no showing why it should not be disclosed at this point.

I think our briefs speak for themselves.

THE COURT: Thank you.

Go ahead.

MR. INOUYE: Your Honor, the Department's

position is that we can't allow people to simply come in every time there is a Complaint and get the Complaint or the allegations when they are going to reveal that identity of the person in the Complaint.

It doesn't matter whether or not the petitioner has actually successfully guessed who made the Complaint. That shouldn't be the standard.

What the standard is is that we have to have a blanket rule and say "No. You don't get these. If you do, you would know who did it."

You could go to the Court saying "I don't like what you said about me. I'm going to sue you. Here's the Complaint and my evidence."

That's what we are trying to avoid. We want to encourage people to file these Complaints. Not discourage the whistle-blowers.

There's no way to redact this particular document without revealing the identity of who made the Complaint.

There's no way to explain specifically why they are so intertwined without revealing the identity of the Complainant either.

For that reason, we ask that the Court refuse the relief requested by petitioner.

THE COURT: Okay.

MR. LADLE: Briefly, there is no blanket rule that prohibits the disclosure of these.

If internal investigations of police officers can be disclosed, it seems to me a Complaint against a new individual could be disclosed.

THE COURT: I don't know where you get that.

What 1(d)iv says is "To the extent that the disclosure would unbreakably disclose the identity of the confidential source."

MR. LADLE: But there is no blanket rule that Complaints in and of themselves cannot be disclosed.

It just says when a Complaint unavoidably would disclose a confidential source, then it can't be.

So if there is an exception, namely, when it cannot be disclosed, then logically, it must be otherwise disclosable.

If they are saying "We cannot disclose this because it would disclose a source," then

there are obviously Complaints that would not disclose a source, correct?

Therefore, the general proposition is Complaints are disclosable, and then the rule unless it discloses the source.

Here, we said redact what would on its face disclose the source.

There is nothing -- they have not said how in any way.

I am fighting against a ghost here because they have not -- there's nothing in these briefs that say the allegations in the Complaint are so unique they can only be under this witness's knowledge. Therefore, we can't disclose it.

They have not said that. It's their burden, but they have not said it.

They just said "Trust us. It can't be disclosed."

The case law says you have to specifically say why, which they have not done. And you have to say to what extent, because I don't know.

Apparently, it seems their argument is that the knowledge or allegations within the

Complaint -- a Complaint which my client has already defended on one level without seeing it.

I understand they want the Complaint filed, but it seems ridiculous someone could have an investigation, Complaint and hearing against them without seeing the allegations as to what they did.

But beyond that, if the rule says it must be disclosed unless there is an exception, the exception, which is provided in the rule, is that when it only identifies -- unavoidably discloses the source.

The Department has failed to say why it would unavoidably disclose a source as the knowledge was only in this one specific person's scope of learning.

Let's say someone filed a Complaint that says "My boss is hiding money in the top left drawer of his office from accounting," something like that.

If the only one that could possibly know that is the secretary who filed it, that's one thing. But we are not talking about that here.

We are talking about a Chicago Public

School's project which was done in public, which certain people made public allegations, including having an attorney threaten my client with slander and libel. At that point going to the newspapers and on the radio making allegations against my client.

To the extent if it discloses someone, but that person has made them publicly, that's not a confidential source anymore.

If someone says --

THE COURT: I don't know if I am accepting that, so let's take it in a different context. Let's put it in like a child abuse situation.

The reporter, under the statute, is -- there's criminal penalty attached to that one.

Let's say that it is the principal of the school. That the context in which the report is made, as you say, with the desk drawer, is the only one that would have this information.

Then how does one redact the content of the report in order to protect the reporter's identity.

That seems to be to be akin to what the legislature was talking about in unavoidably

disclosing the identity of the confidential source.

MR. LADLE: Essentially, wouldn't that be every Complaint?

There's two things I want to bring up.

I think the child abuse case is distinctly different because you have the rights of the child, HIPAA information with regard to the medical.

You could redact it down to "The child advised me dad hit me," and redact everything else out. There could be a whole realm of people that the child told it to that was reported.

But at least the person responding to where the allegation was made would know. You could redact everything else out and leave that statement. That would not disclose it.

But this is very different. You're talking about a public project where there were certain public statements made by a person.

The Department attached all this information about how Mr. Perry sent all these letters that he had gotten, and everything else.

But, you know, you could redact out everything else. Even if you just leave the

statements or some portion out so someone could respond.

Part of my problem is, as I said earlier, I don't know their rationale for saying it would unavoidably disclose.

I'm hearing now that the nature of the allegations are such that they are uniquely within one person's area of knowledge.

That apparently is what the allegation is. They have not said that in their briefs. They are supposed to. I can't respond to it.

But to the extent that any Complaint should be disclosed, barring that situation here, it's a public project that was reported on at the time that the Department attached.

There's news articles about the time. So obviously, if there is a newspaper article about this, and the --

THE COURT: That's not an answer to the statutory criteria.

It would be to say then that -- let's say somebody says "Oh, I know who made this report. In fact, I could support this by all of this outside information. It is not confidential, and

why do they care."

I don't think that answers the question under FOIA.

Under FOIA, the Department is permitted to not disclose a confidential source. Even if someone has an inkling that they know who that source is, it doesn't require the Department to make the disclosure.

And that seems to me to be your argument.

MR. LADLE: Well, no, and I'm probably being inarticulate with my argument.

I want to stress for the record, because I believe it is a strong point of objection, that the rationale that's coming out right now is not contained in the briefs.

That rationale coming out right now is that the allegations are so unique, that only one could person could have -- only one person could have disclosed this, as exemplified by the Courts.

THE COURT: How would the Department articulate that?

MR. LADLE: That's a very simple statement right there.

The allegations made in the Complaint against Mr. Perry are unique that only one person could have known it.

Therefore, we are not disclosing it because such unique allegations would unavoidably disclose the identity.

If I understand that to be their position, which is not articulated in their briefs, that's a separate issue I have not prepared for. As such, that new argument right now is improper.

They have had plenty of time to brief it, and they have not raised that.

The allegation, as exemplified in their letter -- what you have just said is it would disclose a confidential source.

Well, by law, all these Complaints are confidential, so therefore, the logical extension is all Complaints are prohibited from disclosure.

But that's not how the statute is written.

It is written instead that Complaints are subject to disclosure, unless or until such disclosure would unavoidably disclose a confidential source.

Those extra words of "unavoidably disclose" demonstrate the legislature's intent that otherwise such Complaints are to be disclosed.

Now, what I'm hearing is is the argument made, which is not in the briefs, that the allegations are so unique they would unavoidably disclose.

That's not the point that's been brought up. That's why I would like to get into the fact that it would not unavoidably disclose it.

I think that's a different issue.

So to that extent, what was said in the public media, if there is an entire newspaper article about there is a disagreement how to proceed on this school design plan, and they disagreed with B, the fact is I can get -- if that's the allegation, I can pull all the information to show that this was in the newspapers. There were parent groups involved.

This information was disseminated widely. It could have been dozens of people who made that Complaint because parent groups are on one side with Mr. Floody with how to proceed with the design were told certain information.

In theory, and in reality, there's potentially dozens or even hundreds of people that could have made the same Complaints using those same allegations because it was publicly made.

And because it is no longer within one person's realm.

I have not been able to brief it or bring those newspaper articles in because they didn't raise that issue in here. They never brought that up.

Their brief says "Investigative Complaints are not disclosed."

Their brief says they are relying on Public Access Counselor's previous determination. That's their point.

The Public Access Counselor's previous opinion is based on a different FOIA request, and it's totally inapplicable to the current case.

So that's why I came to this Court today prepared to argue before Your Honor those matters before you here.

What I'm hearing now is a different ground and different basis. That's just simply improper at this point.

I can't fully and accurately defend those or raise all the relevant information to that because it was not brought before me.

So to that extent, if that's their position now, I'm objecting to it.

And I'm either asking for a continuance to brief that issue, or ask it be barred from argument at this point because I don't believe it is proper.

THE COURT: Anything further?

MR. INOUYE: No, Your Honor.

THE COURT: If you would have a seat for a second.

(WHEREUPON, a short recess was had.)

THE COURT: All right. I'm just going to say sort of, in the generality, I have read all of these multiple sections of FOIA and compared the requirements to what is provided here.

Frankly, you know, throwing in the kitchen sink is really not a very helpful way to try to deal with these specific sections.

Some of them obviously do not apply at all. I think it would be far better to just focus in on the one that does, which, in my view, is

140/7 1(d)iv.

That provision reads as follows: "Records in the possession of any public body created in the course of administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would unavoidably disclose the identity of a confidential source, confidential information furnished by the confidential source, or persons who filed Complaints with or provide information to administrative investigative law enforcement and penal agencies."

So, obviously, what the legislature is attempting to do there is protect the identity of a confidential source, particularly, with respect to a regulatory body who depends on these reports being accurate and being made, which is what is the benefit of obtaining information about a party who is regulated who is not conforming conduct to the law.

As I have indicated, I did an ex parte examination of the documents that the Department has submitted.

I will delineate some because some of them, I think, fall within this confidential source or persons who file Complaints source, and there are essentially three pages involved.

One is a cover page. That was generated by the Department. An intake form. That would plainly reveal the confidential source.

The other is the actual submission of confidential source, which is a two-page document.

Those documents are not disclosable because they fall within the exemption that I have just cited and discussed.

On the other hand, there are exhibits attached to that report, for lack of a better word, the confidential reporter's information.

These documents appear to be documents that were submitted to third-parties, and at least disclosed to third-parties, if not made available to the general public.

Those exhibits that are attached would not reveal the confidential source. They would be producible as not falling within FOIA exemption.

So the motion for summary judgment is denied in part. That's with respect to the three

pages that I have indicated. The intake form and the submission itself.

The attachments, the exhibits to that submission don't fall within the exemption, or any exemption that I could see and need to be produced.

MR. INOUYE: Can we have a week before we disclose the exhibits?

THE COURT: Yes. Ask for a stay, or whatever, but yes.

I will see you back here in a week if you both could get a status date, and we will enter the final order at that time -- wait. I'm not here next week.

So wait until the next week, or you can come back at the end of this week if you could do it that quickly.

MR. INOUYE: Is Friday, the 31st, available?

THE COURT: Yes. 10:00?

MR. LADLE: I can do that.

THE COURT: We will see you then.

(WHEREUPON, the hearing was adjourned until 10:00 a.m., July 31, 2015.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

I, LISA C. HAMALA, a Certified Shorthand Reporter of the State of Illinois, do hereby certify that I reported in shorthand the proceedings had at the hearing aforesaid, and that the foregoing is a true, complete and correct transcript of the proceedings of said hearing as appears from my stenographic notes so taken and transcribed under my personal direction.

IN WITNESS WHEREOF, I do hereunto set my hand at Chicago, Illinois, this 28th day of July, 2015.

Lisa Christina Hamala

Certified Shorthand Reporter
C.S.R. Certificate No. 84-3335.

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Christopher J Berg et al

v.

No. 14 CH 17994

IDFPR

4246-D
8004

ORDER

This matter comes before the Court on the parties' cross motions to reconsider. The Court having received oral argument and being fully advised of the premises, hereby grants the Defendant's motion to reconsider and dismisses the complaint, for the reasons stated on the record.

JUDGE RITA M. NOVAK

JAN 07 2016

Circuit Court-1741

ENTERED:

Dated: January 7, 2016

Judge

1741

Judge's No.

Atty. No.: 6208358

Name: Thea Monyak

Atty. for: Defendant

Address: 100 west Randolph, 13th Flr

City/State/Zip: Chicago, IL 60601

Telephone: 312 814 3632

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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EXHIBIT 4

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT - LAW DIVISION

CHRISTOPHER J. PERRY, an Individual, and PERRY & ASSOCIATES, LLC, an Illinois limited liability company, Plaintiffs, vs. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, Defendant.	No. 14 CH 17994

REPORT OF PROCEEDINGS at the hearing of the above-entitled cause before the Honorable RITA M. NOVAK, Judge of said Court, on January 7, 2016, at the hour of 11:43 o'clock a.m.

Reported By: Analisa McDermott, CSR, RPR, CRR

License No.: 084-003620

APPEARANCES:

JOHN L. LADLE, P.C.
BY: MR. GREGORY F. LADLE
177 North State Street, 3rd Floor
Chicago, Illinois 60601
(312) 782-9026
gladle-law@att.net
on behalf of the Plaintiffs;

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS
ATTORNEY GENERAL LISA MADIGAN
BY: MR. THOR YUKINOBU INOUYE
Assistant Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3632
tinouye@atg.state.il.us
on behalf of the Defendant.

THE COURT: Perry versus IDFPR.

MR. LADLE: Good morning, your Honor. Gregory Ladle on behalf of Christopher Perry and Perry and Associates.

MR. INOUYE: Good morning, your Honor. Thor Inouye on behalf of the Illinois Department of Professional Regulation.

THE COURT: All right. The matter is before the Court on two motions to reconsider by each of the parties on this previous ruling on the FOIA requests. So why don't we begin with the plaintiff.

MR. LADLE: Thank you, your Honor. Briefly, our motion -- as a brief overview just for a second, Mr. Perry was -- had a complaint lodged against him, was compelled to appear at a hearing. There was an investigation done. Apparently the complaint was dismissed with a warning.

Mr. Perry tried to find out what that complaint was. He's never found out what the allegation was, but he's got a warning in his file against him. So we filed a FOIA request. It was denied. There was an opinion rendered on that request. Due to a defect in that request, he filed

a new opinion.

Throughout it, the Department has simply thrown the kitchen sink at this. And then when we came in on our motion for summary judgment, the only two grounds the Department raised in its motion in its opposition tendering those documents were, one, the previous public access opinion was binding on the subsequent request, which was wrong on two counts. One, the public access opinion was more than 60 days late so it's not binding, but two, it was a different request. That was the one ground they raised.

The other ground they raised was that the plain language of the statute exempts it from disclosure. The plain language of the statute talks about redaction and shall tender the remaining information. So those were the grounds that they were limited to, and yet they had different arguments at the hearing.

Additionally, the burden was on them to prove it, why it shouldn't be turned over, and they never offered any evidence or reasoning. We could never address it. The burden was on them to establish by clear and convincing evidence. None

was presented. We don't know what it is. It's chasing shadows at this point.

And throughout this, there have been repeated requests and denials, and as the Court itself addressed this, the Department has basically thrown the kitchen sink in all of its denials. You know, I know -- and I think I should address at this point the change in the law which was signed in August of 2015 which was two years after that second request. Two years, they stalled, they delayed, they denied.

And what's interesting is that statute talks about which -- you know, they say, therefore, it can't be disclosed. But the statute actually has an exception which they don't raise, which is that a party presenting a lawful subpoena to the department.

Well, here what we've got is Mr. Perry was a party in the complaint registered against him. They admit he had to show up at a hearing, they investigate him, they've got a warning in his file, but he can't find out what was said against him at all.

THE COURT: Was that a subpoena?

MR. LADLE: Well, it wasn't -- we didn't know we had a subpoena at the time because two years ago we didn't. That's a new requirement.

And if they want me to file a subpoena today, I'll do that. I will gladly file a subpoena and get the document that way because we have new law on that. But that's after all of this. That is not a justification for what went on for the two years.

THE COURT: Well, what would be the justification for my not following the existing law?

MR. LADLE: To the extent that the law has changed and that's a new ground, we -- and we had filed our motion before that was ever raised, so we were just addressing the law at the time that the decision was made -- now, you -- absolutely the Court could do that.

We're here on a motion for summary judgment. There's certain issues that still could be open, and we've asked in our motion, if that's the case, let us file a subpoena in this matter. It's odd to subpoena a party, but if that's -- the statute allows for it to be tendered

that way.

THE COURT: Well, that would be -- I mean, I'm guessing or interpreting the statute in such a way that if, in fact, there are documents that an agency has and there's a separate court proceeding, that the Court -- the statute allows the Court to determine whether or not the documents should be produced by way of a subpoena.

But you're asking that the Court issue a subpoena in a FOIA case. That doesn't seem to be in accord with that statute.

MR. LADLE: Well, but the question then is, why for two years did they deny it when this law didn't apply? There's been a pattern of denial for two years where this law was not on the books.

With regard to the ruling that was entered in July, this law didn't apply, and that's what our motion was directed on, that ruling in July. They raised new grounds not in the written briefs, they raised new issues not presented, and they never established any evidence that they're required to under the law. That's what we're looking at as reconsidering that decision.

I understand their new position, and that's why I said -- and it's interesting because the statute doesn't say -- it just says, may not disclose or to a party presenting a subpoena. It doesn't say subject to review. It doesn't say subject to redaction.

But as to the decision in July, we believe there was an error to the extent that the Department raised new grounds not in their brief, they never addressed their burden of proof, and there was no decision on the redaction.

This Court spoke of the fact that if there were an allegation of abuse against a parent, that the parent would not be entitled to see that allegation of abuse because it could disclose the informant. And it was our statement and our position at that time that if that were the case, if there were such an allegation, the person against whom that was made would at least have a right to know the nature of the allegation -- Johnny had bruises.

But to have this secret process where people have complaints lodged against them and have warnings placed in their files saying, don't

do this again but we're not going to tell you what it is you did and you will never know and you can't see the documents and we can't tell you what happened, and if you try to request it this way, we're just going to stall it for two years and cite boilerplate exemptions that do not apply in any way, there's no good faith there.

You know, they were actually a day late on their -- even on their denial. There's not even a valid denial on this. And they admit that. That is not an issue. They were a day late on their initial denial, and again, they cite an opinion that is not relevant to the present request.

So we have this pattern of conduct, and now they come in and say two years later, well, the law has changed now. And again, it -- and what it seems to be is that we have to issue a subpoena to somehow find out what this charge against him in his file is.

It strikes me as antithetical to the entire notion of open government when the government can say, we have a complaint against you, we're warning you not to do it again, but

you can't see what you did. That is contrary to literal bias towards disclosure.

At least the document could be redacted so someone knows what it was. They have not said why the very nature of the allegation itself is so unique that it couldn't possibly be disclosed, but we did see in the documentation very publicly made threats about Mr. Perry and what we --

THE COURT: I think you're getting a little bit off target because I mean, it may be one issue in an administrative review action. We're talking about FOIA. So it's very specific. What does the statute say? What does it permit and not permit? And that's my focus.

And I really think that at this point the very significant issue is the existence of a statute that is in effect. And I'm assuming it went into effect upon enactment.

MR. LADLE: Yes, it did.

THE COURT: Anything further? Is this --

MR. LADLE: No, other than the fact that this motion was directed at the July hearing and the July ruling that had been pending since -- I believe the briefing goes back to May or March.

And that was what the focus of our motion was, your Honor.

THE COURT: Right. Okay. Understood. I read all of that. Thank you. Counsel?

MR. INOUYE: Your Honor, just briefly. I think in our reply, we addressed the fact that this is -- under FOIA, this is injunctive relief. So the new statute would have to apply. It's not an ex post facto law or anything to that effect.

The statute came into effect after, you know, we did the briefing on the motions, and I believe it was -- if I'm not mistaken, it was actually enacted after the Court made its ruling. So now the new statute applies, and it would apply to any future injunctive relief if the Court were to order -- even if the Court ordered we were to turn it over or not turn it over.

At the end of the day, this is all about context. When we filed our motion to reconsider, the Court had ordered that we provide the two exhibits that were attached to the complaint that was filed with the Department.

Now, when we talk about context, we're talking about what is the context of this. It's

protecting the confidentiality of people who bring issues and concerns to the Department of people who are licensed -- doctors, nurses, engineers.

Without the ability and without the environment protecting the confidential sources, you're not going to -- you can't task the Department with actually protecting the public and then prevent them from -- or inhibit their investigations in that sense. And what we're only trying to do is protect individuals.

Maybe in this case -- maybe he does know who it is, maybe he doesn't, but that is not the issue. The issue is, overall are we going to say you may or may not be -- you may or may not have confidentiality depending on what you attach to your complaint, what evidence you help provide to the Department so that they can make their decision of whether or not to investigate.

This is not a case where they have no idea that this investigation ever happened or that -- he was called to a hearing. He knows what the case was about. He just doesn't know who made the complaint or he can't prove who

made the complaint.

The only way that they're going to be able to do that is to get the complaint itself. And what we've done is, the General Assembly has said, let's protect these people, let's create a statute that protects these individuals.

Now, the original -- even if you look at our answer, we addressed this issue in our original answer that we protect the identity of these individuals. It says, unnecessarily disclosed identity of the source. That was our first affirmative defense.

Now, the statute has since -- there's been an additional statute which adds another layer of protection, and so our point is that to disclose these exhibits in this context -- even if you can get them from another source, that's fine, go get it from another source, but if you disclose them in this context, you necessarily reveal the identity of the person who filed the complaint. So that's why we're asking the Court to reconsider.

THE COURT: Okay. Well, let me begin with the initial order that I entered in connection with the action, and that was that I reviewed in camera

certain documents that were presented by the Department that the plaintiff was seeking disclosure of. I ruled that there were portions of it that could not be disclosed, in particular the initial complaint, without revealing the identity of the complainant. And I ruled that other attachments to the -- those documents were required to be disclosed under the FOIA statute.

But in the interim, regardless of that ruling, the legislature has now enacted a new statute, an amendment, and this came into effect about one week after the Court's ruling while the case was still open, while the Court still had jurisdiction over the case, and while the controversy was still alive.

And that statute provides as follows: All information collected by the Department in the course of an examination or investigation of a licensee, registrant or applicant, including, but not limited to, any complaint against a licensee or registrant filed with the Department and information collected to investigate any such complaint shall be maintained for the confidential use of the Department and shall not be disclosed.

The Department may not disclose the information to anyone other than law enforcement officials, other regulatory agencies that have an appropriate regulatory interest as determined by the Director, or a party representing a lawful subpoena to -- presenting a lawful subpoena to the Department. Information and documents disclosed to a federal, state, county, or local law enforcement agency shall not be disclosed by the agency for any purpose to any other agency or person.

A formal complaint filed by a licensee or registrant by the Department -- excuse me. Let me read that again. A formal complaint filed against a licensee or registrant by the Department or any order issued by the Department against a licensee, registrant or applicant shall be a public record except as otherwise prohibited by law.

This statute was enacted on August 3rd, 2015, and it was effective on its enactment date. That statute appears at 20 ILCS 2105/117. The law that is -- comes into effect while the case is still pending before the Court. Unless application of that statute would be an unconstitutional retroactive application, it must be applied.

Here we have a case from the First District Appellate Court that is virtually identical in principle to the case I have here. That case is Kalven, K-a-l-v-e-n, versus City of Chicago, 2014 Ill. App. 1st 121846 at Paragraphs 9 and Paragraph 10.

The Court there indicated that where there was a FOIA request and there was a new statute that came into effect -- in that case it was a new 2009 FOIA statute that changed the law -- where injunctive and declaratory relief are prospective forms of relief, that the statute that is in effect at the time of the decision is the one that the Court has to apply.

In this case it is now clear that the legislature has expanded the scope of the prohibition on disclosures even what it was when the Court initially heard the case. At that time it was the identity of the complainant.

Here it is -- includes any information collected to investigate any such complaint. And what is clear here is that that information is deemed confidential for the use of the Department and shall not be disclosed.

And so given the change of the law, I must reconsider my earlier decision, and at this time I have to rule based on that statute that none of the materials are disclosable under FOIA and that the plaintiff's complaint must be denied. That's a final order.

MR. LADLE: Your Honor, if I may, this is -- I --

THE COURT: You're done. I ruled. That's it.

(Whereupon, no further proceedings were had in said cause.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

Analisa McDermott, being first duly sworn, on oath says that she is a court reporter doing business in the City of Chicago; and that she reported in shorthand the proceedings of said hearing, and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid, and contains the proceedings given at said hearing.

Analisa McDermott

ANALISA McDERMOTT, CSR, RPR, CRR

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

10:30

Christopher J. Perry +
Perry & Associates LLC

v.

No. 14 CH 17994

Illinois Dept of Financial & Professional Regulation

5-24-16

ORDER

This matter coming to be heard on Claimant's Motion to Reconsider the Judgment of January 7, 2016, the Motion being fully briefed, oral argument being heard and the Court being fully advised in the premises and having jurisdiction, it is hereby ORDERED THAT:

1) Claimant's Motion to Reconsider the Judgment of January 7, 2016 is DENIED for the reasons stated on the record by this Court. The transcript shall be made part of the record.

2) This resolves all issues and the case is DISMISSED.

JUDGE RITA M. NOVAK

ENTERED: MAY 25 2016

Circuit Court-1741

Dated: May 25 2016

1741

Judge Judge's No.

Attorney No.: 25742
Name: Law Offices of Ladle PC
Atty. for: Claimant
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City/State/Zip: Chicago IL 60601
Telephone: 312-782-9026

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

C 261 A78

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

CHRISTOPHER J. PERRY, an individual, and PERRY & ASSOCIATES, LLC, an Illinois limited liability company, Plaintiffs,	)	
vs.	)	No. 14 CH 17994
ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, Defendant.	)	

REPORT OF PROCEEDINGS at the hearing of the above-entitled cause before the Honorable RITA M. NOVAK, Judge of said Court, on the 25th day of May, 2016, at the hour of 10:37 o'clock a.m.

Reported by: Deborah E. DeSanto, CSR
License No. 084-1384

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Representing the Defendant.

THE CLERK: 14 CH 17994, Perry vs. IDFPR.

MR. LADLE: Good morning, your Honor. Gregory Ladle, L-a-d-l-e, on behalf of the claimants.

MR. INOUYE: Good morning, your Honor. Thor Inouye, I-n-o-u-y-e, on behalf of the respondents.

THE COURT: All right. Good morning, all.

The matter is before the Court on the plaintiff's motion to reconsider an order that I had previously reconsidered.

So, I've read the briefs and the cases that are relied on as well as the statutory provisions. So keep that in mind in presenting your arguments.

You may proceed.

MR. LADLE: Thank you, your Honor.

As this Court pointed out, this is a motion to reconsider the grant of a motion to reconsider by the State.

And the only reason we brought it in part, the only reason we brought it was 'cause this Court raised law which was not raised by the Department. And we felt that we didn't have a chance to address

or reply to that.

With regard to that, I think what's important here is when we look at the concurrence by Judge Delort talking about this retroactive application protecting, shielding, or otherwise indemnifying Department for delay, that's exactly the case we have here.

We have two-and-a-half years from the time that the FOIA request was entered until there was a judgment entered telling them to turn things over, and then the law changed and suddenly they said, "We're immune".

And that's exactly what we have here, two-and-a-half years of boilerplate denials, nonsense denials, denials cited to inapplicable law, refusal to comply with FOIA, and suddenly they say, "Well, we can't turn it over now".

And the question is are they talking about the concurrence?

The Supreme Court talks about inequitable consequences, and that's what we have here, an inequitable consequence in the change of law of later.

They have successfully delayed all this

time with a no good faith showing as to why any of this couldn't be turned over. The duty was on them.

They've never set forth this detailed explanation. They waited and waited and waited and waited, and then they lost, and they waited some more. And then suddenly --

THE COURT: Well, they didn't lose entirely.

MR. LADLE: They lost in part, you're correct.

But they lost -- they were ordered to turn certain documents over.

And then the law changed.

The question is at what point did Mr. Perry's right to that document vest? When he filed that FOIA request and the law says, "This is what he's entitled to," was it then?

Was it when he filed the suit saying, "You should have turned that over to me back then"?

Was it when this Court entered the order on July 27th?

I point to the concurrence by Justice Delort talking about it should be when the request

is made, because that's when the person has the expectation to receive these documents.

But under any of those three, he had a right to those documents, these documents that he has never got a chance to see despite having to come in and his appearance being compelled before a board.

And so what we have here very clearly is an inequitable consequence. And to me it's fundamentally unfair.

Thank you.

MR. INOUYE: Thank you, your Honor.

Just briefly, the plaintiff or claimant cites the Kalven case, the concurrence in the Kalven case, but the Kalven case itself is directly on point. It says that this is prospective relief, that no matter what, you're talking about prospective relief. And if you're talking about prospective relief, they have to apply the law that's in effect at the time.

And since the initial order of the Court saying that part of those documents had to be turned over, there was a motion to reconsider filed by both parties. And so the order didn't become

final at that point.

And then another court entered the second order and then another motion to reconsider was filed.

So at this point, no order is technically final until those motions to reconsider have been ruled upon.

In any event, the law at the time that the second order was issued is that under Kalven and under the statute, the new statute, they can't be turned over.

We would argue that they should not be turned over in any event because the law existed prior to the order.

And as we noted in our initial response to the motion, that the -- revealing these documents would necessarily reveal the identity of the complainant. It would necessarily reveal things that they should be able to keep confidential.

That if you were to just say, "There's no longer any confidentiality; these are all subject to FOIA", then it's going to discourage this process.

And so and that's why they issued the new

statute anyway.

I think that we've set forth in our motion or in our response to the motion exactly why we think that the law is not retroactive, because they're seeking prospective relief.

But under either of the cases cited by plaintiff, I believe that the Court issued the correct ruling.

THE COURT: All right. Any reply?

MR. LADLE: Just two things.

One, I'm not talking about the blanket change of the entire law here. I think that's a misstatement of both our complaint and the briefs that have been filed in here.

But more importantly, injunctive relief is prospective. It absolutely is. Don't do this in the future.

But what this Court was asked to review was should the Department have previously turned over those documents. And if we want to know whether that's prospective or not, look at the statute. The statute allows for attorney's fees and for penalties for their prior actions, prior harms.

THE COURT: But they only get triggered if the Court finds that there's a basis for disclosing the documents that were wrongfully withheld or under the language of the fee statute prevail.

MR. LADLE: I understand.

THE COURT: So everything hinges on that.

MR. LADLE: On prevailing. And the question is was it wrongfully withheld when. It's not was it wrongfully held on the date of the hearing.

THE COURT: So you don't consider the Court's review part of the process?

MR. LADLE: Does the Court finding that it was wrongfully withheld up for two-and-a-half years and then saying but -- because there's no way the Department could have known this law was going to change in 2013 when they received this. It's not an excuse for their actions.

And yet that's what this, this application of law is doing. It is a retroactive shield for their prior bad accounts.

The Department potentially was exposed to liability for its previous refusal to comply with the law. That would be from January of 2013 when

they received the request through January, July 27, 2015. For those two-and-a-half years the Department withheld documents it should have turned over.

There's no indication that this law says that somehow now they're immune. They didn't know it. It's not an excuse for why they did what they did.

It's clearly inequitable for them to delay for two-and-a-half years, which is a past harm. Two-and-a-half years of refusing to tender a document is a past harm, which the statute contemplates penalties for. It clearly contemplates penalties for that conduct. And then says, "But going forward, the law changed. Therefore, you prevail. Therefore, you're excused."

Because that's what this ruling does. It says that you were wrong for two-and-a-half years. You didn't have a proper --

THE COURT: I didn't hold they were wrong for two-and-a-half years. I heard they were partially wrong for two-and-a-half years.

That's all that you got out of this Court.

So, that's an overstatement of what happened even prior to the change in the law.

And part of the process in FOIA is to allow a party to come to court to challenge the public body's determination on whether or not the exemption applies or doesn't.

MR. LADLE: And the question was, the public body didn't know this change in the law when they denied it in 2013. The public body did not know of this exemption when they refused to comply with the law in 2014.

THE COURT: They were -- this is where we're kind of at odds in terms of my grasping your argument, because you assume that they had no right to withhold that document or the documents that they would have withheld.

The process began here to test whether they were correct or whether your client was correct in its interpretation of the statute.

You won a portion of it with regard to the documents that were attached to the complaint, and the Department won the portion of it with regard to my ruling that the actual complaint would have revealed the identity of the informant and that was

not disclosable, producible under FOIA.

So to state that there was a foregone conclusion that the Department acted erroneously is not exactly a complete statement of what actually occurred here.

MR. LADLE: Okay. And I'm not trying to say it's a foregone conclusion.

What I am saying is that by ruling this way, by saying that this change two-and-a-half years later -- the question is, and the Court seems somewhat confused in the opinions I've read, there's no -- there doesn't seem to be a clear answer.

Kalven says it, but the concurrence talks about this. When did Mr. Perry's right to that document vest? When did it vest? When he filed the FOIA complaint?

THE COURT: Well, you're assuming he has a right to the document starting there. And that is what this case is about, your challenge to whether or not he had a right to that document.

And if we were talking about the complaint, the Court's interim determination even prior to the statute was that he did not.

So to claim that he had a vested right to the information in the complaint and the complainant's name has not been borne out by the rulings in this case.

MR. LADLE: But we're not arguing that here today. That's not --

THE COURT: Yes, that's what you're telling me, he had a vested right to a document -- to have this document produced under FOIA, that is what your argument is.

MR. LADLE: I -- if there's a confusion on my part on how I've phrased this, I've not attacked in this motion to reconsider your denial of our motion to reconsider the refusal to grant the complaint.

THE COURT: Well, then --

MR. LADLE: This motion solely is based on in our complaint and the cases cited and the facts cited and the opinions we cite to by this Court the change in -- this Court on July 27, 2015 ordered the Department to tender certain documents, a limited field of public documents, in fact, as this Court pointed out, public documents.

The Department then came in afterwards and

said, "We're shielded from even turning those over."

And this Court on July 27th said, "No, he should have had these, this limited pool of documents".

If I'm overstating it, I apologize. But I believe that's what this Court said was a grant of summary judgment as to these items that he should have had previously under his FOIA request going back to 2013.

At that point, this Court had said it, "They should have turned this over. They should have," that for two-and-a-half years they should have turned this portion over, this portion was not protected.

A law comes out after that and there's a question. We never got to the question of whether Mr. Perry's entitled to any remedies for past harms. I tried to bring it up at the end of the January 7, 2016 hearing orally because I didn't have a chance to discuss it, and it was not briefed, and I apologize.

But at that ruling July 27, 2015, this Court ruled that some of these documents as a

matter of summary judgment should have been turned over.

And, in fact, this Court talked about it. It wasn't a final ruling yet on one front because we hadn't ruled on attorney's fees, we just saw it.

Those attorney's fees would be based on the past harms, the past actions of the Department, the past litigation.

There then is a law that comes in afterwards -- and, again, we're not disputing injunctive relief as prospective, but to the extent that this law comes in afterwards and immunizes them for their prior acts, because that is the effect. We can't even get to a hearing on the attorney's fees for those two-and-a-half years of conduct because this Court has said that it's all prospective, and, therefore, we don't address the question of whether for two-and-a-half years they were wrong.

THE COURT: Okay. I have a very comprehensive ruling. So I think we'll just turn to that now.

I'm going to explain on various levels addressing both the arguments at the hearing today

and the arguments in the briefs why I believe that the statute that was enacted on August 3rd, 2015, this is Section 999 of Public Act 99-227, operates and governs this proceeding and does not create a retroactive application of the law.

The statute became effective upon becoming law. So, therefore, the August 3rd, 2015 date is the operative data.

There are a number of arguments that are made here that I think stem from a wrongful premise or a premise that defines no bearing in the law.

As long as this case remains alive, and the issue is whether or not by a declaration or an injunction that is provided under the FOIA statute, the Court still has an active case before it.

Under most circumstances under the Statute on Statutes and the Supreme Court's interpretation of that statute and its decisions, including those that interpret or apply, the United States Supreme Court decision in the Landgraf, L-a-n-d-g-r-a-f, vs. U.S.I. Film Products, all militate in favor of the Court applying the statute that is in effect at the time that the proceedings remain alive before the Court.

Of course, I really don't need to go any further than Kalven vs. City of Chicago, K-a-l-v-e-n. And that case is cited in the briefs. I don't need to include a citation here.

In that case, there was a perfectly analogous situation. And what the Appellate Court held in that case is that where an amendment to the FOIA statute becomes effective at the time that the case is under review by a court, that the amendment will apply.

The Court's rationale was that FOIA created prospective rights, and, therefore, it changes the law, did not interfere with any vested rights or did not ultimately effectuate a retroactive application of the law.

I'm going to quote from the Court's decision at Paragraphs 9 and 10.

The Court said, "FOIA provides that when a person is denied access to inspect or copy any public record by a public body regarding the affairs of government and the official acts and policies of those who represent the public, that person may file suit in Circuit Court for injunctive or declaratory relief".

The Court went on to say, "Injunctive and declaratory relief are prospective forms of relief because they are concerned with restraining or requiring future actions rather than remedying past harms".

The Court went on to say, "When claims are prospective, a Court must apply the law that is in effect at the time of its decision".

And so ultimately in Kalven, the Appellate Court determined, and this is a quote from the same two paragraphs, "The 2009 FOIA statute was in effect when plaintiff filed suit. The statute has since been amended. In order to determine whether plaintiff is entitled to production of the documents, we must, therefore, apply the version of the statute that is currently in effect".

Kalven is good law. It is a decision of the Appellate Court which binds this Court.

And I will note that it is not the concurrence, but the majority decision that the Court is not free to disregard.

The 1st District decision in Kalven directly addresses the issue of a change in the FOIA law during litigation.

And my ruling must be consistent with the dictates in the case that contains this very dispositive ruling on precisely the same issue.

The plaintiffs claim that there is some kind of inroad in Kalven vs. City of Chicago as a result of the Supreme Court case cited after in a decision called People ex rel. Madigan vs. J.T. Einoder, E-i-n-o-d-e-r, Inc.

First of all, that decision in no sense overruled Kalven. The Court did take up the question of whether or not an amendment to a statute that would be an environmental statute created a new remedy or a new right to relief that did not exist under the previous statute.

The new statute allowed for mandatory injunctions, whereas the old statute that was applied or that was in existence when the alleged wrong was done only provided for prospective injunctive relief.

And so what the Court determined was that the new statute that was before it, not FOIA, by the way, but a different statute, would operate to create to be a retroactive application of the law.

The Supreme Court in reaching that

conclusion stated as follows: "Clearly amended Section 42(e) is not simply procedural. It creates an entirely new type of liability, a mandatory injunction, which was not available under the prior statute. Applying it retroactively here would impose a new liability on defendant's past conduct. For that reason, it is a substantive change in the law and cannot be applied retroactively".

That's at Paragraph 36 of the Court's decision.

I think it's worth going over what the facts were in the Einoder decision because in that case what happened is prior to the commencement of the lawsuit, the particular site in question had already ceased operations.

And four years after the initial complaint was brought, the Legislature amended the statute.

As indicated, the previous statute, the pre-amended version only allowed a prohibitory injunction, that is, a restraint on violations of the statute.

The amended version of the statute did not just allow a mandatory injunction, but what it permitted was a mandatory injunction that would

have required some affirmative steps to -- and particularly in that case, to clean up the Glenwood site.

So it wasn't simply, "Quit violating the statute." It was, "Now you're going to take some remedial steps", which, of course, costs money, which, of course, imposes obligations after the cessation of activity on the defendant in an environmental enforcement action.

And so logically the Supreme Court found that that imposed additional liabilities on a party after the conclusion of the party's activities.

In this case, as is true of -- as was true in the Kalven case, what brought the matter to the court remained in controversy. That is, whether or not the FOIA statute allowed the production of these documents.

It was challenged by the plaintiff, as was the plaintiff's right, and it was defended by the Department. And then the Department, then the Court's decision that allowed a part of the relief that the plaintiff sought was further challenged by the Department on a motion to reconsider.

All of this kept the controversy alive.

So there is no retroactive application of this statute. It is simply a change in the law that applies to a pending case, just as was true in Kalven, in Kalven's ruling in that regard. And particularly Kalven's ruling with respect to the type of remedy that's available under FOIA, declaratory and injunctive relief, remained unchanged and is highly distinguishable from the nature of the change in the statute that occurred in the Einoder case.

And, therefore, I find no basis whatsoever to conclude that the Supreme Court did anything to effect or to modify the decision in Kalven, either sub silencio or period.

And I'm not free, once again, to interpret a binding ruling of the Appellate Court.

So let me go on to state an alternative basis for my decision, as though I would need to.

Of course the Supreme Court has set out very recently clearly in the case that I've been referring to, J.T. Einoder, the rules that apply for the Court to determine whether or not there's retroactive application of the statute.

And what the Court says here is that we,

the Landgraf issue should not be so much of a problem in Illinois because we have the Statute on Statutes. And that provision ordinarily tells us what the Legislature's intent is with respect to the application of the law and the effect of the law that the Court should be applying to a particular case.

And, of course, there is always the card that trumps. That is, whether or not there is an unconstitutional retroactive application of the statute that would be, for example, deprivation of someone's due process rights.

And so what we have here is a provision in the Statute on Statutes which is 5 ILCS 70-4. And what this provision talks about is that -- the statute begins by talking about, "A new law shall not be construed to repeal a former law", et cetera, et cetera.

And then it goes on to state, "or in any way to affect any such offense or act so committed or done or any penalty forfeiture or punishment so incurred for any right accrued or claim arising before the new law takes effect".

And here's the point of emphasis, "Safe

only that the proceedings thereafter shall conform so far as practicable to the laws in force at the time of such proceeding".

And, therefore, unless the statute would -- and the change in the law would effect a retroactive application, the Court not only by the Kalven decision, but by the Statute on Statutes must apply the law that exists at the time of ruling.

As I've indicated, here the case remained alive on a party's motion to reconsider. That is, I had made no final order, and, therefore, as was true in Kalven is true here, the Court must apply the law in effect unless it would be a retroactive application. And we learned from Kalven that it would not be, because the relief provided under FOIA is prospective.

In the briefs, the plaintiff further argues that there are certain remedial measures in the FOIA statute that permit or that constitute a vested right and focuses on the attorney's fees provision and on the penalty provision.

There seems to be again some confusion about the finality or termination of these

proceedings. The proceedings did not conclude, they remained alive, along with both parties' motions, with the assumption, of course, that they were filed in a timely way, which they were, and that they remained pending before the Court, properly before the Court with jurisdiction.

So long as no final judgment was entered, there was no final determination by this Court. And, therefore, these statutes, these provisions, the attorney's fees provision and the penalty provision, don't become operative until the Court makes a determination that renders the plaintiff's version of the proper construction of the statute proper and enters a final decision, in which under the statute on fees, anyway, that Section 11(i) of the FOIA statute, that the plaintiff prevails.

The plaintiff did not prevail here. The intervening statute prevented the plaintiff from prevailing.

And in any case, there would have been an issue about whether the plaintiff prevailed even under the Court's original order, because under the original order of July 27, 2015, the Court ordered release of only the exhibits, not the primary

document that was central to the request, the complaint with the information concerning the complainant.

So we would have had probably a controversy about whether or not the plaintiff prevailed in the proceedings at all, but certainly no controversy where the intervening change of the law prevents the disclosure of the primary document that the plaintiff sought.

Plaintiff further claims that there was some wrongful conduct on the part of the Department previously that permits the Court to determine that the Department acted wilfully and intentionally in failing to comply with the statute.

Here's what that statute says. This is Section 11(j) of FOIA. "If the Court determines that a public body wilfully and intentionally failed to comply with this Act or otherwise acted in bad faith, the Court shall impose upon the public body a civil penalty of not less than $2,500 or more than $5,000 for each occurrence."

This, once again, this statute could only operate if I were to determine that the Department acted wilfully and intentionally under the

interpretation of those words in that statute.

In this instance and from the very beginning of this case, the Department challenged an interpretation that the plaintiff was also challenging of the exemption of the FOIA law.

Until the Court agrees that the Department's disclosure or failing to disclose was unlawful, we never even get to wilfully and intentionally failing to comply with the Act.

And so the existence of the statute alone creates no vested right in a party whose claim remains alive before the Circuit Court.

And so I couldn't find that the Department's actions here were wilful or intentional, or let's put it in another set of terms, a purposeful attempt to avoid the application of the law.

That statute does not create any rights at all until there is a determination that there was some wilful, intentional, and wrongful conduct.

And there has not been, all again stemming from the fact that the law changed while this case remained alive before this Court.

So I find that Kalven applies. That the

Supreme Court decision in J.T. Einoder does not in any way overrule the Kalven decision, even though I don't know that I would be authorized to make that determination where the Court doesn't expressly overrule an intervening Appellate Court decision, and that these other remedial provisions of the FOIA statute do not create the kind of vested right that would require the Court not to apply the law that is in force at the time it renders its decision.

So the motion to reconsider is denied for all of those reasons.

MR. LADLE: Thank your, your Honor.

MR. INOUYE: Thank you, your Honor.

(Whereupon, those were all the proceedings had in the above-entitled case on the aforesaid date.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

Deborah E. DeSanto, being first duly sworn, on oath says that she is a court reporter doing business in the City of Chicago; and that she reported in shorthand the proceedings of said hearing, and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid, and contains the proceedings given at said hearing.

Deborah E. DeSanto

Deborah E. DeSanto, CSR

LIC. NO. 084-001384

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY _____ **DEPARTMENT,** CHANCERY **DIVISION/DISTRICT**

CHRISTOPHER J. PERRY and PERRY & ASSOCIATES, LLC
Plaintiff/ Appell ANT

v.

ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
Defendant/ Appell EE

Reviewing Court No. 16-1780

Circuit Court No. 2014 CH 17994

NOTICE OF APPEAL

(Check if applicable. See Ill. Sup. Ct. Rule 303(a)(3).)

☐ **Joining Prior Appeal** ☐ **Separate Appeal** ☐ **Cross Appeal**

Appellant's Name: CHRISTOPHER J. PERRY AND PERRY & ASSOCIATES, LLC
Appellant's Attorney (if applicable): Gregory F. Ladle of J ohn LLadle, P.C
Address: 177 N. STATE ST., SUITE 300
City/State/Zip: CHICAGO IL 60601
Telephone Number: 312-782-9026
☑ **Cook County Attorney Code:** 25742 **or** ☐ ***Pro se* 99500 (Choose one)**

Appellee's Name: ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
Appellee's Attorney (if applicable): Thor Y. Inoyue, AAG; Office of the Illinois Attorney General Lisa Madigan
Address: 100 W. RANDOLPH ST. 13TH FL
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Telephone Number: 312-814-3632
☑ **Cook County Attorney Code:** 99000 **or** ☐ ***Pro se* 99500 (Choose one)**

An appeal is taken from the order or judgment described below:

Date of the judgment/order being appealed: 05/25/16; 1/7/16; 7/27/15 (May 25, 2016; January 7, 2016; July 27, 2015)
Name of judge who entered the judgment/order being appealed: Hon. Judge Rita M. Novak
Relief sought from Reviewing Court: review of partial grant of summary judgment for Defendant denying redacted copies of records under FOIA request entered on July 27, 2015; review and reversal of grant of motion to reconsider for Defendant which entered on January 7, 2016 and denial of motion to reconsider on May 25, 2016 based retroactive application in change in law

I understand that a *"Request for Preparation of Record on Appeal"* form (CCA 0025) must be completed and the initial payment of $110 made prior to the preparation of the Record on Appeal. The Clerk's Office will not begin preparation of the ROA until the Request form and payment are received. Failure to request preparation of the ROA in a timely manner, i.e., at least 30 days before the ROA is due to the Appellate Court, may require the Appellant to file a request for extension of time with the Appellate Court. A *"Request for Preparation of Supplemental Record on Appeal"* form (CCA 0023) must be completed prior to the preparation of the Supplemental ROA.

(To be signed by the Appellant or Appellant's Attorney)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

C 2611

CHRISTOPHER J. PERRY and PERRY & ASSOCIATES, LLC V. ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
Court No.: 14 CH 17994
Sup Ct. No. 122411 (consolidated with No. 122349)

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PROOF OF FILING / SERVICE

I, Gregory F. Ladle, an attorney, certify that on the 5th day of December , 2017, we have caused to be electronically filed with the Clerk of the Supreme Court of Springfield, Illinois, via its e-filing system the following: a **PLAINTIFF-APPELLANT PERRY'S BRIEF**, a copy of which is attached hereto.

I, Gregory F. Ladle, an attorney, further certify that I served a copy of this **PLAINTIFF-APPELLANT PERRY'S BRIEF** and **Proof of Service** upon:

Attorney for Illinois Department of Financial and Professional Regulation
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the parties of record by emailing copies of the same to all primary and secondary email addresses of record on the 5th day of December, 2017.

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 .

/s/ Gregory F. Ladle
_____
Gregory F. Ladle

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12/5/2017 2:04 PM
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