No. 128300

IN THE SUPREME COURT OF ILLINOIS

MATT CHAPMAN, Plaintiff-Appellee, -vs- CHICAGO DEPARTMENT OF FINANCE, Defendant-Appellant.	)	Appeal from the Appellate Court, First District, No. 1-20-0547 There on appeal from the Circuit Court of Cook County, Illinois No. 18 CH 14043 The Honorable Sanjay T. Tailor, Presiding

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BRIEF OF PLAINTIFF-APPELLEE

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I. NATURE OF THE CASE

This is a Freedom of Information Act case seeking the release of the column headings and names of spreadsheets that make up Defendant City of Chicago Department of Finance's ("CDF") parking and traffic citations database. CDF denied Plaintiff Matt Chapman's FOIA request for this information under FOIA Section 7(1)(o). After hearing and weighing live witness testimony on both sides, the Circuit Court ruled that CDF failed to meet its burden of proving that the records are exempt from disclosure. The Appellate Court affirmed. CDF appeals. No questions are raised on the pleadings.

II. ISSUES PRESENTED

1. Whether the Circuit Court's ruling at trial that CDF failed to prove by clear and convincing evidence that release of column heading and spreadsheet names would jeopardize the security of CDF's database was against the manifest weight of the evidence where the Circuit Court heard and relied on detailed expert witness testimony unequivocally stating that it would not.

2. Whether, despite FOIA's narrow construction rule, a public body need only show a "possibility of harm" in order to establish by clear and convincing evidence that disclosure "would jeopardize" the security of a computer system, and, if so, whether the Circuit Court's finding that release of the requested information would not provide an adversary with any advantage at all is against the manifest weight of the evidence.

3. Whether, despite FOIA's narrow construction rule favoring disclosure and other canons of statutory construction, a public body need only show that a record is a "file

layout" to be subject to Section 7(1)(o) without proving that its release would jeopardize the security of a computer system.

III. STATEMENT OF THE FACTS

On August 30, 2018, Chapman submitted a FOIA request to CDF seeking "[a]n index of the table and columns within each table of CANVAS," along with the "column data type." C 13. Chapman referred to this information as the "database schema." C 13-15. The CANVAS system referenced in Chapman's requests is CDF's Citation Administration and Adjudication System ("CANVAS"), which tracks parking and traffic citations within Chicago. C 42.

On September 12, 2018, CDF denied the request under Section 7(1)(o), claiming that "dissemination of these pieces of network information could jeopardize the security of the systems of the City of Chicago." C 17. Chapman then filed suit. C 8-12. CDF filed an answer but asserted no affirmative defenses. C 23-29. The parties then briefed summary judgment, and the Circuit Court found that CDF's supporting affidavit was conclusory, but that one of the statements in the expert affidavit submitted by Chapman was unclear and left open an issue of fact for trial on the extent to which release of the schema could be used to attack and jeopardize the CANVAS system. C 31-36, 41-48, 51-59, 62-68; R 12-13. That trial was held on January 9, 2020. R 15-197.

During the pre-trial process, CDF argued for the very first time that it was not required to prove that release of the schema would jeopardize security, but only that it qualified as a "file layout" or "source listing."[1] R 25-26. Chapman objected to this new argument as untimely. R 27-28, 31-32, 35. The Circuit Court heard argument and rejected

[1] CDF no longer relies on any "source listing" argument. See Appellant Br.

CDF's argument, holding that the phrase "if disclosed, would jeopardize the security of the system" qualifies everything that precedes it, including "file layouts" and "source listings." R 34. The Circuit Court also noted that because the "issue has not been framed by any of the pleadings[,] . . . it would be unfair to raise it here on the first day of trial." R 35.

CDF then called Bruce Coffing, a City of Chicago IT employee, as its only witness. R 57. Coffing stated that the CANVAS is the computer system CDF uses to track parking and traffic ticket payment information, which he acknowledged is already common knowledge to the public. R 59, 90-91. Coffing testified that the "CANVAS is a competently built system," that it "is built on best practices in the industry," and that it does not have any known vulnerabilities. R 70-73, 76, 80. He also agreed that other government bodies release their database schema. R 100. Finally, Coffing defined a file layout as "the instructions that the database management system uses to create the database that the data is then stored in." R 67-68.

Chapman then offered testimony from his expert witness, Thomas Ptacek. R 110. Ptacek has worked in the field of information and software security for over 25 years and has five patents. R 111, 113. He is a founder of Latacora,[2] an information security company, where Ptacek "look[s] for vulnerabilities in systems" and helps his client companies "remediate vulnerabilities" that he finds. R 110-13. He "hack[s] systems for a living" at the request of his clients. R 111. Ptacek's clients include a variety of companies

[2] Ptacek also co-founded Matasano Security, one of the largest security firms in the United States. C 58.

from start-ups to large technology companies like Microsoft, including "large financial organizations, banks, insurance companies, [and] electric grid operators[.]" R 112.

Ptacek explained that as "a professional based on [his] 25 years of experience doing precisely this kind of work, [he] could not think of a thing [he] would do with [the schema information at issue] that would allow [him] to in any way more effectively attack or compromise the system or do so more precisely or quietly." R 118. He testified unequivocally that there is no value to an adversary in having the schema prior to attacking the system. R 118-19, 136. He stated that he "cannot think of a way which publicly disclosing the schema would jeopardize the security of that system," R 120, and that "[i]n no case could the attacker use the schema to breach the system." R 133. In other words, the schema is "the product of an attack and not the predicate," R 135-36, 151.

He also squarely disputed CDF's central claim at trial: that an adversary with the schema would be less "noisy" during an attack, R 61, 154, 171, which refers to the amount of data that a user creates when interacting with a database. R 62-63. Ptacek testified that having the schema "would not make it easier" for an adversary to go undetected because "there is already a huge amount of noise" in database systems, and "the schema doesn't change the amount of noise" that an adversary generates. R 135, 154 ("The schema has nothing to do with how much noise I would make as an attacker."). Nor would it make an attack more effective. R 148-49. In sum, Ptacek testified that knowledge of that information would not make it any easier for an adversary to carry out an attack, even "in

conjunction with [the] other information" that was made public about the CANVAS system. R 131-33.

In response to CDF's claim that the schema discloses information about the kind of data in the database, which might attract adversaries depending on the nature of that data, Ptacek explained that such information is already visible to would-be adversaries through the HTML source code available through the web browser by visiting the website. R 138-39. He further explained that would-be adversaries would rely on that information, not the schema, to identify preferred targets. R 138-39.

Finally, Ptacek testified that "absolute secrecy of the schema" is not how the industry protects databases. R 140. He specifically noted that private companies (including his clients) and government agencies frequently release their schema to the public. R 112, 143-45. Ptacek testified that there are schemas that are "readily" available for downloading on data.gov, but that if he were to download those schemas it would not be any easier for him to break into their corresponding systems. R 144-45.

In addition to his testimony about security, Ptacek addressed CDF's claim that that a schema is a "file layout" or a "source listing." R 145. He testified clearly that a schema is neither a file layout nor a source listing. R 145. Nor is it considered "a blueprint of the database" because "there is a lot more information that would go into the configuration of the database." R 126. Rather, "schema" is "a term of art that we use to describe all of the fields and the databases that sit behind these applications." R 122-23. Ptacek compared the schema to the names and column headings of "a collection of spread sheets." R 123.

At the close of evidence, after weighing the testimony and credibility of these witnesses, the Circuit Court issued a ruling. R 193-96. It found that CDF "has not met its

burden of proof" on whether disclosure of the database schema "would jeopardize the security of the CANVAS system." R 193. The Court explained that, while Coffing vaguely testified that knowledge of the schema could allow an adversary to "more precisely plan and execute an attack without making noise," R 193, he did not "go into it more beyond that, as far as explaining how that would work, at least not in a way that [the Court] found persuasive," R 194. The Circuit Court was instead persuaded by Ptacek's testimony that "knowledge of the schema would not in any way provide a threat actor [with an] advantage in attacking a system like CANVAS," R 194, because "the schema is the product of the attack and not the predicate of the attack," R 195. The Circuit Court further found that knowledge of the schema "does not make it easier" to attack the system, R 195; that knowledge of the schema "in no way makes the system more vulnerable" to any attacks, R 196; and that the schema cannot be used "in combination with" other publicly available information to assist an adversary. R 196. Finally, the Circuit Court found, based on the expert testimony, that whether the schema may help guide an adversary "on which system he might want to pursue" "is really of no moment" because it is already known that the CANVAS "by definition" contains "the kind of information that would attract a threat actor." R 195-96. Because CDF "failed to meet its burden on its defense under Section 7(1)(o) of FOIA," the Circuit Court entered judgment for Chapman and against CDF and ordered CDF to produce the records. R 196; C 79.

CDF appealed. A 27. The Appellate Court affirmed the Circuit Court's ruling, holding that it was not against the manifest weight of the evidence and that CDF had failed to carry its burden of proof. A 17-18. The Appellate Court also affirmed the Circuit Court by narrowly construing Section 7(1)(o) and by holding that the provision's phrase "if

disclosed, would jeopardize" applies to all of the items, including "file layout," listed under Section 7(1)(o). A 14-15. This Court granted CDF's Petition for Leave to Appeal.

IV. LEGAL STANDARDS

The General Assembly has made clear that the purpose of FOIA is to facilitate transparency and allow the public to participate meaningfully in decisions that affect them. "Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act." 5 ILCS 140/1 (West 2018). The General Assembly specifically acknowledged that "[s]uch access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest." *Id*. As a result, "[t]he 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." *Id*.

When determining whether information may be kept from the public, courts must interpret the FOIA statute in light of these transparency objectives. *Id.* "Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government

activity that affect the conduct of government and the lives of any or all of the people." *Id*. Therefore, FOIA provisions "shall be construed in accordance with this principle." *Id*.

Accordingly, this Court requires that exemptions be narrowly construed in favor of disclosure. *E.g.*, *Stern v. Wheaton-Warrenville Community Unit School District 200*, 233 Ill. 2d 396, 406, 410-11 (2009). "Based upon the legislature's clear expression of public policy and intent set forth in section 1 of the FOIA that the purpose of that Act is to provide the public with easy access to government information, this court has held that the FOIA is to be accorded 'liberal construction to achieve this goal.' Accordingly, we have, on several occasions held that the exceptions to disclosure set forth in the FOIA are to be read narrowly so as not to defeat the FOIA's intended purpose." *Southern Illinoisan v. Illinois Department of Public Health,* 218 Ill. 2d 390, 416 (2006).

The General Assembly has acknowledged that information about the kinds of data and records that public bodies have is important for the public to know:

> As to public records prepared or received after the effective date of this Act, *each public body shall maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control*. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act. *Each public body shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained* in a form comprehensible to persons lacking knowledge of computer language or printout format. (Emphasis added.) 5 ILCS 140/5 (West 2018).

V. ARGUMENT[3]

As explained at trial, the federal government, state and local government agencies, and private companies regularly make database schema publicly available on data.gov. R

[3] Chapman adopts CDF's jurisdiction and statutory provision involved sections. See Appellant's Br. at 2-3.

143-45; C 54. After weighing expert testimony, the Circuit Court found that release of the requested information would not jeopardize the security of the CANVAS system. R 193-96. That decision is reviewed under the highly deferential manifest weight of the evidence standard, and CDF's attempts to reweigh the evidence *de novo* must be rejected. *E.g.*, *Studt v. Sherman Health Systems*, 2011 IL 108182, ¶ 50.

Because the Circuit Court's decision was not arbitrary, unreasonable, or without any evidentiary support, CDF relies on a series of statutory interpretation arguments that are unsupported by cannons of construction or FOIA's requirement that exemptions be "narrowly construed." First, CDF attempts to rewrite the FOIA statute by defining "would jeopardize" as a mere "possibility of harm." Not only does this fail to comport with this Court's requirement that FOIA exemptions be narrowly construed, but the Circuit Court's well-founded ruling based on live testimony that the database schema "would not in any way provide a threat actor [with an] advantage in attacking a system like CANVAS," "does not make it easier" to attack the system, and "in no way makes the system more vulnerable" to any attacks, would foreclose CDF's claim even under its own improperly broad interpretation of the exemption. R 194-196.

Next, CDF argues that any item listed in Section 7(1)(o), including "file layout," is *per se* exempt. But this directly conflicts with the plain language of Section 7(1)(o) because the General Assembly subjected that list to the exemption's "would jeopardize" clause. To the extent there is any ambiguity, which there is not, FOIA's narrow construction rule,

again, defeats CDF's claim. The "would jeopardize" clause applies to all of the items listed in Section 7(1)(o).

Even if the General Assembly had made file layouts *per se* exempt, CDF relies on an improperly broad definition of that term that is not even consistent with its own witness's explanation of what a file layout is or the definition it presented to the Appellate Court. R 67-68; Appellate Court Appellant's Br. at 16-17 n.2, 29-30; Appellant's Br. at 13-14. If the Court finds that "file layouts" are *per se* exempt, it should reject CDF's improperly broad definition of this technical term and remand the case for additional proceedings where the Circuit Court can address, in the first instance based on expert testimony, whether the requested database schema is a "file layout."

This Court should affirm the Appellate Court.

A. The Circuit Court properly considered the live witness testimony at trial and its ruling that disclosure would not jeopardize CANVAS is not against the manifest weight of the evidence.

This Court should not disturb the Circuit Court's finding that disclosure of the schema would not jeopardize the security of CANVAS. Circuit courts are afforded great deference under the manifest weight of the evidence standard because the circuit court "is in the best position to evaluate the conduct and demeanor of the witnesses." *Samour, Inc. v. Board of Election Commissioners of City of Chicago*, 224 Ill. 2d 530, 548 (2007); *Indeck Energy Services, Inc. v. DePodesta*, 2021 IL 125733, ¶ 56 ("We will not disturb the trial court's ruling on a question of fact unless it is against the manifest weight of the evidence."); *Studt*, 2011 IL 108182, ¶ 50 ("a reviewing court may not simply reweigh the evidence"); *In re Commitment of Tunget*, 2018 IL App (1st) 162555, ¶ 35 (a "clear and convincing evidence" finding warrants reversal if that determination was against the manifest weight of the evidence). A trial court's ruling is "against the manifest weight of

the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence." *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 70; *DePodesta*, 2021 IL 125733, ¶ 56 ("A ruling is against the manifest weight of the evidence only if an opposite conclusion is clearly evident."); *In re Estate of Michalak*, 404 Ill. App. 3d 75, 96 (2010).

Under the manifest weight of the evidence standard, "all reasonable presumptions are made in favor of the trial court, the appellant has the burden to affirmatively show the errors alleged, and the judgment will not be reversed unless the findings are clearly and palpably contrary to the manifest weight of the evidence." *Estate of Michalak*, 404 Ill. App. 3d at 96 (quoting *In re Estate of Vail*, 309 Ill. App. 3d 435, 438 (1999)). A reviewing court will not substitute its own judgment "for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *E.g.*, *id.*; *Best v. Best*, 223 Ill. 2d 342, 350–51 (2006)*; Tully v. McLean*, 409 Ill. App. 3d 659, 671 (2011). Given this high standard that CDF must overcome on appeal and with the trial record before it, the Appellate Court properly determined that the Circuit Court's ruling was not against the manifest weight of the evidence. A 17 at ¶ 38. That is especially so under FOIA, where a public body like CDF must meet its burden by clear and convincing evidence. 5 ILCS 140/1.2 (West 2018).

Here, Chapman's expert witness Thomas Ptacek squarely contradicted CDF's claim, and the Circuit Court is entitled to great deference in its decision of which witness's testimony to credit. C 58-59; R 110. The Circuit Court accepted Ptacek's testimony that, put simply, "knowledge of the schema would not in any way provide a threat actor advantage in attacking a system like CANVAS." R 193, 194; see R 118-20. That fact

alone, which the Circuit Court was well within its discretion to accept, defeats any claim that release of the schema "would jeopardize" the CANVAS database and provides more than sufficient basis for the Circuit Court's decision under the manifest weight of the evidence standard, even under CDF's overbroad interpretation, as discussed below.

In addition, however, the Circuit Court heard and relied on testimony from Ptacek that the CANVAS's schema is like a collection of spreadsheets showing the column headings of those spreadsheets, but it does not show the actual data points beneath the column headers, R 123-24, and that a system's schema is the "product of an attack and not a predicate of an attack"—that the schema is not at all helpful in attacking a system, and that it is readily available to an attacker once the system has been infiltrated. R 135-36. Adversaries would not even attempt to collect a schema prior to an attack because having a schema would not make the attack any easier. R 118-19, 131, 134-36. This is supported by Ptacek's own real work experience with companies hiring him to test their systems' security. R 119, 136.

Ptacek further testified, based on his extensive industry experience, that an adversary with the schema would not be any more successful than an adversary without the schema, and that there is simply no value in having the schema prior to an attack. R 118-119, 127; A 17.

There was also evidence before the Circuit Court that release of the schema, not secrecy, would follow industry best practices, and that according to CDF's own witness, CANVAS is built on the best practices in the industry. R 80-81; see also A 17 at ¶ 38. Private companies, the federal government, and other state and local government agencies frequently make their schema publicly available for anyone to download. R 143-45 (Ptacek

testifying that government agencies make their schema publicly available for download on data.gov and that if he downloaded those schema, he "would not be able to use that information to break into the systems."); C 54 (citing data.gov and other federal government websites where federal, state, and local agencies make their schema publicly available). Similarly, hiding the schema is not an accepted practice for defending against attacks because it does not work. R 140; C 59; see also R 123, 125-28, 135 (explaining that the best practice is to keep the source code, not the schema, secret and that Chapman's request does not seek CANVAS's source code).

While reviewing courts do not reweigh trial evidence, the testimony on which CDF relies is clearly insufficient, and certainly not enough to overcome the Circuit Court's decision to accept Ptacek's unambiguous testimony that the requested information would not provide a threat actor with any advantages. As the Circuit Court explained, despite the requirement that CDF prove its exemption claim by clear and convincing evidence, Coffing provided only vague and undeveloped testimony about a would-be hacker being less "noisy" if he had the information Chapman requested. R 62-63, 193-94. The Circuit Court rejected his testimony because Coffing failed to "explain[] how that would work." R 194. Such a ruling can only be disturbed if the Circuit Court's decision was against the manifest weight of the evidence, and not simply because this Court would disagree in a *de novo* proceeding. *E.g.*, *Flynn v. Cohn*, 154 Ill. 2d 160, 166 (1992) ("a reviewing court should not overturn a trial court's findings merely because it does not agree with the lower court or because it might have reached a different conclusion had it been the trier of fact").

Moreover, nothing that CDF points to in its brief now to attack Ptacek's testimony makes that finding any less proper. See Appellant's Br. at 36-37. CDF's cherry-picked

lines of testimony were addressed in their proper context by the Circuit Court in its ruling, and CDF does not show how the opposite conclusion is "clearly evident." R 195. For example, CDF attempts to distract from Ptacek's testimony by claiming that merely knowing what kind of information is stored in a system jeopardizes the security of that system. See Appellant's Br. at 40-41. But the evidence at trial showed that it is already known through the City of Chicago's website that CANVAS is used for parking and traffic ticket payment information. R 65-66. The Circuit Court therefore rejected CDF's argument as "of no moment." R 195; see also R 59-61, 86, 90-91 (CDF revealing the general information stored in the CANVAS); C 42 (same).

Similarly, the Circuit Court heard testimony showing that a would-be attacker can easily discover the contents of the CANVAS by using their web browser to look at the HTML source code, which would allow that person to understand the contents of the database. R 139. In other words, because the public already knows that CANVAS contains information about the issuance and payment of parking tickets, there was simply no evidence at trial showing that disclosing information about the column headings and names of the spreadsheets would jeopardize the CANVAS system under CDF's "more attractive target" theory. Thus, the Circuit Court's ruling that "knowledge of the schema in no way makes the system more vulnerable" is more than adequately supported by the trial record and may not be disturbed. R 139-40, 195-96.

CDF's other line of attack is its focus on the adversary's relative "speed" during an attack if it lacked the schema before beginning an attack. See Appellant's Br. at 36-40. Based on the live evidence at trial, the Circuit Court rejected a vaguely similar argument

CDF made pertaining to noise,[4] which CDF no longer raises in this appeal. R 193-94 ("Mr. Coffing in summary testified that if a threat actor knows the name of a field he can more precisely plan and execute an attack without making noise and thereby avoid detection. But he really didn't go into it more beyond that, as far as explaining how that would work, at least not in a way that the Court found persuasive."). Moreover, CDF did not present and does not cite in its brief here any evidence about an adversary's speed at trial. See Appellant's Br. at 37, 39-40. While CDF points to Ptacek's "product not predicate" statement, its interpretation of that statement mischaracterizes Ptacek's unequivocal testimony, which the Circuit Court accepted based on the live testimony, that having a schema in advance would not make the attack any easier or more successful. R 127, 135-136, 150-51; see Appellant's Br. at 37, 39-40.

In addition to its mischaracterization of Ptacek's testimony, which the Circuit Court was in the best position to evaluate, CDF appears to argue, as a matter of law, based on the Second District's decision in *Garlick*, that courts must accepted the testimony of government witnesses even when it is disputed by another expert witness. See Appellant's Br. at 35, 40 ("the circuit court should have accorded due weight to the testimony of Coffing, the official responsible for the system"). There is no basis for such an approach in the FOIA statute, and in *Garlick*, the requester did not offer any counter evidence disputing the affidavit of the government's witness. *Garlick v. Naperville Twp.*, 2017 IL App (2d) 170025, ¶ 49.

Finally, CDF points to excerpts of testimony from a federal district court decision involving a different federal FOIA exemption, which, as explained below, applies a

[4] "Noise" is data that is generated when a user interacts with a database. R 62-63.

substantially easier standard for the government to satisfy, and which does not apply the clear and convincing evidence standard present under the Illinois but not the federal FOIA. See Appellant's Br. at 37-39; *Long v. Immigration & Customs Enforcement*, 464 F. Supp. 3d 409, 411 (D.D.C. 2020). CDF did not offer the testimony in *Long* as evidence to the Circuit Court, does not explain how it is even admissible, and does not cite any authority allowing the consideration of inadmissible testimony from an unrelated case, let alone for the first time on appeal, and let alone when that testimony was directed to a different issue.

Further, the General Assembly established a higher burden of proof in the Illinois FOIA than Congress has for the federal FOIA, which does not require government agencies to prove exemption claims by clear and convincing evidence. *Compare* 5 ILCS 140/1.2, 11(f) (West 2018) *with* 5 U.S.C. § 552 (2018); Appellant's Br. at 37 (admitting same). As a result, the federal case law interpreting Exemption 7(E), which CDF relies upon, is inapplicable to Section 7(1)(o). Thus, while *Long* might have addressed a database schema, it did so under a different statute based on different trial evidence. *Long*, 464 F. Supp. 3d at 418-23.

This Court can only disturb the Circuit Court's ruling if it was against the manifest weight of the evidence. *E.g., DePodesta*, 2021 IL 125733, ¶ 56. Ptacek testified, among many other things that support the Circuit Court's ruling, that he "cannot think of a way which publicly disclosing the schema would jeopardize the security of the system." R 119-20. Therefore, the Circuit Court's ruling is not against the manifest weight of the evidence, and this Court should decline to disturb the Circuit Court's ruling.

B. The Court should reject CDF's broad interpretation of "would jeopardize" as "possibility of harm," and even if it accepts that interpretation, should find

that the Circuit Court's factual findings defeat CDF's claims under that improper interpretation.

CDF claims it need only show a "possibility of harm" to establish that disclosure "would jeopardize the security" of CANVAS. See Appellant's Br. at 30-35. But the dictionary definition on which it relies defines "jeopardize" as "to expose to danger or risk," not a mere "possibility of harm." See *id.* ("Jeopardize means 'to expose to danger or risk'" (citing Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/jeopardize)). Moreover, "possibility" evokes "could," not "would" jeopardize, which is a meaningful distinction under FOIA case law. *Chicago Sun-Times v. Chicago Transit Authority*, 2021 IL App (1st) 192028, ¶ 43 (holding that the General Assembly was aware that "could reasonably be expected to" creates "a more flexible, less onerous standard to invoke a FOIA exemption" than "would"); *Kelly v. Village of Kenilworth*, 2019 IL App (1st) 170780, ¶ 44 (distinguishing federal FOIA cases interpreting "could" exemptions from the "would" exemptions in Illinois FOIA); see also *Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1037 (7th Cir. 1998) (holding that "could reasonably be expected to interfere" requires a general showing of interference not a showing that disclosure "would actually" interfere). And, as this Court has repeatedly noted, FOIA exemptions must be "narrowly construed." *E.g.*, *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 416 (2006). Therefore, the Court should reject CDF's broad interpretation of "would jeopardize."

To support its broad interpretation, CDF primarily relies on federal cases. See Appellant's Br. at 34. But there are key material differences and no parallel language between Section 7(1)(o) and the federal FOIA exemption cited in those federal cases. *Kelly*, 2019 IL App (1st) 170780, ¶¶ 43, 44 (federal FOIA case law not persuasive where

there are key differences between the statute). Illinois courts do not follow federal FOIA case law when the General Assembly has "clearly chosen" to handle Illinois FOIA differently. *Id.* at ¶ 46 (declining to follow federal FOIA case law on requests with voluminous law enforcement records). The exemption at issue in the federal cases on which CDF relies interpreted federal Exemption 7(E), which applies where release of certain information "could reasonably be expected to risk circumvention of the law." See Appellant's Br. at 34-40 (citing *Mayer Brown LLP v. IRS*, 562 F.3d 1190, 1193 (D.C. Cir. 2009); *Shapiro v. DOJ*, 893 F.3d 796, 800 (D.C. Cir. 2018); *Wolf v. CIA*, 473 F.3d 370, 374 (D.C. Cir. 2007); *Long*, 464 F. Supp. 3d 409 (D.D.C. 2020); *Sheridan v. U.S. Office of Personnel Management*, 278 F. Supp. 3d 11, 25 (D.D.C. 2017); *Shapiro v. DOJ*, 393 F. Supp. 3d 111, 122 (D.D.C. 2019)); 5 U.S.C. § 552(b)(7)(E) (2018). But the exemption here does not say "could reasonably be expected" to jeopardize; it says "would jeopardize." 5 ILCS 140/7(1)(o) (West 2018).

Federal courts have noted that "would" and "could" have significantly different meanings in federal FOIA exemptions. *E.g.*, *National Archives & Records Administration v. Favish*, 541 U.S. 157, 165 (2004) (holding that Congress intended for there to be a "marked difference" between exemptions using "would" and "could reasonably expected to"); *Solar Sources*, 142 F.3d at 1037; see also *Chicago Sun-Times*, 2021 IL App (1st) 192028, ¶¶ 43-44 (holding that "could reasonably be expected" imposes a lesser burden on public bodies than "would"); *Kelly*, 2019 IL App (1st) 170780, ¶¶ 43-44 ("while the federal FOIA provides an exemption where disclosure 'could' interfere with enforcement proceedings (5 U.S.C. § 552(b)(7)(A) (2018)), the Illinois FOIA provides an exemption only where disclosure 'would' interfere with enforcement proceedings or obstruct an

ongoing investigation (5 ILCS 140/7(1)(d)(i), (vii)"). Thus, these federal Exemption 7(E) cases are irrelevant to Section 7(1)(o), and demonstrate that if the General Assembly had wanted to make information exempt based on the more lenient standard for which CDF argues, it would have used the "could reasonably be expected" language from federal Exemption 7(E). See also 5 ILCS 140/7(1)(v) (West 2018) (making certain material exempt where release "could reasonably be expected to jeopardize the effectiveness" of certain security measures).

Even if the Court accepted CDF's interpretation of "would jeopardize," however, CDF would still lose. The Circuit Court found based on the trial testimony that "knowledge of the schema in no way makes the system more vulnerable[.]" R 194; see also R 193, 196. Thus, even under CDF's claim that "jeopardize" means that release would "expose" the system to "danger or risk," CDF's evidence at trial still failed even to make this showing. See Appellant Br. at 32.

C. Under the plain language of Section 7(1)(o), file layouts are not *per se* exempt because "would jeopardize" applies to all of the listed items.

In addition to arguing that the Circuit Court committed a reversible error under the deferential standard of review despite relying on testimony that expressly defeated CDF's claims, CDF argues that it need not even satisfy the "would jeopardize" requirement because *all* "file layouts" are supposedly exempt, with no further showing required. In response to CDF's last-minute argument to that effect on the eve of trial, the Circuit Court found that "would jeopardize" modifies all of the items listed in Section 7(1)(o). R 34. The Appellate Court agreed that Section 7(1)(o) is unambiguous and that under the plain and ordinary meaning of "would jeopardize" applies to all of the items listed in Section

7(1)(o). A 10, 14. These decisions were correct.

Even if this Court agreed with CDF and reversed the Appellate Court, however, which it should not, it should remand this case for further trial on whether the requested information is a "file layout," which the Circuit Court did not address.

1. When reading Section 7(1)(o) as a whole, it is clear that the General Assembly intended that "would jeopardize" modify all of the listed items, and any ambiguity would be resolved in favor of disclosure anyway under FOIA's narrow construction rule.

Statutes must be read as a whole. *E.g.*, *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 23. "Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *Id.*

These doctrines defeat CDF's interpretation. Section 7(1)(o) states:

> Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, *file layouts*, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, *and any other information that, if disclosed, would jeopardize the security of the system* or its data or the security of materials exempt under this Section. (Emphasis added.) 5 ILCS 140/7(1)(o) (West 2018).

Thus, Section 7(1)(o) begins with a general provision ("administrative or technical information"), which is followed by a list of examples that fall within that provision (including "file layouts"), which is then followed by a limitation that logically applies to everything on the list ("if disclosed, would jeopardize security of the system or its data or the security of materials exempt under this Section"). Reading the provision as a whole, therefore, requires the conclusion that "would jeopardize" modifies "file layout."

Indeed, the General Assembly certainly knows how to make information *per se* exempt without any showing of a specific harm when it wants. See, *e.g.*, 5 ILCS 140/7(1)(f) (deliberative material is *per se* exempt without a showing of harm); (q) ("Test

questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment") (West 2018). Had the General Assembly wanted to make all "administrative and technical information" exempt, which would be the result of CDF's interpretation of the exemption by applying "would jeopardize" only to "any other information," there would be no need to include the closing phrase "and any other information that, if disclosed, would jeopardize the security of the system or its data." That is because all "software, operating protocols, computer program abstracts," etc. are already "administrative and technical" by their very nature. See *id.* Because reading Section 7(1)(o) as whole necessarily includes "and any other information that, if disclosed, would jeopardize the security of the system or its data," the General Assembly clearly intended a different result than those other exemptions without limiting phrase. Thus, CDF's interpretation cannot be squared with this clause.

Further, this Court "narrowly" construes FOIA exemptions in favor of disclosure. *E.g.*, *Southern Illinoisan*, 218 Ill. 2d at 416; *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 463 (2003); see also 5 ILCS 140/1 ("This Act shall be construed to require disclosure of requested information as expediently and efficiently as possible and adherence to the deadlines established in this Act.") (West 2018). Thus, even if the language was unclear or ambiguous, under this Court's narrow construction rule, it must be interpreted in favor of disclosure and "would jeopardize" must be read to modify "file layout."

While the plain text and structure of the exemption and FOIA's narrow construction rule resolve this question, CDF's interpretation should also be rejected because it would yield absurd results. This Court "presume[s] that the legislature did not intend absurd,

inconvenient, or unjust results." *Bank of New York Mellon v. Laskowski*, 2018 IL 121995, ¶ 12. CDF's blanket prohibition would lead to the absurd result of turning FOIA into a closed records statute as it pertains to computer information. See A 14 ("A *blanket prohibition* against disclosure of the items separately listed in section 7(1)(o) *runs contrary to the principle that exceptions are to be read narrowly and would frustrate the legislature's goal* in enacting the FOIA of providing "the public with easy access to government information" (emphasis added)). Here, there is simply no plausible reason to deny the public access to records about what kind of information is stored in government databases unless there is likely to be some harm from its release. And that result cannot be reconciled with, and would be absurd in light of, FOIA Section 5, which requires the disclosure of information about what kind of records the government has and how it keeps electronic information. 5 ILCS 140/5 (West 2018).

2. CDF arguments for a *per se* exemption fail to overcome the plain language because there is no dispute that Section 7(1)(o) is unambiguous and any ambiguity would be resolved by FOIA's narrow construction rule.

Ignoring the plain language and narrow construction rule, CDF relies on the last antecedent rule. Appellant Br. at 16-21. "The last-antecedent rule is a *grammatical canon* of construction resorted to only when terms are ambiguous." (Emphasis added). *State Farm Mutual Automobile Insurance Co. v. Murphy*, 2019 IL App (2d) 180154, ¶ 35. CDF does not argue Section 7(1)(o) is ambiguous,[5] and therefore, the last antecedent rule does

[5] CDF faults the Appellate Court for not determining that Section 7(1)(o) is ambiguous. See Appellant's Br. at 16-20. But CDF confirmed at oral argument before the Appellate Court that Section 7(1)(o) is not ambiguous. A 10. While CDF relies on a single 1992 Appellate Court case that cites no authority for CDF's apparent proposition that a party can concede a statute is not ambiguous to further its argument then argue that the court should have rejected that concession, it cites no such authority from this Court to that effect. Appellant Br. at 19 (citing *Hyatt Corp. v. Sweet*, 230 Ill. App. 3d 423, 429 (1992)).

not apply. See Appellant's Br. at 12, 15-21, 27-29.

Even if there had been any ambiguity, FOIA provides its own mechanism for resolving ambiguity: the narrow construction rule. 5 ILCS 140/1 (West 2018); *Southern Illinoisan*, 218 Ill. 2d at 416. Under this Court's precedent, all FOIA exemptions must be narrowly construed, and here, that resolves any ambiguity and requires "would jeopardize" to modify all items on the list. *Id.* (both); *Oommen v. Glen Health & Home Management Inc.*, 2020 IL App (1st) 190854, ¶ 43 ("the rule of the last antecedent is not an absolute"); *State Farm Mutual Automobile Insurance*, 2019 IL App (2d) 180154, ¶ 34 (rejecting use of last antecedent canon where text is not ambiguous).

CDF also argues that the last antecedent rule is a grammatical rule, which unlike canons of statutory construction, can apply to unambiguous statutes. See Appellant's Br. at 20. But CDF is wrong because the requirement that the rule apply only to ambiguous statutes includes grammatical canons. *E.g.*, *Pepper Construction Co. v. Palmolive Tower Condominiums, LLC*, 2021 IL App (1st) 200753, ¶ 74, appeal denied, 184 N.E.3d 999 (Ill. 2022) ("The last antecedent rule is a grammatical canon of construction resorted to only when terms are ambiguous"); *State Farm Mutual Automobile Insurance*, 2019 IL App (2d) 180154, ¶¶ 34-35 ("The last-antecedent rule is a grammatical canon of construction resorted to only when terms are ambiguous.") (citing and quoting *Lockhart v. United States*, 136 S. Ct. 958, 963 (2016)) (rejecting last antecedent rule and holding that "funded, in whole or in part by the State" applied to "nursing home" in provision "a licensed physician who practices his or her profession, in whole or in part, at a hospital, nursing home, clinic, or any medical facility that is a health care facility funded, in whole or in part, by the State" because when "the listed items are simple, parallel, and of the type a reader

would expect to see together . . . the reader will intuitively apply the final modifier to each item in the list")); *Doctors Direct Insurance, Inc. v. Bochenek*, 2015 IL App (1st) 142919, ¶ 26 ("where the text of the statute is clear and unambiguous, there is no need to resort to canons of statutory construction such as the last-antecedent rule." (quoting *Department of Transportation v. Singh*, 393 Ill. App. 3d 458, 465 (2009))). Thus, the Appellate Court was correct to not apply the last antecedent rule because Section 7(1)(o) is unambiguous.

Even if this Court determines that it must resort to canons, however, the series qualifier canon is more useful in determining the General Assembly's intent. Under the series qualifier canon, "[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." *Paroline v. United States*, 572 U.S. 434, 447 (2014). Similarly, if "there is no reason consistent with any discernible purpose of the statute to apply" the antecedent phrase to only the last item in the list, then the phrase should apply to all items in the list. *United States v. Bass*, 404 U.S. 336, 341 (1971); see also *Oommen*, 2020 IL App (1st) 190854, ¶ 43.

With no reason consistent with a discernible purpose to limit "would jeopardize" to only "any other information," CDF resorts to unsupported claims about the legislative history and assumptions about what the General Assembly knew in 1983. CDF suggests that because the FOIA statute was first enacted in 1983, the General Assembly intended for technical and administrative information to be *per se* exempt because the General Assembly would not have been able to predict technological advancements. See

Appellant's Br. at 16. CDF does not cite to any legislative history to support this claim. See *id.*

It stands to reason that the General Assembly would not have wanted to foreclose all technical records from public disclosure, but would rather want them to be subject to a showing of harm relevant to the technological capabilities at the time of the request. This comports with Section 1, where the General Assembly acknowledged that technology may advance quickly but the FOIA statute "should nonetheless be interpreted to further" disclosure. 5 ILCS 140/1 (West 2018). Indeed, the FOIA statute shows that the General Assembly intended for technical records be available to the public. 5 ILCS 140/2(c) (public records subject to disclosure include "electronic data processing records"), 5 ("Each public body shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained") (West 2018). This is why Section 7(1)(o) requires a showing by the public body that disclosure "would jeopardize" security. As explained above, the General Assembly knows how to make information *per se* exempt without any showing of a specific harm when it wants. See*, e.g.*, 5 ILCS 140/7(1)(f), (q) (West 2018). Thus, the "would jeopardize" clause only makes sense if it applies to all administrative and technical information, including file layouts.

CDF next argues that the placement of a comma in Section 7(1)(o) should control this Court's construction. See Appellant's Br. at 21-22 ("The absence of punctuation is significant."). While this Court has held that the presence or lack of a comma may at times be useful for interpretation, a statute must be considered as a whole, as CDF concedes. Appellate Court Appellant's Br. at 28 (citing *In re E.B.*, 231 Ill. 2d 459, 468 (2008)). CDF has not shown how the placement of a single comma overcomes the plain language of

Section 7(1)(o) as explained above. Indeed, in *State Farm Mutual Auto Insurance*, "by a person" was not offset by a comma, and the Court still held that the limitation applied to the entire list. See 2019 IL App (2d) 180154, ¶¶ 34-35.

It would be particularly misguided to make determinations about the FOIA statute in particular based on commas because the General Assembly has inconsistently used commas throughout the FOIA statute. For example, not all test questions and scoring keys are exempt. Instead, there are only two instances where test questions and scoring keys are exempt, and both are qualified by language that is not offset by a comma. 5 ILCS 140/7(1)(j)(i) ("The following information pertaining to educational matters: (i) test questions, scoring keys and other examination data *used to administer an academic examination*" (emphasis added)) (West 2018); 5 ILCS 140/7(1)(q) ("Test questions, scoring keys, and other examination data *used to determine the qualifications of an applicant for a license or employment*" (emphasis added)) (West 2018). Under CDF's interpretation, "used to administer an academic examination" and "used to determine the qualifications of an applicant for a license or employment" only modify "other examination data" because they are not offset by a comma, and thus all "test questions and scoring keys," regardless of subject matter, would be *per se* exempt in two different exemptions. And demonstrating even further that the General Assembly does not follow a rigorous methodology of comma usage indicative of legislative intent, it used a serial comma in Section 7(1)(q) and not in Section 7(1)(j), even though they otherwise parallel each other. See *id.*

Next CDF relies on various decisions interpreting statutes with lists using "or" language. See Appellant's Br. at 17, 27 (citing *E.B.*, 231 Ill. 2d at 464 ("who is without

proper medical or other remedial care recognized under State law or other care necessary for his or her well being through no fault, neglect or lack of concern by his parents, guardian or custodian, provided that no order may be made terminating parental rights, *nor* may a minor be removed from the custody of his or her parents for longer than 6 months… unless it is found to be in his or her best interest by the court or the case automatically closes as provided under Section 2–31" (emphasis added)); *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 511 (1998) ("guilty of unreasonable *or* vexatious delay, intentional under-payment of compensation benefits, *or* has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act" (emphasis added)); *People v. Newton*, 2018 IL 122958, ¶ 16 ("within 1,000 feet of the real property comprising any church, synagogue**,** *or* other building, structure, *or* place used primarily for religious worship" (emphasis added))). These cases can all be distinguished by the fact that the exemption here uses "and" language, which is fundamentally different. *City of LaSalle v. Kostka*, 190 Ill. 130, 137 (1901) ("The conjunction 'and' is a co-ordinate conjunction. It is not explanatory, but signifies and expresses the relation of addition.").

Although "and" can be read to mean "or" and vice-versa, "this is not done except in cases where there is an apparent repugnance or inconsistency in a statute that would defeat its main intent and purpose." *DG Enterprises, LLC-Will Tax, LLC v. Cornelius*, 2015 IL 118975, ¶ 31 ("generally the use of a conjunctive such as 'and' indicates that the legislature intended that all of the listed requirements be met" (emphasis in original)). No such repugnancy or inconsistency exists here because a reader would expect "would jeopardize" to apply to all of the parallel terms. Nor has CDF even argued that this Court

should read Section 7(1)(o) to say "or other information." Thus, by using "and" the General Assembly intended to signify the relation between all items in the list.

CDF next argues that applying "would jeopardize" to the entire list would render the "including but not limited to" and "or the security of materials exempt under this Section" portions of Section 7(1)(o) superfluous. See Appellant's Br. at 22. First, "including but not limited to" precedes the list of items in Section 7(1)(o). 5 ILCS 140/7(1)(o) (West 2018). This Court has held that the General Assembly uses this phrase when it intends for the list to be illustrative, not exhaustive, which given a narrow construction must result in the phrase being illustrative here. See *People v. Perry*, 224 Ill. 2d 312, 330 (2007). The General Assembly was merely illustrating types of administrative and technical information, not creating an exhaustive list of *per se* exempt material by using "including but not limited to."

Second, applying "would jeopardize" to the entire list would not render "the security of the system or its data or the security of materials exempt under this Section" superfluous as CDF claims. See Appellant's Br. at 22 (emphasis in original). This phrase still has effect even when "would jeopardize" applies to the whole exemption because materials will still be exempt under Section 7(1)(o) upon the public body's showing that disclosure would jeopardize security. In other words, if disclosure of one technical record would jeopardize the security of another technical record, which would itself jeopardize the security of a system if disclosed, then Section 7(1)(o) will still function as intended. Thus, no portions are superfluous and the last antecedent rule should not apply.

Finally, CDF relies on *Lieber*, which involved a prior version of the personal privacy exemptions, and *Mancini Law Group*, which only addressed whether a public body

waives the private information exemption when it discloses the unredacted private information to a third party. *Lieber v. Board of Trustees of Southern Illinois University* 176 Ill. 2d 401, 408-09 (1997); *Mancini Law Group., P.C. v. Schaumburg Police Department*, 2021 IL 126675, ¶¶ 9, 48; see Appellant's Br. at 25-29. But the provision at issue in *Lieber* used an entirely different structure in which "information which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy," then stated that "[i]nformation exempted under this subsection (b) shall include but is not limited to" specific categories. See *Healey v. Teachers Retirement System,* 200 Ill. App. 3d 240, 243 (1990). *Lieber* only instructs what to do after the Court has construed the records to fall into a specific, narrow exemption and that the record is per se exempt without any further balancing. *Id.* at ¶ 30. It does not explain how to interpret differently structured exemptions. And this Court clarified in *Mancini Law Group* that the *per se* approach does not apply to every single FOIA exemption. *Id.*

Further, in *Mancini Law Group*, this Court's discussion of *Lieber* was clearly focused on the voluntary disclosure and waiver issue, which is not an issue present in this case. *Mancini Law Group*, 2021 IL 126675, ¶ 34. *Mancini Law Group* does not address *per se* in the way that *Lieber* did. *Id.* There is nothing in *Mancini Law Group* that changes the ruling in *Lieber*. *Id.* at ¶¶ 25-33. Thus, these cases are irrelevant to the question here.

D. CDF's "broad" definition of "file layout" fails on the merits, especially in light of FOIA's narrow construction rule.

Even if CDF is correct and "would jeopardize" does not modify "file layout," CDF must still then prove by clear and convincing evidence that the requested records are a file layout. CDF asks this Court to adopt an admittedly new "broad" interpretation based on dictionary definitions of "file layout" that was not presented to the Circuit Court to define

a file layout as the "arrangement of the information stored in the database" or a "blueprint." Appellant Br. at 13-14.

The items listed under Section 7(1)(o) are highly technical terms that this Court should allow the Circuit Court to address through expert witness factual testimony, rather than attempt to define the term any further beyond its own language. See 5 ILCS 140/7(1)(o) (examples of other highly technical terms: "computer program abstracts," "source listings," "object modules," and "load modules") (West 2018). As an initial matter, this proposed definition is not even consistent with CDF's own witness's testimony, which defined a file layout as "the instructions that the database management system uses to create the database that the data is then stored in." R 67-68. Nor is it consistent with CDF's proposed definition to the Appellate Court. See Appellate Court Appellant's Br. at 29-30 (using separate definitions of "file" and "layout"). But even on its own merits, this Court should not adopt CDF's "broad" definition because they conflict with fundamental principles of statutory interpretation.

First, CDF's "broad" interpretation of these words, Appellant's Br. at 13-14, runs contrary to the long line of this Court's rulings requiring FOIA exemptions to be read narrowly in favor of disclosure. *E.g.*, *Southern Illinoisan*, 218 Ill. 2d at 416; 5 ILCS 140/1 (West 2018). CDF readily admits that it is arguing for this Court to adopt a "broad" dictionary definition, ignores the narrow construction binding case law, and relies on a case interpreting the federal Clean Air Act to incorrectly claim that there is a presumption of a broad interpretation of statutory language merely because the statute pertains to

technology. Appellant's Br. at 13-14 (citing *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497, 532 (2007))

Second, CDF's "broad" definition that a file layout is an "arrangement of the information stored in the database" conflicts with the FOIA Section 5 requirement that public bodies disclose a list of the "categories of records under [the public body's] control" and "a description of the manner in which public records stored by means of electronic data processing may be obtained." 5 ILCS 140/5 (West 2018); see Appellant's Br. at 14; see also 5 ILCS 140/1 ("The provisions of this Act shall be construed in accordance with th[e] principle" that "the people of this State have a right to full disclosure of information"), 1.2 (West 2018). It is "a fundamental principle of statutory construction . . . that all provisions of an enactment should be viewed as a whole and words and phrases should be read in light of other relevant provisions of the statute." *Rushton v. Department of Corrections*, 2019 IL 124552, ¶ 19; see also *Moore v. Green*, 219 Ill. 2d 470, 479 (2006) (presumption against statutes contradicting each other). When viewing Section 7(1)(o) in light of the other FOIA sections that affirmatively require the disclosure of information about the arrangement of a database, presume that records are open to inspection and copying, and require the FOIA statute to be construed in furtherance of that presumption, CDF's "broad" definition making file layouts exempt fails.

It would be improper for this Court to adopt CDF's "broad" definition of "file layout," especially where the evidence presented to the Circuit Court demonstrates that a schema is not such a "file layout" (though the Circuit Court did not rule on whether the records fall under "file layout" or "any other information"). CDF's new "broad" definition conflicts with the testimony of its own witness. Compare Appellant's Br. at 30 *with* R 67-

68. When asked to define "file layout" Coffing defined it as "instructions" and claimed the requested records are both too. R 67-68. CDF does not rely on Coffing's testimony as it attempts to "broadly" define "file layout." See Appellant's Br. at 13-14. Moreover, CDF's definition of "schema" to mean a "blueprint" conflicts with the trial testimony that there is a lot more information, beyond the requested information, in a database's blueprint. R 126. And Ptacek testified, in no uncertain terms, based on his substantial experience in the industry, that a schema is not a "file layout." R 145 ("schemas are not file layouts.").

E. If file layouts and the other listed items are *per se* exempt then this case should be remanded for a further trial to determine whether the requested records even fall within the definition of "file layout."

If this Court determines that "file layout" is *per se* exempt and because the Circuit Court did not rule on whether the requested records are a "file layout," then this Court should remand the case to make those determinations. There is certainly no basis in the record for this Court to hold in the first instance that CDF proved by clear and convincing evidence that the requested records are a file layout. *E.g.*, *Whitaker v. Wedbush Securities, Inc.*, 2020 IL 124792, ¶ 41 (remanding case where trial court did not reach all factual determinations because resolving the first factual question ended its inquiry but this Court reversed the trial court's ruling on that first factual question).

VI. CONCLUSION

For these reasons, the Circuit Court and the Appellate Court should be affirmed.

Dated: October 14, 2022

RESPECTFULLY SUBMITTED,

/s/ Merrick J. Wayne

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 32 pages.

Dated: October 14, 2022

/s/ Merrick J. Wayne

No. 128300

IN THE SUPREME COURT OF ILLINOIS

MATT CHAPMAN, Plaintiff-Appellee, -vs- CHICAGO DEPARTMENT OF FINANCE, Defendant-Appellant.	)	Appeal from the Appellate Court, First District, No. 1-20-0547 There on appeal from the Circuit Court of Cook County, Illinois No. 18 CH 14043 The Honorable Sanjay T. Tailor, Presiding

NOTICE OF FILING AND CERTIFICATE OF SERVICE

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Please take notice that an electronic copy of Brief of Plaintiff-Appellee was submitted to the Supreme Court of the State of Illinois, Clerk's Office for filing on October 14, 2022.

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and states that on October 14, 2022, I caused a copy of the foregoing brief to be filed with the Illinois Supreme Court, by Odyssey eFileIL, and served upon the parties listed above electronically and via E-mail.

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