2026 IL App (1st) 250205

Third Division
June 30, 2026

No. 1-25-0205

LUCY PARSONS LABS,	)	Appeal from the Circuit Court
	)	of Cook County, Chancery
Plaintiff-Appellant,	)	Division.
	)	
v.	)	No. 2023 CH 01181
	)	
THE CHICAGO POLICE DEPARTMENT,	)	The Honorable
	)	Eve M. Reilly,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court, with opinion.
Presiding Justice Martin and Justice Lampkin concurred in the judgment and opinion.

OPINION

¶ 1 In a Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2022)) inquiry submitted to the Chicago Police Department (Department) in 2022, plaintiff Lucy Parsons Labs requested e-mail communications which contained the phrase "Criminal Enterprise Information System" or "CEIS" (CEIS) from a specific officer corresponding to an 11-month period. The Department subsequently failed to respond to the request after the five-day statutory response period and two five-day extensions had lapsed. After more than two months had passed since submitting the initial request, during which no responsive records were produced or FOIA exemptions claimed, plaintiff filed a complaint against the Department for declaratory and injunctive relief, attorney fees and costs, and civil penalties. See 5 ILCS 140/11(a), (d), (i), (j) (West 2022). An agreed order was entered several months after the litigation commenced compelling the Department to produce the records, which it then

produced. Plaintiff then filed a petition for attorney fees and costs and civil penalties, after which the circuit court conducted an evidentiary hearing.

¶ 2 Based on the evidence produced at the hearing and the standards established in *Williams v. Bruscato*, 2021 IL App (2d) 190971, ¶ 15, and *Thomas v. County of Cook*, 2023 IL App (1st) 211656, ¶¶ 15-16, the circuit court ruled that, although the Department had knowledge of the statute's requirements and its own violation of those requirements, plaintiff had not met the burden for civil penalties as there was not a sufficient showing of the Department's bad faith. For the reasons set forth below, we reverse the circuit court's denial of civil penalties and remand the case for a determination of appropriate penalties.

¶ 3 BACKGROUND

¶ 4 Plaintiff sent an e-mailed FOIA request to the Department on November 28, 2022, requesting "[a]ll email communications sent or received, including being CCed or BCCed, by Michael Milstein between 1/1/2022 and 11/20/22 which include the phrase, 'Criminal Enterprise Information System' or 'CEIS.' " In the same e-mail, plaintiff requested an advance estimate of fees and electronic delivery of the responsive records "within 5 business days, as the statute requires."

¶ 5 The Department sent a short response on November 29, 2022, acknowledging receipt of plaintiff's request and assigning a reference number to the request. The Department wrote again on December 6, 2022, to request a five-day extension, outlining the following reasons for the delay:

> "1. The requested records are stored in whole or in part at other locations other than the office having charge of the requested records.

2. The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure or should be revealed only with the appropriate deletions.

3. There is a need for consultation, which shall be conducted with all practicable speed, with another public body or among two or more components of any public body having a substantial interest in the determination or in the subject matter of the request."

The e-mail further stated a response would be sent "on or before December 13, 2022."

¶ 6 On the slated response date, December 13, 2022, the Department requested a second five-day extension "due [to] issues with our portal and a back log of FOIA request[s]." Then, on December 20, 2022, the Department sent an e-mail to plaintiff which stated, "I received the records and will start the process of reviewing and redacting them. I will send you a response within 5 business days." On December 28, 2022, the Department sent another e-mail which stated that plaintiff's request was pending review and approval.

¶ 7 Plaintiff filed a complaint in the circuit court on February 7, 2023, alleging violations of FOIA. The complaint cited the legislative purpose undergirding Illinois's FOIA law (see 5 ILCS 140/1 (West 2022)), as well as the requirement that the public bodies which claim exemptions bear the burden of proof by clear and convincing evidence that the information requested of them falls under an established exemption (see *id.* §§ 1-1.2). In the complaint, plaintiff acknowledged that the original December 6, 2022, e-mail from the Department and the first requested five-day extension were compliant with FOIA section 3.5(a). See *id.* § 3.5(a) ("Upon receiving a request for a public record, the Freedom of Information officer shall *** compute the day on which the period for response will expire and make a notation of that date on the written request."). After receiving the section 3.5(a)-compliant e-mail, though, plaintiff

stated that it had not consented to any further extensions, and such consent was required to make any further extension valid under FOIA. See *id.* § 3(e) ("If the requester and the public body agree to extend the period for compliance, a failure by the public body to comply with any previous deadlines shall not be treated as a denial of the request for the records.").

¶ 8 The complaint further alleged that the Department had both failed to produce any responsive records as of the date of the filing on February 7, 2023, and to produce a substantive response pursuant to sections 3 and 9 of FOIA. See *id.* §§ 3, 9. The complaint alleged that the Department had "been aware of FOIA's statutory deadlines," that it was "in violation of those deadlines" since November 28, 2022, and that "complying with FOIA's deadlines is a fundamental obligation" of the agency. The complaint also alleged that the Department had been the subject of various prior lawsuits for failure to comply with FOIA deadlines. Due to its knowing violation of the statutory response deadline, plaintiff alleged, the Department had willfully and intentionally, or otherwise in bad faith, failed to comply with FOIA. Plaintiff sought declaratory and injunctive relief, as well as civil penalties pursuant to FOIA section 11(j). See *id.* § 11(j).

¶ 9 In its answer filed on April 5, 2023, and amended on June 14, 2023, the Department denied its failure to comply with FOIA's deadlines, its awareness of the violations, and the notion that compliance with FOIA deadlines was a fundamental obligation of the agency. The Department claimed that some of the requested records "may be" exempt pursuant to FOIA's enumerated exemptions in section 7, including the private information exemption under 7(1)(b). See *id.* § 7(1)(b). The Department also claimed FOIA exemptions 7(1)(a) (*id.* § 7(1)(a) ("Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.")), and 7(1)(f) (*id.* § 7(1)(f) ("Preliminary

drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated")).

¶ 10 On June 28, 2023, plaintiff moved for partial summary judgment and for an index of withheld records pursuant to FOIA section 11(e). (*Id.* § 11(e) ("On motion of the plaintiff, prior to or after in camera inspection, the court shall order the public body to provide an index of the records to which access has been denied," including "[a] description of the nature or contents of each document withheld, or each deletion" and "[a] statement of the exemption or exemptions claimed for each such deletion or withheld document"). On July 3, 2023, the court entered an agreed order requiring the Department to produce the responsive records on or before July 10, 2023.

¶ 11 The Department produced the records on July 13, 2023. Plaintiff filed a petition for fees and costs on October 10, 2023, in which it also advanced its civil penalties argument, arguing that the Department's violation was willful and intentional and that it had acted in bad faith. Plaintiff emphasized the Department's seven-month delay in producing the responsive records, including several months into the timeline of the lawsuit underlying this appeal. The Department filed a cross-motion for partial summary judgment and response to plaintiff's petition for fees and costs on November 13, 2023, noting that there was no provision in the Code of Civil Procedure which permitted plaintiff to combine its fee petition and civil penalties arguments into the same motion. The Department further denied plaintiff's allegations of bad faith, arguing that *Williams* requires a showing of deliberate dishonesty on the part of the public body to prove bad faith warranting the imposition of civil penalties. See *Williams*, 2021 IL App (2d) 190971, ¶ 20. In its reply, plaintiff argued it had satisfied its burden of proving bad faith by demonstrating the Department's "regular violations of the deadlines" and revealing

through a Department FOIA officer's testimony "that [the Department] was aware of the deadlines, the requirement to comply with them, and its ongoing failure to do so." To the extent that further evidence was necessary, plaintiff argued, the court should conduct an evidentiary hearing on the matter.

¶ 12 The court heard arguments on plaintiff's fee petition and its request for civil penalties on February 1, 2024. On the subject of civil penalties, the Department maintained that plaintiff was required to demonstrate that it had failed to comply with FOIA willfully, intentionally, and in bad faith, and that it had not satisfied that burden. Plaintiff argued that the case law allowed for circumstantial evidence to prove intent of a willful violation, noting that a FOIA requester is "unlikely to get direct evidence" as "[n]o one from CPD is going to come into court and say, yes, I willfully violated the statute, I did it deliberately, by design, and with a dishonest purpose." Additionally, plaintiff argued that the Department failed to comply even after it was served with the complaint in the current litigation and thus had undeniable knowledge of its purported violation. It was not until almost three months thereafter that the Department finally produced the responsive records, and it cited no acceptable explanation or exemption to excuse the delay.

¶ 13 In response, the Department again emphasized that it was plaintiff's burden to prove that its violation was willful, intentional, and in bad faith—which it described as "a very high bar" to surmount—and noted that plaintiff had elected not to pursue discovery to uncover any potential evidence of intentionality. The court interjected, "Well, there's late, and then there's late, right?" The Department responded, "This isn't something where time is of the essence. We didn't see a plaintiff here who filed on the sixth business day. *** [Plaintiff] brought this to our attention, that they still wanted this, and they weren't accepting the constructive denial

*** some amount of time after." The court noted in response that, while the burden of proof rested on the plaintiff, the Department had offered "nothing" to justify its violation. Plaintiff contended that there was no statutory basis for the Department's argument that "they can ignore a request, and then say, well we constructively denied it and you have to tell us that you still want your documents after we ignored you." Plaintiff argued, "The one thing they can't do, and the one thing that's completely contrary to the purpose of the statute, which is prompt disclosure of public records so that we can hold the government accountable, is they can't just ignore it, and *** elect not to produce records for seven months." It is sufficient to infer bad faith, plaintiff argued, where, as here, there is evidence proving the Department's knowledge of the statutory deadlines; where the Department's response is "significantly late" and several months subsequent to its receiving service of a legal complaint for its violation; and where there is no justification, "either offered or even fathomable" for its delay.

¶ 14 In a February 2, 2024, order, the court denied plaintiff's request for civil penalties as improperly raised in the fee petition, and granted its petition for attorney fees, subtracting the fees accrued in pursuit of the civil penalties claim. On February 27, 2024, plaintiff moved for an evidentiary hearing on the civil penalties claim. The circuit court entered an agreed order on April 25, 2024, setting the matter for an evidentiary hearing.

¶ 15 The circuit court conducted the evidentiary hearing on June 27, 2024. Plaintiff called its first witness, Officer Pedro Rodriguez (Officer Rodriguez), a retired police officer and FOIA specialist with the Department for nearly five years. Officer Rodriguez was presented with an exhibit of plaintiff's original FOIA request, and he testified that he was the officer responsible for processing the request at the time of its receipt. Officer Rodriguez testified to the general nature of his training, and that his response to plaintiff's FOIA request was

consistent with that training. He also testified that he understood at the time that responses to FOIA requests were due in five business days, which could be extended by an additional five business days in certain circumstances, and that information regarding those deadlines was readily available to him on the GovQA portal that FOIA officers used to track requests. Officer Rodriguez admitted that, as of November 29, 2022, there were at least some other FOIA requests for which he was responsible that did not receive the required response by the statutory deadline. Reviewing the December 13, 2022, e-mail exchange in the instant case, in which he had requested an additional five day extension due to portal issues and a backlog of requests, Officer Rodriguez testified that he had used the same language in response to other FOIA requests and that he had drafted the language himself. He testified that he understood that the response deadline for plaintiff's request was December 13, 2022, and that the request was overdue by the time he sent the next follow-up e-mail on December 20, 2022. Officer Rodriguez testified that he had possession of the responsive records at that time, and that he could not recall or identify anything preventing him from producing the records on that date.

¶ 16 Officer Rodriguez further testified that he had completed his processing, review, and redaction of the records as of December 28, 2022, but the records at that time still required review by the supervising sergeants and legal affairs division at the Department. Although Officer Rodriguez notified plaintiff at that time that the request was "currently pending to be reviewed and approved," he testified that he neglected to initiate the review and approval process, stating, "I erred and did not send it to the sergeant when I thought I sent it to the sergeant for review." Officer Rodriguez testified that it was his belief on December 28, 2022, when he sent the message to plaintiff conveying pending approval, that he had in fact initiated the review process, and it was not until he was notified of the filed complaint in the lawsuit in

March 2023 that he realized he had failed to do so. Despite realizing his error and understanding the urgency of the matter once the lawsuit had been filed, Officer Rodriguez could not recall when he ultimately forwarded the proposed response onto his sergeants for approval, estimating that it was approximately April 2023. He did not have an explanation as to why it took until July 2023 for the records to be produced.

¶ 17 On redirect examination, Officer Rodriguez testified that, according to his understanding of FOIA law, there was nothing in the statute which permitted a public body to extend its response time beyond the total 10 business days allowed in the statute to accommodate internal policies requiring additional review processes. Officer Rodriguez testified that the CEIS system about which plaintiff had directed its request was "still in *** a draft mode and it wasn't ready to be released," "[s]o it's not just simple emails." As such, Officer Rodriguez testified that he most likely had spoken to someone in the Bureau of Counter Terrorism to discuss what was "unreleasable and releasable" from the request, and would have done so within the five-day extension period.

¶ 18 Plaintiff then introduced Sergeant Peter Edwards (Sergeant Edwards), the commanding officer at the Department's FOIA unit who had held the position since January 2019. Sergeant Edwards testified that he was not familiar with the e-mails that Officer Rodriguez had sent in response to plaintiff's request until after the lawsuit had been filed. Accordingly, Sergeant Edwards testified that at some point before April 5, 2023, he became aware that the Department had yet to appropriately respond to the request and notified the assigned FOIA officer. Sergeant Edwards acknowledged that, even if the Department had first received the request on April 5, 2023, instead of November 28, 2022, when it actually received the request, the maximum amount of time it would be allotted for a response would be 10 business days. When asked if

he had an explanation for the Department's delay, Sergeant Edwards answered, "The records needed to be reviewed." He also acknowledged that the statute did not provide for such a cause for delay due to review, absent written consent from the requesting party, which was not obtained here. As an alternative explanation, Sergeant Edwards testified that "the program that [plaintiff was] asking about for those e-mails, those e-mails may have contained draft records or communications that were attorney-client privilege." He testified that he had not reviewed the responsive records, however, and acknowledged that the presence of potential attorney-client privileged information in some portion of a document does not preclude the production of the remainder of that document.

¶ 19 Sergeant Edwards further testified that there was a backlog of FOIA requests at the Department as of December 13, 2022, and that there were simultaneous issues with the Department's portal system, where "we weren't getting requests or we weren't able to upload PDF records into GovQA in order to send them." He testified that he reviewed the request backlog on a monthly basis, and that there were roughly 500 overdue FOIA requests as of December 13, 2022. Sergeant Edwards also testified that he was aware of lawsuits filed against the Department as of December 13, 2022, concerning delays in its responses to FOIA requests.

¶ 20 On cross-examination, Sergeant Edwards testified that the Department typically handles "about 96 percent" of requests within "a small time frame." He testified that responsive records often contain information regarding witnesses, innocent parties, and suspects that "can compromise investigations or endanger life and safety of individuals" if released improperly. On redirect examination, Sergeant Edwards acknowledged that nothing in the FOIA statute condones only 96% as opposed to full compliance with the statutory deadlines.

¶ 21 In closing, plaintiff argued that, even setting aside the period preceding April 2023 before which Officer Rodriguez became aware of his mistake in neglecting to forward the response to his sergeants for internal review, there were approximately three months during which the Department was aware of its own noncompliance and still failed to produce the required response or records. Plaintiff argued that the Department "knew what the deadlines were[,] they knew [they] weren't complying with them, and they did it anyway. That seems to be a classic example of bad faith."

¶ 22 The Department countered that, according to *Thomas*, 2023 IL App (1st) 211656, ¶ 15, "to warrant the imposition of civil penalties under Section 11 J, the public body not only must have *** intentionally failed to comply with the FOIA, but must have done so deliberately[,] by design[,] and with a dishonest purpose." The Department emphasized the conjunctive "and" in this standard, and that the burden of proof lies with the plaintiff. "[T]here was nothing here today that said this system was designed to violate FOIA," the Department continued. "You didn't hear anything about there was a dishonest purpose. The only thing you heard here was that they were trying to get it right. *** [T]hese are civil servants who are acting in good faith."

¶ 23 The court issued an order requesting that the parties submit post-hearing briefs. Plaintiff's brief, filed on August 5, 2024, articulated the standards established in *Williams* and reaffirmed in *Thomas*, but disputed the holdings "because they are based on the incorrect conclusion that a violation must be willful, intentional *and* in bad faith, where the statute plainly says 'or' in bad faith, and because the statute must be interpreted liberally in favor of promoting transparency." (Emphasis in original.). Plaintiff also asserted that the *Williams* and *Thomas* decisions run afoul of *Rock River Times v. Rockford Public School District 205*, 2012 IL App (2d) 110879, ¶¶ 52, 55, which required civil penalties for a public body that knew of

its violation and continued the violation anyway. Furthermore, plaintiff argued, the Department's conduct still rose to the level of the "deliberately, by design, and with a dishonest purpose" standard from *Williams*, even if the legal concept of "bad faith" under this standard had been wrongly narrowed in its view through the *Williams* and *Thomas* decisions.

¶ 24 The Department's brief maintained that plaintiff failed to satisfy the standard from *Williams* and *Thomas* and emphasized that its delay in response to plaintiff's initial request was due in part to Officer Rodriguez's inadvertent mistake and the "temporary malfunctioning" of the Department's software rather than any "deliberate conspiracy of bad faith." Instead, the Department argued, it "had a good faith basis to review the requested records for potentially privileged, exempt, and confidential information prior to public disclosure." The Department noted that it had never disobeyed a substantive court order to produce the responsive records, and instead voluntarily produced the records on its own accord after the court entered its agreed order. The Department maintained it "was stuck between a rock (a late FOIA request), and a hard place (risking improper public disclosure of deliberative, confidential, or privileged information)," and that its delay was owing to good faith reasons including Officer Rodriguez's need to confer with the Bureau of Counter Terrorism; the CEIS system's involvement in a "deliberative process" due to civil litigation which could make some communications subject to attorney-client privilege; and the potential of the records containing information regarding witnesses, suspects, and innocent parties. Accordingly, the Department argued, its delay did not represent a willful and intentional violation of FOIA, and plaintiff had failed to demonstrate bad faith.

¶ 25 Following this briefing, the circuit court issued an oral ruling on January 9, 2025, in which it articulated the section 11(j) standard as willful and intentional failure to comply with

FOIA or otherwise acting in bad faith, which is not only an intentional failure to comply but also done "deliberately[,] by design[,] with a dishonest purpose." The court acknowledged that Officer Rodriguez had provided no explanation for the Department's additional three-month delay "after he became aware of the mistake" in April 2023. It further noted that although Sergeant Edwards had testified that some of the responsive e-mails may have been privileged, he had never reviewed the records to have any certainty as to that fact, and he acknowledged that such an exemption would not have extended to all of the records responsive to plaintiff's request. The court found that Officer Rodriguez's initial failure to respond was a mistake, and there was no willful or intentional delay prior to April 2023. As to the continued violation thereafter, however, the court found the Department's delay amounted to willful and intentional conduct. The court stated, "[K]nowing the statute exists, knowing that you have already violated the statute, knowing that you have no good reason to continue to violate the statute and violating it anyway is a willful and intentional conduct." "However," it continued, "the Court cannot find that [the Department] acted in bad faith because there was no evidence they acted with a dishonest purpose and that is what is currently required under the case law." The court reasoned, "Plaintiff maintains that the *Williams* and the *Thomas* cases were both wrongly decided, and I can't say I necessarily disagree with that, but I am duty bound to follow them." The circuit court therefore denied civil penalties on the basis that plaintiff had failed to prove the Department's bad faith according to the standard articulated in *Williams* and *Thomas*.

¶ 26 Following the oral ruling, the circuit court entered a written order on the same day which held that, "[f]or the reasons stated on the record, the Court finds the Plaintiff has not met its burden of showing that [the Department] willfully and intentionally failed to comply with FOIA or otherwise acted in bad faith."

¶ 27 This timely appeal followed.

¶ 28 ANALYSIS

¶ 29 Plaintiff challenges on appeal the circuit court's ruling which interpreted the relevant provision of FOIA to require a showing of dishonest purpose to prove bad faith in addition to willful and intentional conduct for a violation of FOIA to exist. See 5 ILCS 140/11(j) (West 2022). As the court relied on *Williams*, 2021 IL App (2d) 190971, and *Thomas*, 2023 IL App (1st) 211656, in this ruling, plaintiff requests that we diverge from the interpretation of section 11(j) promulgated in those earlier decisions.

¶ 30 *Standard of Review*

¶ 31 As a preliminary matter, when reviewing the denial of a civil penalties claim under FOIA, we subject factual findings to the manifest weight of the evidence standard. *Rock River Times*, 2012 IL App (2d) 110879, ¶ 48. Accordingly, we will not overturn those factual findings unless "an opposite conclusion is apparent" or the findings appear to be "unreasonable, arbitrary, or not based on the evidence." *Id.* ¶ 48 (citing *Goldberg v. Astor Plaza Condominium Ass'n,* 2012 IL App (1st) 110620, ¶ 60). Here, we apply this standard to the circuit court's finding in its oral ruling, as incorporated in its written order, that the Department's actions of "knowing the statute exists, knowing that you have already violated the statute, knowing that you have no good reason to continue to violate the statute and violating it anyway" constituted willful and intentional conduct. As the circuit court made a reasonable assessment of the evidence from the evidentiary hearing—citing Officer Rodriguez's lack of explanation for the three-month delay "after he became aware of the mistake" and the insufficiency of a possible privilege exemption to justify continued withholding of the records in their entirety—we find

that the circuit court's holding that the Department exhibited willful and intentional conduct was not against the manifest weight of the evidence.

¶ 32 The Department acknowledges this finding from the oral ruling on appeal, writing that the circuit court "found that [the Department] acted willfully and intentionally, but *also* found that [the Department] did not act in bad faith." (Emphasis in original.). Although the circuit court later stated in its written order that "[p]laintiff has not met its burden of showing that [the Department] willfully and intentionally failed to comply with FOIA or otherwise acted in bad faith," it did precede this statement with the phrase, "[f]or the reasons stated on the record," signifying an intent to incorporate its prior oral ruling and finding that defendant had willfully and intentionally failed to comply with FOIA. The parties appear to be in agreement on this point, as they did not substantially address the issue in their briefing nor during oral arguments on appeal; we therefore will not further probe the issue here. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) ("Points not argued are forfeited ***.").

¶ 33 *Statutory Construction*

¶ 34 The primary subjects of this appeal, then, are the circuit court's finding that plaintiff failed to prove bad faith, coupled with the circuit court's prior articulation in its oral ruling that plaintiff had failed to demonstrate that the Department had a "dishonest purpose." The circuit court noted in its oral ruling that it had come to its understanding of section 11(j) based on the holdings in *Thomas*, 2023 IL App (1st) 211656, and *Williams*, 2021 IL App (2d) 190971. As these cases involve an interpretation of the statutory language of FOIA, particularly concerning the "or otherwise acted in bad faith" portion of section 11(j) (see 5 ILCS 140/11(j) (West 2022)), our review is ultimately an exercise in statutory construction.

¶ 35 Questions of statutory construction are questions of law which are reviewed *de novo*. *Williams*, 2021 IL App (2d) 190971, ¶ 13; *Green v. Chicago Police Department*, 2022 IL 127229, ¶ 35. The primary aim of statutory construction is to ascertain and give effect to the legislature's intent. *Williams*, 2021 IL App (2d) 190971, ¶ 13. The most reliable indicator of legislative intent is the plain and ordinary meaning of the language in the statute. *Id.* Whenever possible, we must give each word, clause, and sentence of the statute a reasonable meaning to avoid rendering any part of it superfluous. *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 23; *Green*, 2022 IL 127229, ¶ 51. We must consider the statute in its entirety, including other provisions, rather than reading words or phrases in isolation. *Green*, 2022 IL 127229, ¶ 51. Where the statutory language is clear and unambiguous, we refrain from consulting extrinsic aids of construction. *Rock River Times*, 2012 IL App (2d) 110879, ¶ 36.

¶ 36 Our analysis commences with a reading of the plain language of the statute. Section 11(j) provides:

> "If the court determines that a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty of not less than $2,500 nor more than $5,000 for each occurrence. In assessing the civil penalty, the court shall consider in aggravation or mitigation the budget of the public body and whether the public body has previously been assessed penalties for violations of this Act." 5 ILCS 140/11(j) (West 2022).

¶ 37 This case centers on the meaning of the phrase "or otherwise acted in bad faith" in the broader context of a determination that a public body willfully and intentionally failed to comply with the requirements of FOIA. Both parties agree that this language indicates that a willful and intentional violation of FOIA constitutes a form of bad faith action of which there

are others. As such, "or otherwise acted in bad faith" represents a "catchall" category of possible bad faith actions that a public body can take in violation of FOIA. In statutory construction, such "catchall" terms reveal an implicit legislative understanding that it cannot list every specific instance within the category's scope; thus, the examples of bad faith conduct that the legislature included here—willful and intentional noncompliance—are meant to be illustrative rather than exhaustive. See *Chapman v. Chicago Department of Finance*, 2023 IL 128300, ¶ 38 (applying the catchall doctrine to another subsection of FOIA); see also *Williams*, 2021 IL App (2d) 190971, ¶ 14 (acknowledging that the phrase "or otherwise" connotes a catchall term). In holding that "where a public body willfully, intentionally, and in bad faith failed to comply with the FOIA, the court shall impose a civil penalty," the *Williams* court, however, supplanted the catchall term which the legislature had intended by replacing it with the conjunctive "and." See *Williams*, 2021 IL App (2d) 190971, ¶ 14. In replacing the original language in the statutory standard, *Williams* imputed a higher standard of proof of "bad faith," thereby eliminating the possibility that a "willful and intentional" violation of FOIA could in and of itself warrant civil penalties.

¶ 38 Here, although the circuit court recognized a willful and intentional violation, it determined that "there was no evidence [the Department] acted with a dishonest purpose," as "is currently required under the case law." The "dishonest purpose" standard also originated in *Williams*, 2021 IL App (2d) 190971, ¶ 15. After its discussion of the "or otherwise" term in the statute, the *Williams* court consulted the Merriam-Webster Dictionary definitions of "willful" and "intentional"—which provided the definitions "deliberately" and "by design," respectively—and the Merriam-Webster and Black's Law Dictionary definitions of "bad faith"—which gave rise to "with a dishonest purpose"—to arrive at its formulation that, "based

upon the plain meaning of these terms, to warrant the imposition of a civil penalty under section 11(j), the public body not only must have intentionally failed to comply with the FOIA but must have done so deliberately, by design, and with a dishonest purpose." *Id.* ¶ 15.

¶ 39 Although it is appropriate to use dictionary aids to ascertain the ordinary meanings of terms which the statute itself does not define (*Poris v. Lake Holiday Property Owners Ass'n*, 2013 IL 113907, ¶ 48), we find the alternative definition which *Williams* provided for the term "bad faith"—"with a dishonest purpose"—to be unduly narrow. As plaintiff notes, the *Williams* court relied upon an older edition of Black's Law Dictionary in devising its "dishonest purpose" definition. *Williams*, 2021 IL App (2d) 190971, ¶ 15 (quoting Black's Law Dictionary 139 (6th ed. 1990)). Here, as section 11(j) was added to FOIA in 2010 (5 ILCS 140/11(j) (West 2022)), we consult the ninth edition of Black's Law Dictionary, which defines bad faith as "[d]ishonesty of belief or purpose," and includes an excerpt from Restatement (Second) of Contracts § 205 cmt. D (1979) which reads, "A complete catalogue of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: *** lack of diligence and slacking off, willful rendering of imperfect performance ***." Black's Law Dictionary 159 (9th ed. 2009). To reduce this definition to "with a dishonest purpose" negates the validity of other permissible versions of bad faith wherein the exact "state of mind" that the public body exhibited in its conduct was not exclusively purposeful dishonesty but could also encompass a knowing violation of FOIA.

¶ 40 We acknowledge that the *Williams* court's "deliberately, by design, and with a dishonest purpose" standard has been adopted in subsequent appellate court decisions denying plaintiffs' requests for civil penalties for FOIA violations. See, *e.g., Kraft v. City of Kankakee*, 2022 IL App (3d) 210270-U, ¶¶ 23, 28; *Edgar County Watchdogs v. Joliet Township*, 2023 IL

App (3d) 210520, ¶¶ 30, 32; *Thomas*, 2023 IL App (1st) 211656, ¶ 15; *Harsy v. Perry County Sheriff's Office*, 2024 IL App (5th) 180483-U, ¶¶ 40, 43. Other recent cases, however, have diverged from this standard. In *Tobias v. City of Chicago Office of the Mayor*, 2026 IL App (1st) 241435-U, ¶¶ 48-49, for instance, the court acknowledged *Williams* but noted that the *Williams* court "declin[ed] to honor the disjunctive *** 'or' " from section 11(j). *Tobias*, by contrast, devised its own formulation that "to warrant civil penalties, the [public body's] failure to comply with FOIA had to be done deliberately and by intention/design *or* the [public body] had to in some different way act dishonestly or fail to fulfill its statutory duty." (Emphasis in original). We find the *Tobias* formulation more compelling than the one provided in *Williams* and thus adopt it here. See Ill. S. Ct. R. 23(e)(1) (eff. June 3, 2025) ("[A] nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes."). Unlike the standard articulated in *Williams*, the *Tobias* framework honors section 11(j)'s original sentence structure in a manner that does not render the statute's "or otherwise" catchall designation superfluous and does not attempt a judicial rewrite of the plain language of the statute. See *Green*, 2022 IL 127229, ¶ 51 ("We construe the statute to avoid rendering any part of it meaningless or superfluous."); *Zahn v. North American Power & Gas, LLC*, 2016 IL 120526, ¶ 15 ("No rule of construction authorizes us to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions or limitations the legislature did not include.").

¶ 41 *Divergent Case Law*

¶ 42 The Department only cites two reported pre-*Williams* cases in the section of its brief arguing for our adoption of the "deliberately, by design, and with a dishonest purpose" standard. One of these cases, also cited in *Williams*, 2021 IL App (2d) 190971, ¶ 14, is *Garlick*

v. Bloomingdale Township, 2018 IL App (2d) 171013, ¶ 40, which affirmed a denial of civil penalties due to the plaintiff's failure to prove bad faith when the public body timely provided the plaintiff with the records he requested. The other pre-*Williams* case which the Department cites for this proposition is *Rock River Times*, 2012 IL App (2d) 110879, ¶ 54. That case is instructive here, as it involves a public body which delayed production of requested documents in violation of FOIA's deadlines by consecutively asserting multiple statutory exemptions despite knowing those exemptions to be inapplicable. *Id*. In contrast to *Williams*, the *Rock River Times* court did not impose the conjunctive "and" in its articulation of the section 11(j) standard, instead reciting it as follows: "Once the trial court finds a willful and intentional failure to comply with the FOIA, or that the party acted in bad faith, it is required to, *i.e.,* 'shall,' impose a penalty." *Id.* ¶ 49. Similar to the case at bar, the circuit court in *Rock River Times* found that the school district defendant had willfully and intentionally violated FOIA in delaying disclosure when it knew the justifications it had given for that delay were insufficient, but it continued to delay anyway. See *id.* ¶ 23. Unlike in our case, however, the circuit court in *Rock River Times* found that the totality of the evidence there demonstrated a "lack of good faith" on the part of the school district. See *id.* As such, the *Rock River Times* court revealed that a public body's knowing violation of FOIA's statutory deadlines may evidence bad faith.

¶ 43 Among the post-*Williams* cases which the Department heavily relies upon is *Thomas*, 2023 IL App (1st) 211656, ¶¶ 21-24, in which another division of our court affirmed a denial of civil penalties. In *Thomas*, the defendant, Cook County, asserted a statutory privacy interest exemption as justification for its failure to release requested records. *Id.* ¶¶ 18-20 (citing 5 ILCS 140/7(1)(c) (West 2018)). The plaintiff, Thomas, who had been convicted of murder, had requested autopsy and postmortem photographs and X-rays of the murder victim through

FOIA. *Id.* ¶¶ 3-4. Although the circuit court granted partial summary judgment for Thomas, it also held that there was no evidence to demonstrate willful or intentional conduct or otherwise bad faith action on the part of the County to warrant civil penalties. *Id.* ¶ 10. During the hearing on the motion for reconsideration presented by Thomas, the County argued that "knowingly raising an exemption could not constitute a willful and intentional violation of FOIA, even if the exemption was later determined to be inapplicable," and the court accepted this argument by denying the motion. *Id.* ¶ 12.

¶ 44 The appellate court in *Thomas* affirmed the judgment of the circuit court, holding that the County had reasonably asserted a privacy exemption under FOIA, which appeared to undercut a finding that the County was motivated by bad faith. *Id.* ¶¶ 18-21. In so ruling, the appellate court quoted the "deliberately, by design, and with a dishonest purpose" standard from *Williams*, 2021 IL App (2d) 190971, ¶ 14. *Thomas*, 2023 IL App (1st) 211656, ¶ 15. The opinion also included the conjunctive "and" and omitted the catchall "or otherwise" language in two later rearticulations of the "willful," "intentional," "bad faith" standard from section 11(j), but its use of that exact articulation was inconsistent. *Id.* ¶ 16 ("A trial court's finding that a public body willfully, intentionally, and in bad faith failed to comply with FOIA ***."); see also *id.* ¶ 17 ("the trial court found that the County did not willfully, intentionally, and in bad faith fail to comply with FOIA"); but see *id.* ¶ 17 ("the court further explained that the County did not act willfully, intentionally, or in bad faith ***. We agree.").

¶ 45 Unlike in *Thomas*, the Department here did not initially assert any recognized FOIA exemptions in response to plaintiff's request for records. See *id.* ¶¶ 18-20. Rather, the Department provided plaintiff with unrecognized excuses for its delay, such as "issues with our portal and a back log of FOIA request[s]," as stated in its December 13, 2022, e-mail. See

5 ILCS 140/9(b) (West 2022) ("Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request, the reasons for the denial, including a detailed factual basis for the application of any exemption claimed[.]"). Although the Department later claimed in its answer to plaintiff's complaint that some of the responsive records "may" have contained exempt information—including private information protected under FOIA section 7(1)(b) (see *id.* § 7(1)(b)), information prohibited from disclosure under federal or State law (see *id.* § 7(1)(a)), and documents which contained expressions of opinions or formulations of policies or actions (see *id.* § 7(1)(f))—these arguments were ultimately resolved below and are not the subject of this appeal. Additionally, the circuit court here found that the Department had exhibited willful and intentional conduct in failing to comply with FOIA. Given these factual distinctions and our general disagreement with the version of the section 11(j) standard adopted from *Williams*—which the *Thomas* court incorporates inconsistently throughout its opinion—we reject the application of *Thomas* here.

¶ 46 In construing legislative intent, we consider the statute as a whole, rather than reading the provision at issue in isolation. *Green*, 2022 IL 127229, ¶ 51. Section 1 of FOIA, which addresses the public policy purposes and legislative intent of the statute, reads in part:

> "The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government.
>
> ***
>
> 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. The provisions of this Act shall be construed in accordance with this principle. 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." 5 ILCS 140/1 (West 2022).

It is clear from this text that the legislature intended FOIA to allow for the expedient and efficient disclosure of government information, in compliance with the statutory deadlines provided, so as to promote government transparency and accountability. In the case at bar, though the circuit court recognized that an internal mistake was responsible for the Department's initial delay in disclosure, it ruled that the Department's continued delay for the months following April 2023 constituted willful and intentional conduct in violation of FOIA. Based on the testimony at the evidentiary hearing, the circuit court ascertained that the Department's FOIA personnel had knowledge of the timing requirements of FOIA, were aware due to the lawsuit's existence that they were in violation of those requirements, and continued their violation nonetheless. This conduct runs afoul of the above principles articulated in the statute in favor of expedient disclosure, and exhibits a willful and intentional failure to comply with FOIA as the legislature sought to address in enacting the civil penalties provision in 2010. See *id.* § 11(j).

¶ 47 *Rule of Lenity*

¶ 48 The Department also argues that statutes are to be construed strictly against the imposition of penalties—a canon of construction known as the rule of lenity. The Department cites *Bittner v. United States*, 598 U.S. 85, 101 (2023), for this proposition. The text of *Bittner*, however, in fact contradicts the Department's argument, stating that "[u]nder the rule of lenity,

this Court has long held, statutes imposing penalties are to be 'construed strictly' against the government and in favor of individuals." *Id.* Regardless, an application of the rule of lenity here as the Department has proposed could render the legislature's stated purpose of "requir[ing] disclosure of requested information as expediently and efficiently as possible and adherence to the deadlines established in this Act" (5 ILCS 140/1 (West 2022)) and the 2010 addition of section 11(j) superfluous. See *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 23; *Green*, 2022 IL 127229, ¶ 51 ("Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous."); see also *People v. Gutman*, 2011 IL 110338, ¶ 43 ("[T]he rule of lenity must not be stretched so far or applied so rigidly as to defeat the legislature's intent."). Furthermore, courts generally only apply canons of construction such as the rule of lenity in cases of ambiguity—not, as here, where the plain and ordinary meaning of the language of the statute is clear. See *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 12 ("[T]o the extent there is any ambiguity, penal statutes and statutes that create 'new liabilities' should be strictly construed in favor of persons sought to be subjected to their operation and will not be extended beyond their terms."); see also *City of Chicago v. Janssen Pharmaceuticals, Inc.*, 2017 IL App (1st) 150870, ¶ 20 ("[I]f the language of the statute is not ambiguous, we need not *** resort to other aids of statutory construction to determine the legislative intent.").

¶ 49 Additionally, with respect to the federal cases the Department cites for its rule of lenity argument and for its argument that administrative delays are insufficient to constitute bad faith, we emphasize that although Illinois courts may look to federal FOIA cases as guidance for statutory construction of the Illinois version of FOIA (see *Green*, 2022 IL 127229, ¶ 60), section 11(j) is one of the clearest instances of divergence between the federal statute and the

Illinois one. Compare 5 U.S.C. § 552(a)(4)(E)-(F) (2024) (detailing procedures for when FOIA complainants have "substantially prevailed" against the government, including attorney fee procedures and disciplinary actions for agency employees who acted arbitrarily or capriciously, but not describing any mechanism for complainants to obtain civil penalties for willful, intentional, or otherwise bad faith violations) with 5 ILCS 140/11(j) (West 2024); see *Uptown People's Law Center v. Department of Corrections*, 2014 IL App (1st) 130161, ¶ 18 (rejecting application of federal case law for purpose of statutory construction concerning Illinois FOIA section 11(i), which the Illinois legislature intentionally wrote differently so as not to mirror the federal version).

¶ 50 A further point of divergence is that while the rule of lenity has been applied to federal statutes which impose civil penalties in federal case law (see *Bittner*, 598 U.S. at 102 (identifying cases in which the rule of lenity has been applied to interpret federal civil statutes that impose both civil penalties and criminal sanctions)), it has been applied solely in the penal context in Illinois. See, *e.g.*, *Gutman*, 2011 IL 110338, ¶ 12 ("Pursuant to the rule of lenity, ambiguous *criminal* statutes will generally be construed in the defendant's favor." (Emphasis added.)); *People v. Hicks*, 164 Ill. 2d 218, 222 (1995) ("*[P]enal* statutes, where ambiguous, should be construed to afford lenity to the accused." (Emphasis added.)); *People v. Alejos*, 97 Ill. 2d 502, 510 (1983) ("[A] policy of lenity applies with respect to the interpretation of *criminal* statutes[.]" (Emphasis added and internal quotation marks omitted.)). Accordingly, we reject the Department's analogy to federal case law for these purposes.

¶ 51 *Manifest Weight*

¶ 52 Finally, the circuit court's written order that the "[p]laintiff has not met its burden of showing that [the Department] willfully and intentionally failed to comply with FOIA or

otherwise acted in bad faith" is against the manifest weight of the evidence. As the circuit court itself noted, Officer Rodriguez failed to offer a sufficient explanation for the additional delay in disclosure after April 2023. In the Department's brief on appeal, it argues that the "landscape changes," suggesting that the ordinary timeline of mandated response to a FOIA request is expanded once a lawsuit is filed to accommodate "ordinary incidents of litigation." As plaintiff notes, however, the FOIA statute does not list litigation as an enumerated basis for an extension of time to respond to a request, suggesting that the legislature did not contemplate such an excuse to permit further violations of FOIA. See 5 ILCS 140/3(d)-(e) (West 2022). Additionally, even if litigation had caused further delay in its processing of the responsive records, the Department failed to seek an extension in the circuit court through the permissible method outlined in section 11(d) of the statute. See 5 ILCS 140/11(d) (West 2022). ("If the public body can show that exceptional circumstances exist, and that the body is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.").

¶ 53 The other justifications the Department offered for its delay in disclosure—the hypothetical risk of accidentally disclosing "deliberative, confidential, or privileged information"; Officer Rodriguez's need to confer with other departments concerning the records; and the possibility of the records containing private information regarding witnesses, suspects, and innocent parties—were appropriately addressed and disposed of below. Consequently, the circuit court's denial of civil penalties was against the manifest weight of the evidence.

¶ 54 CONCLUSION

¶ 55 The circuit court's denial of civil penalties is reversed, and the case is remanded for determination of appropriate civil penalties.

¶ 56 Reversed and remanded.

Lucy Parsons Labs v. Chicago Police Department, **2026 IL App (1st) 250205**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 2023-CH-01181; the Hon. Eve M. Reilly, Judge, presiding.
Attorneys for Appellant:	Matthew Topic, Shelley Geiszler, Merrick Wayne, and Josh Loevy, of Loevy & Loevy, of Chicago, for appellant.
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