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IN THE

SUPREME COURT OF ILLINOIS

Rene Bassett Butler, as Special Representative of SANDRA HART,	)	**Petition for Leave to Appeal from from the Appellate Court of Illinois, Fifth Judicial District, No. 5-19-0258,**
Plaintiff-Appellee,	)	
v.	)	**There Heard on Appeal from the Circuit Court of the Third Judicial Circuit, of the Third Judicial Circuit, No. 18 MR 611,**
ILLINOIS STATE POLICE,	)	
Defendant-Appellant.	)	**The Honorable David W. Dugan, Judge Presiding**
KENNETH L. BURGESS, Sr.,	)	**Petition for Leave to Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-20-0421,**
Plaintiff-Appellee,	)	
v.	)	**There Heard on Appeal from the Circuit Court of the Third Judicial Circuit, of the Third Judicial Circuit, No. 20 MR 608, The Honorable CHRISTOPHER P. THRELKELD, Judge Presiding**
ILLINOIS STATE POLICE,	)	
Defendant-Appellant.	)	

BRIEF OF PLAINTIFF-APPELLEES

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ARGUMENT

I. Nothing in the plain language of FOIA exempts the sought information of persons whose FOID cards have been been revoked, suspended or denied from gathering information as to why.

A. Plainiffs agree the standard of review is *de novo*

Defendant argues that the standard of review in this case is *de novo,* and cites in support *Sun-Times v. Cook Cnty. Health & Hosps. Sys*., 2022 IL 127519, ¶ 24 (cross-motions for summary judgment); *Walworth Invs.-LG, LLC v. Mu Sigma, Inc.*, 2022 IL 127177, ¶ 40 (section 2-619 motion to dismiss). Plaintiffs concur the standard of review is *de novo*.

B No part of the legislative intent of FOIA generally, or the particular subsection at issue in this case supports non-disclosure

In Illinois, subject to criminal penalties, in order to lawfully possess firearms generally, one must possess a valid Firearms Owners Identification Card, also known as a "FOID" Card. See 430 ILCS 65/14. It is also a fundamental constitutional right for a citizen to possess a firearm, said right being incorporated under the Fourteenth Amendment and applicable to the states. *McDonald v. City of Chicago*, 561 U.S. 742 (2010). In such a case, it is suggested that as a FOID card is required in order to lawfully possess a firearm, that logically there is a fundamental constitutional right to a FOID card. As there is such a fundamental constitutional right at issue, logically,

basic due process suggests that a person being denied that right be able to find out why.

In this case, Hart and Burgess were denied FOID cards, and submitted FOIA requests to ISP seeking their own applications for FOID cards and ISP's letters to them denying the applications. See No. 5-19-0258 C9; No. 5-20-0421 C12. In addition to being under the FOIA, Burgess also requested the documents generally. No. 5-20-0421 C12. ISP denied all such requests, whether made under the FOIA or otherwise. The ultimate point of all of these requests was for Plaintiffs to, quite simply, find out why they were being denied FOID cards, and thus their fundamental Second Amendment right to bear arms, and depending on the answer, to challenge it, appeal same in court, file an administrative appeal or potentially simply accept the status quo.

Under the Freedom of Information Act, "'all persons are entitled to full and complete information regarding the affairs of government.'" *Sun-Times*, 2022 IL 127519, ¶ 26 (quoting 5 ILCS 140/1). In accordance with that policy, FOIA states that "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of

proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (2020).

Given this clear statement of legislative intent, there is a presumption that public records are open to public disclosure. *Sun-Times*, 2022 IL 127519, ¶ 27. As such, FOIA is to be construed liberally in favor of providing the public with access to government information. Id

Thus, if the FOIA were a footrace on a standard round track, Plaintiff starts the footrace, not just in the lead, but has proverbially already passed the non-disclosing agency by several laps, before the agency gets to even start running. In fact, with Plaintiff 20 feet from the finish line, the agency should not even have its shoes on yet.

However, as noted by the Defendant, not all records are disclosable under the FOIA. In both cases, Defendant has invoked Exception 7.5 of the FOIA. See 5 ILCS 140/7.5(v) (2020). Section 7.5(v) of the Illinois FOIA exempts from disclosure documents, in relevant part, that are:

> "Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act or …"

5 ILCS 140/7.5(v) (2020).

Again, Plaintiffs are seeking *their own* information. Logically speaking, and as indicated on their own requests, as Plaintiffs already know their own names and already know that they at one time applied for or received a FOID card, there would be no point in submitting a request to Defendant merely to reaffirm that they have a name, what their name is and/or fact of prior FOID card application. These things are already known to Plaintiffs and persons similarly situated.

As indicated in the record of both cases, the *reason* that Plaintiffs made the FOIA requests was not to learn what they already knew, but to learn something that they did not already know, the "why" of FOID card disapprovals. As a matter of fact, Defendant mails to FOID card holders letters when their FOID cards are denied or revoked. Plaintiffs had simply misplaced their letters, and wished, at this point, to challenge the revocations, but needed accurate and complete information to do so. These revocations are actions of government, not actions of individuals.

Both at the time of the revocation, and today, there are two, mutually exclusive methods to challenge a FOID card denial or revocation, one is in circuit court, one is administratively. What is challenged administratively is not eligible to be challenged in court, and what is eligible to be challenged in court is not permitted to be challenged administratively. Thus, in order to

know where and how to proceed, one must know exactly why a given FOID card was denied or revoked. Sometimes these letters are simply not factually accurate, meaning that a FOID applicant or holder may well have no idea what the problem is independent of the letter. As the letter and application either originated with the Plaintiff, or has already been sent to the Plaintiff by the Defendant in these cases, at least theoretically, they have already seen it. Thus, there should be nothing to keep secret from the Plaintiffs or persons like them, that is sought herein.

It would be completely irrational to deny a person a copy of a document they, themselves generated, or alternatively, was already mailed to the person. Yet, that is precisely what the Defendant's argument is. Perhaps the first principle of statutory construction is that the legislature is presumed not to intend an absurd result. ("Statutes are to be construed in a manner that avoids absurd or unjust results"); *People ex rel. Cason v. Ring*, 41 Ill.2d 305, 312-13, 242 N.E.2d 267 (1968) (when the literal construction of a statute would lead to consequences which the legislature could not have contemplated, the courts are not bound to that construction).

In this case, Defendant argues that Section 7.5(v) of FOIA creates a blanket statutory exemption against public disclosure of FOID card information. (Def. Brief, p. 16). That is simply untrue under a plain

language reading of the statute. Rather, in order to be prohibited, it must be "names and information of people." Supra. The Appellate Court, in both cases came to the same conclusion. There is no conflict in the District Courts, as was suggested in the Petition for Leave to Appeal.

In addition, as noted by both Appellate Courts,

> "FOIA does use the singular term "person" in other sections. See, e.g., 5 ILCS 140/3(a) (West 2018) ("a public body may not grant to any person or entity"); id. § 3.1(a) ("the public body may require the person"); id. § 5 ("electronic data processing may be obtained in a form comprehensible to persons lacking knowledge of computer language"). However, section 7.5(v) uses the plural term "people," and this court may not construe any word of a statute as superfluous or meaningless. *Collins v. Board of Trustees of the Firemen's Annuity & Benefit Fund of Chicago*, 155 Ill. 2d 103, 116 (1993). To state that "people" indicates a single individual would render the word "people" meaningless. Therefore, we find that the word "people" by its plain meaning necessitates more than a single individual."

(*Hart v. ISP*, Appellate Decision, para. 22).

Second Plaintiffs consented to the release of information in writing. FOIA provides for the release of personal information if "the disclosure is consented to in writing by the individual subjects of the information." 5 ILCS 140/7(1)(c) (West 2018). *Hart v. Illinois State Police*, 2022 IL App (5th) 190258, Para. 25 (5th Dist. 2022); *Woolsey v. The Illinois State Police*, 2022 IL App (4th) 210467-U, Para. 35 (4th Dist. 2022).

Defendant claims this was an erroneous confabulation by the Appellate Courts with FOIA Section 7(1)(c), which, per their argument deals with "personal information" and has a consent provision, and FOIA Section 7(1)(b), which, per the argument deals with "private information" and has no consent provision.

The argument overlooks two things. First, Section 7(1)(b) provides as an exception to nondisclosure, "unless disclosure is required by another provision of this Act[]." Again, Section 7(1)(b) requires consent with disclosure, as found by both Appellate Courts to consider this issue. Second, the State's argument, taken at face value, leads to an absurd result, in that a person whose name is listed in a document, for their own good presumably, cannot consent to and obtain a copy of that document, for their own good, because it might contain their own name. But in enacting Section 7.5(v), the General Assembly was not trying to protect FOID card holders from

themselves, it was trying to protect them from burglars! The impetus for this provision was an Attorney General opinion that the names of FOID card applicants and holders could be released and a lawsuit between ISP and the Associated Press relative to such release.

Senator Dillard urged passage of the provision as follows:

> Thank you, Madam President and Members. This bill deals with a matter of public policy, that the names of those legitimate firearm owners, who have Firearm Owner's ID Cards, should be exempt from the Freedom of Information Act. The Attorney General—a staffer, issued an advisory opinion that these names of—and there's millions of these individuals who live in our community, should be made public. There is a lawsuit between the State Police and the Associated Press and others pending in Peoria. But as a matter of public policy, I believe that these names should remain private. But, more importantly, every State police director in recent memory, regardless of political party, believes that it is a law enforcement nightmare to have these names released into the public domain, and thus your lawsuit in Peoria, with a former Governor of Illinois representing the Illinois State Police.

> Obviously, I can argue the constitutional side of this and these names clearly have a constitutional right to be made private—or kept private. But from a law enforcement standpoint, I don't believe we should give burglars a map to systematically burglarize our neighborhoods and our farms.
>
> So, constitutionally, as well as from a law enforcement standpoint, these names should remain public {sic}, but most importantly every State police director, regardless of political party, agrees with me that these names should remain private. I'd be happy to answer any questions."

97th Ill. Gen. Assem., Senate Proceedings, May 20, 2011, at 11 (statements of Senator Dillard).

In the House, Representative Morthland similarly argued:

> Thank you, Mr. Speaker, Members of the House. HB3500 will protect the privacy of law-abiding citizens who either have or have applied for FOID cards and exempt them from having the release of their names and personal information under the Freedom of Information Act. This has been a Bill of some interest and some contention. I appreciate the Attorney General

> and the work she has done in this matter; however, there is a pressing need to keep this information private. It would create a situation where there would be increased possibility for gun violence in the State of Illinois should this not pass, and so I ask the Members of the House to do so."

97th Ill. Gen. Assem., House Proceedings, April 8, 2011, at 38 (statements of Representative Morthland).

Therefore, requiring ISP to release to Plaintiffs is consistent with the Act's provisions providing for open records while protecting the privacy of FOID card applicants and holders. Literally nothing in the legislative history of the subsection is any indication that the General Assembly was trying to keep secret from the actual FOID card holders their own information.

Finally, the principle of constitutional avoidance in interpretation of statutes. *People v. Davis,* 93 Ill.2d 155, 162 (1982). It is the Court's duty to construe acts of the legislature so as to affirm their constitutionality and validity, if it can be reasonably done, and further if their construction is doubtful, the doubt will be decided in favor of the validity of the law challenged. Id. Should this Court construe the FOIA statute in such a way

that divests FOID card applicants or holders from obtaining copies of their own documents showing why their FOID card was denied, suspended or revoked, it could and likely would lead to a substantive challenge of the validity of the FOID card itself, by every person who FOID card was denied, suspended or revoked, and who simply could not find out why. Affirming the trial and appellate courts avoids this future constitutional quagmire.

Means Outside of FOIA

The Defendant's next argument is that Plaintiffs may obtain these documents by means outside of FOIA. Defendant claims that "ISP, like other Illinois governmental officers and agencies, has a procedure for individuals like Hart and Burgess to obtain copies of their own information outside of FOIA, even if that information is not otherwise available to the public." (Def. Brief. P. 27).

This entire argument is a red herring, not made in the initial agency response, not made to the trial court, not supported in the record before this Court and frankly, irrelevant.

It is of no moment that the Illinois Department of Employment Security or Illinois Secretary of State make certain documents available by other means, as these FOIA requests deal with the Illinois State Police and FOID cards, not those other agencies and their jurisdictions.

As to the "quick link" to FOID card information from the ISP, again, there is nothing in the actual court record concerning this, and in violation of rules, Defendant fails to cite to any location in the Court record where such information can be found, and that entire argument was never presented to the trial court or the Appellate Court. The entire argument should be stricken and disregarded, as waived. *Wagner v City of Chicago,* 166 Ill.2d 144, 146 (Il. 1995)("Moreover, as a general rule, any issue not raised at the trial court level is waived."). Furthermore, as noted by this Court nearly forty years ago "a belated attempt by [a party] to bolster what is apparently perceived as a deficient record […]. will not, [] be considered by this court." *Wieser v. Mopac,* 98 Ill.2d 359, 361 (1983).

Even overlooking *Wagner* and *Wieser*, the argument of Defendant seems to be that if a person contacts Defendant and asks nicely, they will send the letter or requested information. The actual record belies this statement, as Plaintiff Burgess *actually did* ask for the documents, "generally" in addition to under the Freedom of Information Act, for the record. (Burgess Record, C12). The response was not a denial under the FOIA, but a copy of the documents under the general request. (Burgess Record, C9). The response was a denial under FOIA and the request generally was simply ignored. (Burgess Record, C9).

But then, that is the ultimate point of FOIA. Absent FOIA, or a statute like it, with actual penalties and /or private enforcement mechanisms, government agencies, like Defendant, will have no incentive to actually be helpful to the citizenry or to actually produce documents to persons. "We promise that would never happen" has never been an adequate guarantee of due process.

To have a mechanism to compel a government agency to produce a needed or desired document, not simply out of the good graces or magnificence of that agency, under which the agency would almost certainly provide documents showing how good a job it was doing, but withhold those that might subject it to criticism, but as a matter of right to the requester. As noted in FOIA itself, "[i]t is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." 5 ILCS 140/1. If it was sufficient for the people of this State to simply ask their governmental agencies for copies of their records, FOIA would not be necessary, it would be mere surplusage. Yet, mere surplusage FOIA is not.

There is no injunction barring disclosure to Plaintiffs of their own documents

Defendant claims that it is barred from disclosing the requested documents by a trial court order in another case.

As an initial matter, this argument was never raised by the Defendant in its initial FOIA response in either the *Hart* or *Burgess* cases. Second, in the *Hart* case, Defendant ISP never raised that issue in the trial court, or for that matter, in the appellate court. Thus, as relates to *Hart*, the entire issue should be stricken as waived *Wagner v City of Chicago*, 166 Ill.2d 144, 146 (Il. 1995)("Moreover, as a general rule, any issue not raised at the trial court level is waived."). Furthermore, as noted by this Court nearly forty years ago "a belated attempt by [a party] to bolster what is apparently perceived as a deficient record […]. will not, [] be considered by this court." *Wieser v. Mopac*, 98 Ill.2d 359, 361 (1983). Thus, at least as to *Hart* this Court should not even consider this argument.

As to *Burgess*, similar to *Hart*, the Defendant did not cite to this allegedly relevant injunction in responding to the initial FOIA request, nor did the Defendant in *Burgess* respond in its first response in the trial court with this argument, instead, relying solely on the Section 7.5(v) argument. (Burgess Record, C46-C53). It was only four months after the *Burgess* case was filed, only after having previously answered and made a summary

judgment motion, and five months after denying the initial FOIA request administratively, that Defendant decided to raise this defense. (*Burgess Record*, C94). Even then, and to this day, Defendant has not raised this defense in its Answer or Affirmative Defenses (Burgess Record, C38), and has not sought to amend its answer or affirmative defenses to include this defense. In sum, the argument is outside the scope of the pleadings. As there was no defense actually pleaded in *Burgess*, affirmative or otherwise, about any injunction, such a fact outside the scope of the pleadings is not proper for the court to consider under summary judgment standards, even if true. See 735 ILCS 5/2-1005(c).

But even if this Court does actually consider the issue, the injunction applies only to information "that identifies or describes a person." (No. 5-20-0421 C92-93). As previously noted, Plaintiffs already know who they themselves are. They already know their own description. As noted by the Appellate Court in this case, "We further note that an individual's request for his/her own information does not identify, either directly or indirectly, a person that is not ascertained in the request.". (No. 5-20-0421, p. 8). The only other appellate level court to consider the same issue, came to the exact same conclusion in an unpublished decision. *Woolsey v. ISP*, 2022 IL App (4th) 210467-U.

Instead, what is disclosed to Plaintiff is information they already have (i.e. their name and address), as well as information that they either lost, or which was never provided to them in the first place, but should have been, the ultimate reasons *why* their FOID card was denied, revoked or suspended. As noted by the Appellate Court held that the injunction did not prohibit release of *Hart* and *Burgess's* FOID card information because it "specifically state[d] that the injunction [wa]s pursuant to FOIA." *Hart*, 2022 IL App (5th) 190258, ¶ 67

Someone has to decide whether the injunction applies, or not. That person is not the litigants, much less a litigant in a separate case. In our system of government, that would be the Courts. The Appellate Court found the injunction inapplicable to this case. The Fourth District Appellate Court did as well. No court has found said injunction applicable. There are no enforcement attempts of said injunction by the Plaintiff in the other case. Nobody is attempting to intervene in this case to prevent Plaintiffs from obtaining their own documents. The entire issue is a red herring, through up as a post hoc rationalizations by Defendant to see what mud might stick to the wall. The fact that Defendant allegedly though it applicable is of no moment; for if it was remotely relevant what Defendant's opinion was, it would give the Defendant, as a practical matter, a veto right, despite the

language of FOIA. As the very Appellate Court that might hear such a contempt enforcement case, should one ever actually arise, has already said the injunction does not apply to these requests, it is unclear just what trial court judge might rule to the contrary. Simply through inapplicability, as found by two appellate court, the injunction provides no impediment to production, and the proposed interpretation of said injunction by Defendant leads to the same absurd results that the rest of their proposed interpretations in this case do.

CONCLUSION

For these reasons, Plaintiff-Appellees Sandra Hart and Kenneth L. Burgess, Jr., Illinois State Police asks this Court to affirm the judgment of both trial courts and the appellate court in these consolidated appeals.

Respectfully Submitted,
Rene Bassett Butler, as Special Representative of SANDRA HART and KENNETH L. BURGESS, Sr.,

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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 17 pages.

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APPENDIX

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2022 IL App (4th) 210467-U

JASON F. WOOLSEY, Plaintiff-Appellee,

v.

THE ILLINOIS STATE POLICE, Defendant-Appellant.

No. 4-21-0467.

Appellate Court of Illinois, Fourth District.

June 9, 2022.

Appeal from the Circuit Court of Jersey County, No. 19CH27, Honorable Allison Lorton, Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.

Justices Harris and Steigmann concurred in the judgment.

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed Court, IL under Rule 23(e)(1)

ORDER

Justice CAVANAGH delivered the judgment of the court.

¶ 1 *Held*: The trial court's entry of summary judgment, and subsequent award of attorney fees, pursuant to the Illinois Freedom of Information Act, directing the Illinois State Police to provide plaintiff his application for a Firearm Owner's Identification Card and its letter denying the application was proper.

¶ 2 On March 12, 2021, pursuant to the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2020)), the trial court ordered the Illinois State Police (ISP) to provide plaintiff Jason F. Woolsey all documents relating to his application for a firearm owner's identification (FOID) card, made pursuant to the Firearm Owners Identification Card Act (FOID Card Act) (430 ILCS 65/0.01 *et seq.* (West 2020)). On July 22, 2021, the court awarded Woolsey his attorney fees and costs pursuant to FOIA. ISP appeals, raising two issues: (1) whether a permanent injunction bars ISP from producing the records to Woolsey and (2) whether the language of FOIA exempts the documents from disclosure. Finding neither FOIA nor the injunction bars ISP from producing plaintiff's documents to him, we affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 On November 8, 2018, Woolsey through his attorney sought from ISP, pursuant to FOIA, documents related to Woolsey's FOID card, including (1) his application, (2) any denial of the application, and (3) any document containing any information relating to any legal disability that would have made Woolsey ineligible for a FOID card. He also specifically limited his request to information about his own FOID card, and sought documents relating to ISP's processing time for FOID appeals in general. The request contained Woolsey's name, city of residence, and his social security number.

¶ 5 ISP denied Woolsey's request for the documents, citing section 7.5(v) of FOIA (5 ILCS 140/7.5(v) (West 2020)), exempting from disclosure, *inter alia,* the names and information of people who have applied for FOID cards. ISP further advised it did not possess documents related to the processing times of FOID appeals.

¶ 6 On June 5, 2019, Woolsey filed a single-count complaint in the trial court seeking production pursuant to FOIA of the same information and, in addition, his attorney fees and costs incurred in prosecuting the matter. Woolsey later filed a

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motion for summary judgment, citing as support, a judgment entered by the Madison County circuit court in a factually similar case. ISP also moved for summary judgment, asserting the same claims it makes herein, namely the disclosure is barred by a permanent injunction, and the plain language of FOIA excluded from disclosure the information sought. The permanent injunction ISP relied upon was entered by the Peoria County circuit court in an action brought by the Illinois State Rifle Association. That injunction provides ISP is prohibited from releasing "personally identifying information" of those who have applied for FOID cards.

¶ 7 The trial court held a hearing on the motions for summary judgment, at which time Woolsey withdrew his request for information relating to the processing times of FOID card appeals. On March 12, 2021, the court granted Woolsey summary judgment and denied ISP's cross-motion. The court generally adopted the reasoning of the Madison County circuit court in the matter referenced above. The court noted the exemption claimed by ISP did not "speak specifically to an applicant seeking his/her own information from a public body." Further, the court explained the use of the terms "people" and "names," being plural, suggested section 7.5(v) of FOIA did not apply to those seeking information about their own FOID card applications (5 ILCS 140/7.5(v) (West 2020)). Without explanation, the court found the permanent injunction did not prohibit ISP from releasing to Woolsey the information he sought.

¶ 8 Subsequently, Woolsey filed a petition seeking his attorney fees and costs pursuant to FOIA. On July 22, 2021, the trial court awarded Woolsey $2046.45 in fees and costs and, on August 17, 2021, granted ISP's motion to stay enforcement of the court's orders pending appeal.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 ISP appeals from the trial court's order claiming the plain language of FOIA bars ISP's disclosure to plaintiff of information related to his FOID card, and that the Peoria County circuit court's permanent injunction prohibits the release as well.

¶ 12 A. Standard of Review

¶ 13 Our interpretation of a statute is a *de novo* review. Sandholm v. Kuecker, 2012 IL 111443, ¶ 41. Our review of a trial court's entry of summary judgment is also *de novo*. *Id.*

¶ 14 B. The Illinois Freedom of Information Act

¶ 15 The Act's section of primary interest provides:

> "Statutory exemptions. To the extent provided for by the statutes referenced below, the following shall be exempt from inspection and copying:
>
> * * *
>
> (v) Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act." 5 ILCS 140/7.5(v) (West 2018).

¶ 16 The Act's precatory language directs that:

> "Presumption. All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2018).

¶ 17 The Act's explicit policy statement describes in detail the government's responsibility to wit:

> "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

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> 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. ***
>
> *** 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.
>
> * * *
>
> 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. ***
>
> *** The General Assembly declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding." 5 ILCS 140/1 (West 2018).

¶ 18 C. FOIA Does Not Exempt the Production Sought

¶ 19 ISP argues both section 7.5(v) of FOIA, and a permanent injunction entered by the Peoria County circuit court, prohibit it from providing Woolsey his FOID application, denial letter, and information relating to any legal disability preventing ISP from issuing Woolsey a FOID card. Until recently, this was an issue of first impression, but during the pendency of this appeal, the Fifth District released its opinion in *Hart v. Illinois State Police*, 2022 IL App (5th) 190258, which we find persuasive. In *Hart,* via FOIA requests, one plaintiff sought from ISP "any and all documents" related to her FOID card, and the other plaintiff sought his "file." *Id.* ¶ 13. The appellate court's review however was limited to the trial court's order directing ISP to release to each plaintiff his or her respective application and denial letter. *Id.* ISP argued the FOID-related documents the plaintiffs sought were exempt from production pursuant to section 7.5(v) of FOIA, and that their production was also prohibited by the same permanent injunction ISP urges herein. *Hart*, 2022 IL App (5th) 190258, ¶¶ 19, 30. The Fifth District concluded neither section 7.5(v) of FOIA, nor the permanent injunction, prohibited ISP from releasing the plaintiffs' FOID applications or denial letters. *Id.* ¶ 32.

¶ 20 In explaining it decision, the appellate court noted the oft-cited premises the statutory language is the best indicator of the legislature's intent, and if the language is "clear and unambiguous," the language must be applied. *Id.* ¶ 15. In addition, an entire statutory framework must be considered together, interpreting all language "in light of other relevant provisions." *Id.* ¶ 16.

¶ 21 Applying the foregoing, the Fifth District reasoned,

> "As the circuit court noted, the legislature used the plural terms `names' and `people' and not the singular `name' or `person.' `"Person"' is defined in section 2(b) of FOIA as `any individual, corporation, partnership, firm, organization or association, acting individually or as a group.' 5 ILCS 140/2(b) (West 2018). As such, the legislature could have used the singular term `person' in section 7.5(v), which would have incorporated by definition an individual or group but instead elected to use the plural term `people' indicating more than one individual. We also note that the legislature did not include a provision that the plural use of a term includes the singular that is familiar in other statutory schemes." *Id.* ¶ 21.

¶ 22 The court noted FOIA does use the singular "person" elsewhere and that interpreting "people" in section 7.5(v) to describe an individual person would render the use of "people" meaningless, which a court cannot do. *Id.* ¶ 22. Thus, the Fifth District found the use of "people" necessarily means more than a single person. *Id.*

¶ 23 To aid in interpreting section 7.5(v), the appellate court noted that section 7(1)(c) of FOIA permits the release of personal information if the "`disclosure is consented to in writing by the individual subjects of the information.'" (Emphasis omitted.) *Id.* ¶¶ 23-24 (quoting 5 ILCS 140/7(1)(c) (West 2018)). Thus, though FOIA generally prohibits the release of personal information, the legislature provided for an exception such that "an individual could consent in writing to the

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release of their own information." *Id.* ¶ 25. Further, section 7.5(v) only bars the disclosure of the "names and information" of those who have applied for or received a FOID card, but does not prohibit the release of "any specific document, such as an application or denial letter." *Id.* Thus, reading these sections together, the Fifth District concluded FOIA did not prohibit ISP from releasing to the plaintiffs their applications and denials because plaintiffs consented to the disclosure of their own information. *Id.*

¶ 24 Noting (1) a court is to presume the legislature did not intend absurdity or inconvenience, (2) plaintiffs knew their own names, information, and their FOID card status, and (3) plaintiffs had consented to the release of their own information, the Fifth District found that the result would in fact be absurd if it interpreted FOIA to bar the disclosure of plaintiffs' own information to them. *Id.* ¶¶ 27-28.

¶ 25 ISP also argued it is impossible to verify whether a person making a FOIA request purportedly seeking their own FOID information is actually the individual whose information is the subject of the request. *Id.* ¶ 29. The court found this unpersuasive, *inter alia,* because ISP could request additional information from the person submitting the request to verify the individual was seeking their own information. *Id.*

¶ 26 For the foregoing reasons, the Fifth District concluded FOIA did not prohibit ISP from releasing to the individual plaintiffs their respective FOID card applications and their denial letters. *Id.* ¶ 32.

¶ 27 D. The Permanent Injunction Does Not Bar Release

¶ 28 The permanent injunction proffered by ISP as prohibiting disclosure in *Hart* is contained within an agreed order in a matter captioned Illinois State Rifle Ass'n v. Illinois State Police bearing docket No. 11-CH-151 in the Peoria County circuit court. *Id.* ¶ 30. The relevant provisions of the injunction the Fifth District discussed are explicitly based on FOIA, and bar ISP from releasing "personally identifying information" containing "records" that identify those who have applied for and been issued a FOID card, or who have had their application denied or card revoked. *Id.* The order covers information submitted to ISP related to an application, and calls out various identifiers that ISP may not release. *Id.*

¶ 29 The Fifth District rejected ISP's argument the injunction prohibited release to the plaintiffs of their own information because it already found FOIA did not bar release and the trial court entered the order specifically pursuant to FOIA. *Id.* ¶ 31.

¶ 30 E. This Case

¶ 31 Here, as the Fifth District decided in *Hart,* we too conclude the trial court properly granted Woolsey's motion for summary judgment and directed ISP to provide him with (1) all documents relating to his application for a FOID card, including his application, (2) ISP's letter denying the application, and (3) any information relating to any disability that would prevent ISP from issuing the card to Woolsey.

¶ 32 Like the plaintiffs in *Hart,* Woolsey asked ISP pursuant to FOIA to provide him with information related to his own application and ISP's denial of his FOID application. Woolsey's request specified he did not seek information on anyone else's FOID card. As well, the request contained Woolsey's name, city of residence, and social security number. ISP denied Woolsey's FOIA request citing section 7.5(v) of the Act.

¶ 33 ISP asserts FOIA prohibits it from providing Woolsey's own information to him, as does the permanent injunction entered by the Peoria County circuit court. Given this is the same position ISP took in *Hart,* and Woolsey's FOIA request sought generally the same information, we conclude the Fifth District's analysis applies equally here, especially the discussion of the purposeful use of the plural "people" in a manner that excludes the singular person. Accordingly, we find the trial court properly awarded Woolsey his costs and attorney fees.

¶ 34 Our review of FOIA also supports the trial court's conclusion. First, "we are guided by the principle that under the Freedom of Information Act, public records are presumed to be open and accessible." *Lieber v. The Board of Trustees of Southern Illinois University,* 176 Ill. 2d 401, 407 (1997). To wit: "All records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2018). We are directed to read statutory exceptions to this policy narrowly. *Lieber,* 176 Ill. 2d at 407. As also noted above, "Restraints on access to information, to the extent

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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." 5 ILCS 140/1 (West 2018).

¶ 35 Second, FOIA provides for the release of personal information if "the disclosure is consented to in writing by the individual subjects of the information." 5 ILCS 140/7(1)(c) (West 2018). The explicit purpose of excluding from release personal information without consent is to prevent "a clearly unwarranted invasion of personal privacy." *Id.* There is no privacy concern if ISP releases Woolsey's information to him. Such release to Woolsey is consistent with FOIA's general policy of disclosure and its specific language meant to protect an individual's private information.

¶ 36 Lastly, the General Assembly's purpose underlying its enactment of section 7.5(v) of the Act was to protect the privacy of the individual FOID card applicants and holders such that these individuals would not be targets for burglars. Further, the impetus for this provision was an Attorney General opinion that the names of FOID card applicants and holders could be released and a lawsuit between ISP and the Associated Press relative to such release.

¶ 37 Senator Dillard urged passage of the provision as follows:

> "Thank you, Madam President and Members. This bill deals with a matter of public policy, that the names of those legitimate firearm owners, who have Firearm Owner's ID Cards, should be exempt from the Freedom of Information Act. The Attorney General—a staffer, issued an advisory opinion that these names of—and there's millions of these individuals who live in our community, should be made public. There is a lawsuit between the State Police and the Associated Press and others pending in Peoria. But as a matter of public policy, I believe that these names should remain private. But, more importantly, every State police director in recent memory, regardless of political party, believes that it is a law enforcement nightmare to have these names released into the public domain, and thus your lawsuit in Peoria, with a former Governor of Illinois representing the Illinois State Police. Obviously, I can argue the constitutional side of this and these names clearly have a constitutional right to be made private—or kept private. But from a law enforcement standpoint, I don't believe we should give burglars a map to systematically burglarize our neighborhoods and our farms. So, constitutionally, as well as from a law enforcement standpoint, these names should remain public {sic}, but most importantly every State police director, regardless of political party, agrees with me that these names should remain private. I'd be happy to answer any questions." 97th Ill. Gen. Assem., Senate Proceedings, May 20, 2011, at 11 (statements of Senator Dillard).

¶ 38 In the House, Representative Morthland similarly argued:

> "Thank you, Mr. Speaker, Members of the House. HB3500 will protect the privacy of law-abiding citizens who either have or have applied for FOID cards and exempt them from having the release of their names and personal information under the Freedom of Information Act. This has been a Bill of some interest and some contention. I appreciate the Attorney General and the work she has done in this matter; however, there is a pressing need to keep this information private. It would create a situation where there would be increased possibility for gun violence in the State of Illinois should this not pass, and so I ask the Members of the House to do so." 97th Ill. Gen. Assem., House Proceedings, April 8, 2011, at 38 (statements of Representative Morthland).

¶ 39 Therefore, requiring ISP to release to Woolsey is consistent with the Act's provisions providing for open records while protecting the privacy of FOID card applicants and holders.

¶ 40 III. CONCLUSION

¶ 41 For the foregoing reasons, we affirm the trial court's judgment.

¶ 42 Affirmed.

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CERTIFICATE OF FILING AND SERVICE

I certify that on March 13, 2023, I electronically filed the foregoing Brief and Appendix of Plaintiff-Appellees, with the Clerk of the Illinois Supreme Court, by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

Valarie Quinn
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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ *Thomas G. Maag*

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