No. 128300

IN THE
SUPREME COURT OF ILLINOIS

MATT CHAPMAN,

Plaintiff-Appellee,

v.

CHICAGO DEPARTMENT OF FINANCE,

Defendant-Appellant.

On Appeal from the Appellate Court of Illinois
First Judicial District, No. 1-20-0547
There Heard on Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division
No. 2018-CH-14043
The Honorable Sanjay T. Tailor, Judge Presiding

REPLY BRIEF OF DEFENDANT-APPELLANT

Corporation Counsel
of the City of Chicago
2 N. LaSalle Street, Suite 580
Chicago, Illinois 60602
(312) 744-7764
ellen.mclaughlin@cityofchicago.org
appeals@cityofchicago.org

MYRIAM ZRECZNY KASPER
Deputy Corporation Counsel
SUZANNE LOOSE
Chief Assistant Corporation Counsel
ELLEN W. MCLAUGHLIN
Chief Assistant Corporation Counsel
ELIZABETH M. TISHER
Assistant Corporation Counsel
Of Counsel

E-FILED
1/9/2023 11:19 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS AND STATEMENT OF POINTS AND AUTHORITIES

ARGUMENT

Chapman requested information about the layout of the CANVAS database, which the Chicago Department of Finance ("DOF") uses to store sensitive personal and financial records. As we have explained, this information is expressly exempt under section 7(1)(o) of Illinois's Freedom of Information Act ("FOIA"), without a showing that disclosure would jeopardize CANVAS's security. Moreover, DOF also demonstrated by clear and convincing evidence that disclosing the information would pose that threat.

In response, Chapman presents no valid basis for avoiding the per se exemption for file layouts. Nor does he offer convincing reasons to interpret section 7(1)(o) to require evidence of more than a possibility of harm to DOF's data system, or to find that DOF did not meet its burden under that standard. He ignores key aspects of section 7(1)(o)'s plain language and this court's precedent, both of which compel reversal of the appellate court's judgment.

I. SECTION 7(1)(O) EXPRESSLY EXEMPTS THE REQUESTED RECORDS FROM DISCLOSURE.

As we explain in our opening brief, section 7(1)(o) expressly exempts from disclosure file layouts like the one Chapman requested. Brief and Appendix of Defendant-Appellant ("DOF Br.") 13-29. Chapman's alternative reading of section 7(1)(o) would require that, for all ten of the specifically listed categories of records, the government must show that disclosure would jeopardize the data system's security. Neither FOIA's plain language nor any

canon of statutory construction supports that interpretation.

A. Section 7(1)(o)'s Plain Language Establishes A Per Se Exemption For File Layouts.

Multiple interpretive principles and features of FOIA's text and structure support our reading of section 7(1)(o): the last antecedent rule, the placement of commas in the section, the rule that all statutory language should be meaningful, and the structure of other FOIA exemptions. DOF Br. 16-23. Chapman's attempts to skirt the implications of these principles are feeble at best.

As for the last antecedent rule, Chapman does not even dispute that the rule undermines his preferred interpretation and, instead, argues only that the court should not apply it, Brief of Plaintiff-Appellee ("Chapman Br.") 23, because DOF "does not argue Section 7(1)(o) is ambiguous," id. at 22. Chapman adopts the appellate court's flawed logic, see DOF Br. 18-19, asserting that because DOF "confirmed at oral argument . . . that Section 7(1)(o) is not ambiguous," the appellate court properly relied on "that concession" to reject DOF's interpretation, Chapman Br. 22 n.5. As we explain in our opening brief, DOF Br. 18-19, that analysis makes no sense. Announcing only that a statute is "unambiguous" is not an answer. If the appellate court believed section 7(1)(o) was unambiguous, it was required to explain why Chapman's was the *only* reasonable reading. Neither the appellate court nor Chapman has provided any such explanation.

The cases Chapman cites do not justify ignoring the last antecedent

rule. See Chapman Br. 23-24. He relies on appellate court decisions calling the rule "a grammatical canon of construction resorted to only when terms are ambiguous." State Farm Mutual Automobile Insurance Co. v. Murphy, 2019 IL App (2d) 180154, ¶ 35; see also Pepper Construction Co. v. Palmolive Tower Condominiums, LLC, 2021 IL App (1st) 200753, ¶ 74. But those statements cannot be squared with this court's holding that textual "aids to statutory construction," including the last antecedent rule, are used to determine *whether* statutory language is ambiguous; if these "intrinsic aids do not resolve the ambiguity," the court may then "resort to other aids or tools of interpretation, including legislative history." In re E.B., 231 Ill. 2d 459, 469 (2008). Thus, courts use the last antecedent rule to read the statutory language and decide whether it is ambiguous, before turning to extra-textual canons of construction.

Chapman also argues that if this court "resort[s] to canons," the "series qualifier canon is more useful in determining the General Assembly's intent." Chapman Br. 24. But the cases he cites do not support favoring the series qualifier canon over the last antecedent rule here. In Lockhart v. United States, 577 U.S. 347 (2016), the United States Supreme Court explained that, as a starting point, a limiting phrase is presumed to modify only the immediately preceding antecedent. Id. at 351; see also Advincula v. United Blood Services, 176 Ill. 2d 1, 26 (1996) (it is generally accepted that a qualifying phrase refers solely to the last antecedent). This presumption can

be rebutted by "structural or contextual evidence," Lockhart, 577 U.S. at 355, as "the rule need not be applied 'in a mechanical way where it would require accepting unlikely premises,'" id. (quoting Paroline v. United States, 572 U.S. 434, 447 (2014) (internal quotation omitted)). The last antecedent rule's presumption may be rebutted when applying a limitation to the last antecedent alone yields an incongruous result, or ordinary speech patterns suggest a different meaning. Id. at 355-57. Thus, as Chapman acknowledges, the series qualifier principle could supplant the last antecedent rule only when "'the natural construction of the language demands that the clause be read as applicable to all'" words preceding it. Chapman Br. 24 (quoting Paroline, 572 U.S. at 447).

Unlike the cases Chapman relies upon, see Chapman Br. 23-24, section 7(1)(o) does not demand such a reading, so the last antecedent rule applies here. In Paroline, for example, the Court addressed a criminal restitution statute that required courts to order "the full amount of the victim's losses" for six enumerated expense categories and "any other losses suffered by the victim as a proximate result of the offense." 572 U.S. at 445-46. The Court rejected the victim's argument that "as a proximate result" modified only "any other losses" and not the enumerated expenses because proximate cause plays a "traditional role in causation analysis," id. at 446, and defendants should pay only for expenses they caused, id. at 447-48. Importantly, the Court did not disapprove of the last antecedent rule; it declined to apply the

rule because, in context, it was clear that doing so would undermine settled causation principles. Id. at 447. Similarly, in United States v. Bass, 404 U.S. 336 (1971), the Court interpreted a statute penalizing any convicted felon "who receives, possesses, or transports in commerce or affecting commerce . . . any firearm." Id. at 337. The Court explained that applying the last antecedent rule would penalize "all possessions and receipts" but "only interstate transportations," id. at 340-41, a reading the Court believed would not be "consistent with any discernible purpose of the statute," id. at 341.

Chapman also cites two appellate court cases, Oommen v. Glen Health & Home Management, Inc., 2020 IL App (1st) 190854, and State Farm. Oommen considered whether to apply the last antecedent rule to an Illinois Whistleblower Act provision defining an "employee" to include any physician practicing "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." 2020 IL App (1st) 190854, ¶ 42. The court held that the last antecedent rule did not apply, relying on the dissent in Lockhart. In particular, the appellate court noted that "where the listed items are simple, parallel, and of the type a reader would expect to see together – the example [the dissent] gave was 'the laws, the treaties, and the constitution of the United States' – the reader will intuitively apply the final modifier to each item in the list." Id. ¶ 43. Thus, the appellate court in Oommen read the phrase "a health care facility funded, in whole or in part, by the State" to apply to all of the items in the list that

preceded it. And in State Farm, the appellate court declined to apply the rule where it would lead to the "absurd result" of defining the term "insured" to include any person who uses an automobile or recreational vehicle regardless of their connection to a policyholder. 2019 IL App (2d) 180154, ¶¶ 34-35.

Here, unlike in Chapman's cases, the presumption that the last antecedent rule applies is unrebutted. Nothing about its application to section 7(1)(o) would lead to an absurd result, nor does Chapman identify any such result. Nor would readers "intuitively assume" that section 7(1)(o)'s limiting phrase applies to each listed category of records; unlike in Oommen, where the appellate court thought the items on the list were "simple, parallel, and of the type a reader would expect to see together," the same cannot be said of the list of items in section 7(1)(o).

Moreover, far from lacking compatibility with any "discernable purpose" of the statute, Chapman Br. 24, the last antecedent rule advances the exemption's purpose, which was plainly to protect database security. The General Assembly could reasonably conclude that certain types of records pertaining to databases would threaten security and make those per se exempt, while allowing a catchall to provide the same protection when there are other materials presenting the same system vulnerabilities that the General Assembly could not anticipate. This reading ensures the most robust protection of database security and the private information frequently kept in these databases. That is a compelling reason to apply the last antecedent

rule here. On plaintiff's reading, courts would hold a trial and hear expert witness testimony every time someone requests the type of records section 7(1)(o) includes, substantially weakening the exemption.

We pointed to four other aspects of section 7(1)(o) that support our reading. DOF Br. 21-23. First, the catchall category reads, "and *any other information that*, if disclosed . . . ," with no comma after "any other information." The lack of a comma indicates that the clause "that, if disclosed . . ." modifies only the immediately preceding words. See Advincula, 176 Ill. 2d at 27. Chapman argues that DOF "has not shown how the placement of a single comma overcomes the plain language of Section 7(1)(o)." Chapman Br. 25-26. But punctuation is part of a statute's plain language. It should not be disregarded merely because it is inconvenient to Chapman's preferred reading.

Second, we explained that the catchall provision refers to "materials exempt under this Section," and thus assumes the records specifically listed in section 7(1)(o) are "materials exempt" from disclosure; the phrase would otherwise be superfluous. DOF Br. 22. In response, Chapman proffers this tangled construction: "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." Chapman Br. 28. Chapman's convoluted effort does not solve the problem. The phrase "materials exempt under this Section" remains

superfluous under his reading, because the General Assembly could have achieved the result Chapman urges by simply exempting records that, "if disclosed, would jeopardize the security of a data system." And our interpretation requires no verbal gymnastics. Listed materials are simply "exempt under this Section," as the statute declares.

Third, we explained, the General Assembly would have had no reason to enumerate materials in section 7(1)(o) if a showing of harm were required any time a public body invoked the exception. DOF Br. 22. Chapman argues that the listed items are "illustrative, not exhaustive." Chapman Br. 28. While we agree that the list is not exhaustive, it defies common sense to suggest that the General Assembly would list ten specific categories of information merely to "illustrate" what might threaten data system security.

Fourth, we pointed to other FOIA exemptions where the General Assembly used different wording and punctuation when it wanted to subject each item in a list to a specific showing of harm. DOF Br. 23 (citing, e.g., 5 ILCS 140/7(1)(k), (v)). Chapman does not respond to this point directly. He argues that "[i]t would be particularly misguided to make determinations about the FOIA statute in particular based on commas," and that applying our interpretation to two other exemptions, sections 7(1)(j)(i) and (7)(1)(q), would cause an absurd result for those sections. Chapman Br. 26. But as we explain, the absence of a comma is but one of several reasons supporting our interpretation of the exemption. And regardless, Chapman's observations

about sections 7(1)(j)(i) and (7)(1)(q) are unilluminating on the question of how section 7(1)(o) should be interpreted. Indeed, even if Chapman were correct that in sections 7(1)(j)(i) and (7)(1)(q), the qualifying phrase necessarily applies to all the preceding items in the provision, that would not help him here. If anything, the list of items in these sections ("test questions, scoring keys, and other examination data") resembles the list of items in the statute in Oommen, where the appellate court declined to apply the last antecedent rule because the statute contained a short list of items that were similar and would intuitively be recognized as going together. See Oommen, 2020 IL App (1st) 190854, ¶ 43 ("hospital, nursing home, clinic, or any medical facility"). As we explain above, the same cannot be said of the list of items in section 7(1)(o).

B. Chapman Offers No Reasonable Alternative Interpretation Of Section 7(1)(o).

Chapman's preferred interpretation of section 7(1)(o) is also unsupported by FOIA's plain language or standard principles of grammar and statutory construction.

To begin, Chapman calls the qualifying phrase "a limitation that logically applies to everything" on the list of exempt materials, and claims such an interpretation is "require[d]" by "[r]eading the provision as a whole." Chapman Br. 20. But Chapman does *not* read the provision, or even the qualifying phrase, as a whole. Again, that phrase is: "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." 5 ILCS 140/7(1)(o). Chapman quotes this as though it begins with "if disclosed," omitting "any other information that . . ." Chapman Br. 20. Yet the omitted words are critical; they demonstrate that the phrase describes a catchall category of any *other* information that might threaten data system security – meaning, information *in addition* to the other items on the list, not a limitation on the exemption for the other information in the provision.

Chapman argues that the General Assembly "knows how to make information *per se* exempt without any showing of a specific harm," and cites sections 7(1)(f) and 7(1)(q) as examples of when it has done so. Chapman Br. 20. In particular, he argues that the General Assembly, by including a catchall in section 7(1)(o), "clearly intended a different result than those other exemptions without limiting phrase [sic]." Id. at 21. That is no distinction. As we explain above, when the General Assembly drafted section 7(1)(o), it could not anticipate all the information that would risk system security if disclosed, so it provided a catchall. That the General Assembly did not find a catchall necessary for other exemptions says nothing about whether the per se rule applies to section 7(1)(o). Indeed, as this court has repeatedly stated, the per se rule applies to the enumerated exemptions. Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401, 408 (1997); Mancini Law Group, P.C. v. Schaumburg Police Department, 2021 IL 126675, ¶ 30. And, as we explain above, section 7(1)(o) is one of them.

Chapman asserts that there is no "plausible reason to deny the public access to records . . . unless there is likely to be some harm from its [sic] release." Chapman Br. 22. But that misses the point. The likelihood of harm is not missing for items that are per se exempt; it is presumed. The General Assembly decided to automatically shelter certain sensitive records from disclosure, thus presuming, rather than requiring proof of, potential harm.

Chapman then argues that the catchall clause in section 7(1)(o) would be superfluous if the General Assembly "wanted to make all 'administrative and technical information' exempt." Chapman Br. 21. He proceeds to argue that because the materials listed in section 7(1)(o) are "'administrative and technical' by their very nature," "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'" unless it qualified all the listed materials. Id. But we do not urge an interpretation that would make all administrative and technical information exempt. Rather, the General Assembly selected ten specific categories of administrative and technical information associated with data processing operations. The General Assembly determined that disclosure of those records would presumptively jeopardize the security of data systems; that is why they are per se exempt. While presuming potential harm from the items listed, the General Assembly added the catchall to cover additional materials that a public body

demonstrates would similarly jeopardize system security.

Having made but a passing effort to explain section 7(1)(o)'s text, Chapman pivots to the "narrow construction" canon, contending that FOIA exemptions "must be interpreted in favor of disclosure." Chapman Br. 21. This argument fails because the principle of narrow construction cannot be used to rewrite statutory language. Moreover, by asking the court to apply the canon, Chapman undermines his own argument that canons of construction should not apply. But before applying such a canon, the court must first apply the various *grammatical* principles we have identified, because textual rules of construction come before extra-textual principles. See People v. Deroo, 2022 IL 126120, ¶ 24 ("The meaning of a rule or statute is determined first by examining the language of the provision itself, not extratextual sources."). Thus, before the court can accept Chapman's invitation to interpret FOIA narrowly, it must examine the statute's grammar.

The United States Supreme Court addressed just this point in the context of the rule of lenity, another "rule of narrow construction," Huddleston v. United States, 415 U.S. 814, 831 (1974), which provides that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity," Rewis v. United States, 401 U.S. 808, 812 (1971):

> The rule of lenity . . . is not applicable unless there is a grievous ambiguity or uncertainty in the language and structure of the Act, such that even after a court has seized everything from which aid can be derived, it is still left with an ambiguous

> statute. The rule . . . comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration[.]

Chapman v. United States, 500 U.S. 453, 463 (1991) (quotations omitted). Thus, this court should first utilize everything in the text from which aid can be derived, then apply extratextual canons like narrow construction only at the end of that process. And as we explain, multiple features of FOIA's text compel our reading.

Finally, Chapman claims DOF's interpretation would create "absurd results." Chapman Br. 21. His argument rests on several inaccuracies. Chapman argues that withholding information about CANVAS's structure would "deny the public access to records about what kind of information is stored in government databases." Id. at 22. Not so. As Chapman acknowledges, id., FOIA section 5 requires the disclosure of that general information, 5 ILCS 140/5. A public body must "maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control," which "shall be reasonably detailed," and it "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." Id. That allows the public to know what records are available. But nothing in that section requires, in addition, "the disclosure of information about the

arrangement of a database." Chapman Br. 31.[1]

Chapman's related argument that sections 2(c) and 5 of FOIA show that "the General Assembly intended for technical records be [sic] available to the public," id. at 25, is similarly misleading. Chapman is not seeking specific records at all, much less "records stored by means of electronic data processing." Id. (quoting 5 ILCS 140/5). He wants information about CANVAS's structure. By its very inclusion of the exemptions in section 7(l)(o), it is clear that the General Assembly did not intend FOIA to be used as a way for hackers to more easily find information in a secure database – that would be antithetical to FOIA's protections against unwarranted invasions of personal privacy and disruptions of government operations. 5 ILCS 140/1. The section 7(1)(o) exemptions guard against that.

C. This Court's Precedent Supports That File Layouts Are Per Se Exempt.

This court's decisions in Lieber, Mancini, and People v. Newton, 2018 IL 122958, reinforce that file layouts are per se exempt. DOF Br. 25-29. Chapman fails to meaningfully distinguish this precedent.

Chapman tries to marginalize Lieber as a case that addressed a provision with "an entirely different structure." Chapman Br. 29. But there

[1] While a section 5 list might describe CANVAS as containing information about parking and traffic citations, Chapman requested the precise field names within the database. See C. 13; R. 92. That particular information is not necessary to allow people to make FOIA requests and, indeed, would be incomprehensible to most laypeople. In any event, it goes well beyond section 5's requirement that the list be "reasonably detailed."

are key similarities that Chapman ignores. The provision at issue in Lieber exempted "'[i]nformation that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.'" Lieber, 176 Ill. 2d at 408 (quoting 5 ILCS 140/7(1)(b)). It then provided a nonexclusive list of exempted information. Id. at 409. This court held that the enumerated items were per se exempt. Id. at 409-10. Thus, Lieber provides instruction on how to construe exemptions that set out lists of specific items.

And Mancini eviscerates Chapman's argument that Lieber "does not explain how to interpret differently structured exemptions." Chapman Br. 29. Mancini states that the "per se rule applies," not just to the specific structure of the exemption at issue in Lieber, but anytime the information falls "into the specific, narrow exemptions set forth in section 7." 2021 IL 126675, ¶ 30. Chapman tries to minimize Mancini as a case that only "clarified . . . that the *per se* approach does not apply to every single FOIA exemption." Chapman Br. 29. That may be true, but Mancini reaffirmed that the per se rule does apply to every *enumerated* exemption. Chapman does not come to terms with this point or explain why section 7(1)(o) should be treated differently than other per se exemptions in section 7.

Finally, Chapman attempts to distinguish Newton – and other cases we cite – because they addressed provisions containing the word "or," while section 7(1)(o)'s terms are connected with "and." Chapman Br. 26-28. He argues that "and" signifies "the relation between all items in the list." Id. at

28. But the use of "and" does not mean the catchall category's limiting phrase applies to all the listed items. If anything, the use of "and" supports our reading. By that term, the General Assembly provided that, *in addition to* items specifically listed, section 7(1)(o) exempts other materials upon a showing that disclosure would jeopardize data system security. Thus, Lieber, Mancini, and Newton all support that file layouts are per se exempt from disclosure.

D. The Records Chapman Requested Are File Layouts.

The records Chapman requested lay out CANVAS's configuration and are thus a file layout, within the meaning of section 7(1)(o). Chapman argues that this matter should be remanded because the circuit court did not decide whether the information was a file layout. See Chapman Br. 32. But there is no disputed question of fact about the nature of the documents requested; Chapman requested "[a]n index of the tables and columns within each table of CANVAS," along with the "column data type." C. 13. Whether the requested material constitutes a "file layout" turns on the meaning of that term. And, of course, this court interprets statutory language as a matter of law. E.g., Deroo, 2022 IL 126120, ¶ 19. Thus, no remand is necessary.[2]

The court need look no further than a dictionary to discern the common understanding of a term. Lacey v. Village of Palatine, 232 Ill. 2d

[2] Should the court disagree that whether the requested material constitutes a file layout may be determined based on the plain meaning of the term, then a remand would be appropriate for further proceedings on this question.

349, 363 (2009). Here, "file layout" means "the arrangement of the data in a file." McGraw-Hill Dictionary of Scientific & Technical Terms, 6E (2003), available at https://encyclopedia2.thefreedictionary.com/file+layout (retrieved Nov. 28, 2022). That perfectly describes what Chapman requested.

Chapman criticizes our reliance on dictionaries, Chapman Br. 27, and argues that "[t]he 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," id. at 30. That is wrong. Not all the items on the list are highly technical terms. Chapman singles out a few that he argues might be ("computer program abstracts," "object modules," and "load modules"), id., but ignores that others clearly are not. For example, in addition to "file layouts," the terms "software," "operating protocols," and "user guides" are commonly used by laypeople. And the most basic principles of statutory construction require those terms to be given their plain and ordinary meaning. As this court has explained, where a term is undefined in FOIA, the court "resort[s] to the plain and ordinary meaning of the term." Chicago Sun-Times v. Cook County Health and Hospitals System, 2022 IL 127519, ¶ 48.

Even if the plain meaning of "file layouts" establishes a broad category of information, as Chapman posits, Chapman Br. 30-31, broad terms must be given their plain meaning, too, see Shakman v. Department of Revenue, 2019 Ill App (1st) 182197, ¶ 55. Moreover, the use of such "broad language" in this

context, where technology is constantly changing, is in "an intentional effort to confer the flexibility to forestall . . . obsolescence." Massachusetts v. EPA, 549 U.S. 497, 532 (2007). Indeed, if the General Assembly had understood "file layout" to be narrow and hyper-technical when it enacted FOIA nearly forty years ago, that term would be obsolete today, given the leaps and bounds of computer technology over the decades.

Chapman also argues that our definition of "file layout" is inconsistent with the definition we offered to the appellate court and the trial testimony. Chapman Br. 30. It is not. In our appellate court brief, we defined "file" and "layout" separately, but with the same result. A "file" is "a collection of related data records," Merriam-Webster Online Dictionary, http://merriam-webster.com/dictionary/file; or "a collection of data or program records stored as a unit with a single name," American Heritage Online Dictionary, https://ahdictionary.com/word/search.html?q=file. "Layout" is defined as "the plan or design or arrangement of something laid out," Merriam-Webster Online Dictionary, http://merriam-webster.com/dictionary/layout; or "an arrangement or plan, especially the schematic arrangement of parts or areas," American Heritage Online Dictionary, https://ahdictionary.com/word/search.html?q=layout. Whether the words are defined together or individually, "file layout" means the arrangement of data in a file. Indeed, the similarity between the definitions in those dictionaries and the dictionary of scientific and technical terms we cite above undermines Chapman's

argument that the term has technical meaning that differs from how laypeople would read it.

As for the trial testimony, neither party's expert testified that the term had a different meaning. Coffing explained that, because the requested "table names and column data" are part of the "structure of the database," R. 67, that information is considered CANVAS's file layout, R. 68. Coffing's testimony aligns with the dictionary definitions of "file layout." And while Ptacek said "'schemas are not file layouts,'" Chapman Br. 32 (quoting R. 145), he did not explain the difference. His conclusory statement does not undermine the application of the exemption for file layouts here.

II. DOF PROVED THAT DISCLOSURE OF THE REQUESTED RECORDS WOULD JEOPARDIZE CANVAS'S SECURITY.

Even on the view that file layouts are not per se exempt from disclosure, section 7(1)(o) requires a public body to show only a possibility of harm to a data system's security, DOF Br. 30-15, and DOF satisfied that burden, id. at 35-41. Chapman responds that section 7(1)(o) demands more than a possibility of harm, Chapman Br. 17-19, and that the circuit court's ruling that DOF failed to prove the requested records are exempt is not against the manifest weight of the evidence, id. at 10-16. These arguments fail.

A. Section 7(1)(o) Requires A Public Body To Show Only A Possibility Of Harm To System Security.

As we explain in our opening brief, section 7(1)(o)'s plain language

indicates that, to withhold materials, public bodies need show only a possibility of harm to the security of a data system, a reading evident from the common meaning of the term "jeopardize," DOF Br. 30-31, and FOIA's structure, id. at 31-32. This reading is also consistent with the need to protect sensitive data, id. at 32-33, and with the courts' interpretation of a similar federal FOIA exemption, id. at 33-35.

Chapman argues that the term "jeopardize" requires a showing of more than "a mere 'possibility of harm.'" Chapman Br. 17. But he is wrong. As we explained, DOF Br. 30-31, and Chapman admits, Chapman Br. 17, jeopardize means "to expose to danger or *risk*," Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/jeopardize (emphasis added). Risk is defined as "the *possibility* of loss or injury." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/ dictionary/risk (emphasis added). Thus, to show that disclosure of information "would jeopardize" data system security, a public body must demonstrate that disclosure would create a possibility of harm.

Rather than confronting the way in which the term "jeopardize" undermines his position, Chapman focuses on the term "would," arguing that the General Assembly would have used the word "could" in its place if it meant to impose a less onerous burden. Chapman Br. 17-18. This argument fails to appreciate that "jeopardize," the statute's operative verb, itself allows for withholding based on mere possibility. It does not matter that section

7(1)(o) does not use the term "could" because "jeopardize" does that work, conveying chance instead of certainty.

Chapman also criticizes our reliance on federal cases, arguing that "there are key material differences and no parallel language between" section 7(1)(o) and the federal exemption at issue in those cases. Chapman Br. 17. He misses our point. The federal FOIA exemption for information that "could reasonably be expected to risk circumvention of the law," DOF Br. 33-34, reflects Congress's determination that the risk of a cyber-attack weighs against setting a high bar for public bodies to justify withholding records that could aid hackers, e.g., Long v. ICE, 464 F. Supp. 3d 409, 421 (D.D.C. 2020); Prechtel v. FCC, 330 F. Supp. 3d 320, 325 (D.D.C. 2018). Even if the language is not identical, the General Assembly's use of the word "jeopardize" reflects the same determination and should be read in accord with the plain meaning of that word to require evidence of only a possibility of harm.

B. DOF Showed That Disclosure Of CANVAS's File Layout Would Jeopardize Its Security.

Applying the correct standard, DOF met its burden of proving by clear and convincing evidence that disclosure of CANVAS's file layout would jeopardize the system's security. DOF Br. 35-41. The undisputed evidence demonstrated that knowledge of the database schema provides an adversary with an advantage in attacking the system. Id.

Chapman argues that the circuit court's contrary ruling was not against the manifest weight of the evidence, Chapman Br. 10-16, relying on

Ptacek's testimony that he does not require a database's schema, or file layout, to attack the system, id. at 11-12. But Chapman ignores Ptacek's acknowledgements that the schema has "some value to [an adversary] in helping him plan his attack," R. 151-52, as it would allow an adversary to "choose which application . . . to go after," R. 149; that knowledge of the schema would "help [an adversary] isolate the systems" that contain sensitive information, "so [the adversary] wouldn't have to take the time to attack lots of other applications," R. 149-50; that, although the schema will not aid an adversary in breaching the database, it may help him once inside, R. 131; and that, once an adversary breaches the system using an SQL injection, he can extract the schema from the database, R. 131, 152, and use it "to make a targeted query of the database," R. 131. Thus, it was undisputed that possessing CANVAS's file layout would aid a hacker.[3] That necessarily means that releasing the file layout would jeopardize the security of the system. The circuit court's decision to the contrary was against the manifest weight of the evidence.

Chapman also argues that the circuit court "is entitled to great deference in its decision of which witness's testimony to credit," Chapman Br.

[3] Chapman suggests that we argued below that knowing CANVAS's file layout would make an attack less noisy, but now argue that it would make an attack speedier. Chapman Br. 14-15. He misunderstands our argument, which is that knowing CANVAS's internal structure would allow an attacker to move both with greater speed and greater precision, potentially evading detection.

11, and properly rejected Coffing's testimony as "vague and undeveloped," id. at 13. But Chapman ignores that even if Coffing's testimony were not considered, the evidence still showed that disclosure would jeopardize security. Ptacek's testimony alone established this, as we explain. DOF Br. 36-37, 39-40.[4]

* * * *

This case involves an exemption that protects against cyber-attacks; and it does so in a way that does not sacrifice FOIA's goals of transparency and accountability. Chapman did not request any data contained in CANVAS or a description of the categories of records DOF maintains and the procedure to obtain them. He asked for information about CANVAS's internal structure. Disclosure of that information will not further the Act's goals, but it will create opportunities for cyberhackers to disrupt DOF's operations and access CANVAS's sensitive data. The judgment should be reversed.

[4] Chapman criticizes our discussion of Long, arguing that the testimony in Long is "inadmissible" in this case. Chapman Br. 15-16. But we point to Long only as a model of analysis, and Chapman identifies no flaw in its approach to issues nearly identical to those presented here.

CONCLUSION

For the foregoing reasons, this court should reverse the judgments below.

Respectfully submitted,

Corporation Counsel
of the City of Chicago

BY: /s/ Ellen Wight McLaughlin
ELLEN WIGHT MCLAUGHLIN
Chief Assistant Corporation Counsel
2 North LaSalle Street, Suite 580
Chicago, Illinois 60602
(312) 744-7764
ellen.mclaughlin@cityofchicago.org
appeals@cityofchicago.org

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) & (b). The length of this brief, excluding the pages containing 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, and the certificate of service, is 5,730 words.

/s/ Ellen W. McLaughlin
ELLEN WIGHT MCLAUGHLIN, Attorney

CERTIFICATE OF FILING/SERVICE

I certify under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing brief was electronically filed with the office of the Clerk of the Court using the File and Serve Illinois system and served via email, to the persons named below at the email addresses listed, on January 9, 2023.

Matt Topic
Merrick Wayne
LOEVY & LOEVY
311 North Aberdeen Street, Suite 300
Chicago, Illinois 60607
foia@loevy.com

/s/ Ellen W. McLaughlin
ELLEN W. MCLAUGHLIN, Attorney

E-FILED
1/9/2023 11:19 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK