

No. 1-25-0575

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

NBC SUBSIDIARY (WMAQ-TV) LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
CHICAGO POLICE DEPARTMENT and OFFICE OF	)	No. 22 CH 3147
EMERGENCY MANAGEMENT AND	)	
COMMUNICATIONS,	)	
	)	
Defendants.	)	Honorable
	)	Eve M. Reilly,
(Chicago Police Department, Defendant-Appellee).	)	Judge, presiding.

PRESIDING JUSTICE QUISH delivered the judgment of the court.
Justices Lampkin and Martin concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's decision to deny plaintiff's request for civil penalties under section 11(j) of the Freedom of Information Act is reversed and the cause remanded because

the court's finding that defendant's violation of FOIA was deliberate and by design was sufficient to impose civil penalties under section 11(j).

¶ 2 Plaintiff NBC Subsidiary (WMAQ-TV) LLC ("NBC") appeals from the order of the circuit court of Cook County denying NBC's claim for civil penalties from defendant Chicago Police Department ("CPD") under section 11(j) of the Freedom of Information Act ("FOIA"). 5 ILCS 140/11(j) (West 2024). On appeal, NBC argues that the circuit court erred by denying its claim for civil penalties when it found, following an evidentiary hearing and based on *Williams v. Bruscato*, 2021 IL App (2d) 190791, that section 11(j) requires a showing that CPD acted with a "dishonest purpose" in addition to "deliberately" and "by design" in order to impose a civil penalty and NBC failed to make such a showing. For the following reasons, we reverse and remand for further proceedings.¹

¶ 3 NBC filed a complaint against CPD and the Chicago Office of Emergency Management and Communications ("OEMC"), alleging that they failed to adequately respond to three FOIA requests. Relevant to this appeal are two FOIA requests to CPD: (1) a January 12, 2022 request for surveillance video, incident reports, witness statements, and other materials related to a hitand-run crash that occurred on the 4900 block of North Milwaukee Avenue on September 24, 2021 (hereinafter, "the first request"); and (2) a February 22, 2022 request for all emails sent to and/or from CPD Officers Brown and Martinez containing certain search terms relating to the same hitand-run crash (hereinafter, "the second request").

¶ 4 The complaint attached copies of the original FOIA requests, as well as CPD and OEMC's responses to these requests. In response to the first request, CPD directed NBC to CPD's records

¹ Although this appeal was fully briefed and ready for review and disposition on February 17, 2026, this appeal was not assigned to the current authoring justice for review and disposition until July 1, 2026.

inquiry section for any vehicle accident/traffic crash reports relating to the incident. The response further asserted that the request for body-worn camera footage was denied under section 7(1)(a) of FOIA and section 10-20(b) of the Law Enforcement Officer-Worn Body Camera Act. See 50

ILCS 706/10-20(b) (West 2022). The response additionally asserted that the records were exempt under section 7(1)(d)(i) and 7(1)(d)(vii) of FOIA because the records related to an ongoing criminal investigation. See 5 ILCS 140/7(1)(d) (West 2022).

¶ 5 In response to the second request, CPD initially requested an extension of time to respond, stating that a response would be sent by March 9, 2022. CPD later responded that the request was reviewed by CPD's Bureau of Detectives, Major Accident Investigation Unit and Office of Legal Affairs and they determined that the requested emails were exempt under sections 7(1)(d)(i) and 7(1)(d)(vii) of FOIA as they pertained to an ongoing investigation. CPD stated that responsive emails had been identified, but would not be disclosed, as CPD's Bureau of Detectives stated that the investigation into the crash was open and ongoing and that "release at this time could possibly jeopardize the progress of the investigation" because individuals were still being interviewed as part of the investigation.

¶ 6 NBC's complaint brought nine counts. Count I alleged that CPD failed to produce records in response to the first request, count II alleged that CPD failed to perform an adequate search for the records in response to that request, and count III alleged that CPD's conduct in responding to that request constituted a willful and intentional violation of FOIA. Counts IV, V, and VI raised identical allegations with regards to CPD's handling of the second request, and counts VII, VIII, and IX raised identical allegations with regards to OEMC's handling of a related request. The complaint

sought a declaration that defendants violated FOIA, an order that defendants conduct an adequate search and produce responsive records, and civil penalties and attorney fees.

¶ 7 NBC filed a motion for partial summary judgment and for a section 11(e) index. NBC argued that there was no dispute that CPD and OEMC were public bodies under FOIA and that NBC made requests for records that were denied in full. NBC argued that defendants could not establish that any records that were withheld were exempt from disclosure under FOIA such that they were justified in withholding the records. The motion sought the immediate release of the requested records. NBC did not request a ruling on the issues of attorney fees, costs, or civil penalties at that time and reserved those issues until after the court ruled on the search and production issues.

¶ 8 Defendants filed a response and cross-motion for partial summary judgment on all issues except attorney's fees. CPD then produced responsive records relevant to the second request. Regarding the first request, CPD argued that its denial of the request for body-worn camera footage complied with the Law Enforcement Officer-Worn Body Camera Act, and the denial of the rest of the request was proper under section 7(1)(d)(i) of FOIA because release of the records would have interfered with a pending law enforcement investigation. OEMC argued that it properly denied the request as there were no responsive records to produce at the time of the request. The response further argued that CPD conducted a proper search in response to each request and did not willfully or intentionally violate FOIA or do so with bad faith. CPD attached affidavits from CPD investigators and its FOIA officer.

¶ 9 NBC filed a combined reply in support of its motion and response to defendants' motion. NBC "elected not to challenge" the adequacy of CPD's search for the first and second requests, relevant to counts II and V. NBC argued that CPD failed to establish that the body-worn camera footage and other records responsive to the first request were exempt from disclosure, and that OEMC

failed to establish that it conducted an adequate search for video records responsive to the third request. NBC further argued that the court's ruling on civil penalties should be deferred until the court resolved whether defendants violated FOIA and if they did, the court should allow NBC to take discovery on that issue under section 11(j) of FOIA.

¶ 10 Following a hearing, the circuit court granted defendants' motion for summary judgment and denied NBC's motion as to counts II, V, VII, VIII, and IX, finding that CPD and OEMC provided sufficient evidence that they completed a reasonable search for responsive records, and that OEMC established that responsive records were destroyed pursuant to its retention policy. NBC does not appeal this ruling.

¶ 11 The court granted NBC's motion for partial summary judgment as to counts I and III related to the first request, finding that CPD "willfully and intentionally violated FOIA by not producing the requested records within five business days" and that CPD's "flat-out refusal" to provide any information responsive to the first request and failure to provide an explanation as to why there were no records that were not exempt constituted a willful and intentional violation of FOIA. The court also granted NBC's motion as to counts IV and VI, finding that CPD failed to provide any explanation as to how or why the records sought in the second request were exempt from disclosure. The court later vacated its order on counts III and VI, the claims seeking civil penalties, after a motion for reconsideration by CPD because NBC did not seek summary judgment on those counts.

¶ 12 CPD subsequently produced the records at issue and the parties resolved all issues regarding the documents. NBC then filed a petition for attorney fees and costs under section 11(i) and civil penalties under section 11(j) of FOIA. After briefing, the circuit court granted the fee petition in part and awarded NBC attorney fees and costs, but denied the claim for civil penalties because

NBC improperly raised it in its fee petition. At NBC's request, the court later held an evidentiary hearing on the only remaining claims in the case, NBC's claims for civil penalties in counts III and VI, in October 2024. NBC called four witnesses from CPD: FOIA officer Audrey Shulruff, former FOIA officer Andrew Marlan, Detective Erik Martinez, and Sergeant Peter Edwards.

¶ 13 Shulruff testified that she received ongoing training on FOIA, including training on exemptions that apply to ongoing investigations. Her response to NBC's first request was approved by one of her sergeants and "someone in Legal Affairs." She conducted a search of CPD databases in response to the request and reviewed responsive documents. She concluded that the documents were related to an ongoing investigation by reading the detective supplementary reports, which referred to the investigation as "open." She also checked to see if any arrest was made in relation to the incident and there was not. Shulruff found a prior related FOIA request from three weeks earlier which stated that this was an open and ongoing investigation, so the request was denied. CPD did not always deny requests for documents when the investigation was open. If there was not a previous denial of a FOIA request, Shulruff would have sent a memo to the Bureau of Detectives asking if the records could be released. However, since the incident at issue involved a major accident investigation, she referred requesters to the Records Division to obtain reports of the incident for a fee. She testified that photographs and video for a major accident investigation would be released through a FOIA request.

¶ 14 Shulruff reviewed documents CPD released in response to the first request, and stated that, "[b]ased on the Bureau of Detectives' stance on this," none of those documents could be released without compromising the investigation. She testified that it was standard practice for the Bureau of Detectives to object to the release of any documents from an open investigation. She would withhold any records responsive to a FOIA request on that basis. Shulruff had not received any

training about the need to review documents related to an ongoing investigation to make individualized determinations regarding what would interfere with a pending investigation. She stated that review would typically be done by the Bureau of Detectives. Shulruff asserted that, besides the exemption, she had no other reason to withhold the records.

¶ 15 Marlan testified that he was a FOIA officer at CPD in March 2022. He asserted exemptions to FOIA requests based on interference with ongoing investigations. He identified his response to the second request which he issued consistent with CPD's policies and procedures. He stated that there was a different review process for FOIA requests from the media, which required notifying Legal Affairs and News Affairs. He did not know why the process differed for media requests. He testified that the response stated the request was reviewed "in collaboration with" the Bureau of Detectives and Legal Affairs because he reached out to those departments for input on the FOIA request. He reviewed emails responsive to that request and forwarded the request to the Bureau of Detectives, who provided a statement that the responsive emails "could possibly jeopardize the progress of the investigation." Marlan did not remember whether he relied on a denial of a prior related FOIA request when he denied the second request. He stated that he relied on the expertise of the Bureau of Detectives and its conclusions when responding to the request, which was consistent with CPD practices at that time.

¶ 16 Martinez testified that he was involved in the investigation into the hit-and-run crash and responded to an inquiry from the CPD FOIA office regarding the second FOIA request. He could not recall any specific interaction with the FOIA office regarding that request. He reviewed his affidavit that was attached to CPD's cross-motion for summary judgment, in which he stated that producing records responsive to the second request "would have materially impacted the investigation by jeopardizing the efficacy of the investigation. CPD would essentially be revealing

the nature of progress of the investigation, including the descriptions of suspect vehicles.” He added that, at the time the request was received, it was only four months into a homicide investigation, which was “extremely early.”

¶ 17 Martinez acknowledged that a community alert sent by CPD to the public in September 2021 contained a description of the involved vehicle as a “Jeep SUV” and provided information about the date, time, and location of the crash. He testified that he “did not have enough time” to go line-by-line through all documents responsive to the request. Martinez concluded, as a general matter, that because the investigation was ongoing, it would interfere with the investigation to release responsive records. He testified that the investigation remained ongoing at the time of the FOIA request, and that he was trying to locate the offending vehicle and the individual responsible. He testified that if images of the suspect vehicle were released, the offender could alter, conceal, or sell the vehicle. He denied that anyone told him that the release of those documents would adversely affect CPD.

¶ 18 Edwards testified that he was one of the supervisors of CPD’s FOIA office. He reviewed the process leading to CPD’s denial of the first and second requests, and found that both complied with CPD’s policies and procedures for responding to FOIA requests. He was aware of the requirements of FOIA and was knowledgeable about the exemptions asserted in CPD’s denials of each of NBC’s FOIA requests. He agreed that a public body cannot deny a FOIA request simply because an investigation is ongoing, and that, in order to assert the exemptions, the public body must conclude that each passage of each document would interfere with the investigation if it were to be released.

¶ 19 Edwards testified that each document “should be reviewed” prior to denying the request, but stated it was “[n]ot necessarily” typical CPD practice to do so. Sometimes, the FOIA office could not review the documents because the relevant unit or bureau of CPD did not provide the

documents to the FOIA office. In those circumstances, the FOIA office would rely on the detective handling the investigation “to provide us a detailed, factual basis of why we wouldn’t be producing those records.” He stated that the FOIA office would provide guidance regarding what kinds of circumstances would warrant withholding information, such as when there were witnesses or offenders that need to be located. He was aware that when some material in a document is exempt and some is not, he had an obligation to release the non-exempt information. Edwards explained that records were withheld in this case because, after consultation with the Bureau of Detectives, the Bureau indicated that this was an open investigation. He also testified that CPD’s budget for 2023 was \$1.5 billion and CPD had previously been assessed civil penalties in FOIA cases.

¶ 20 The parties submitted post-trial briefs in lieu of closing argument. NBC argued that two decisions by this court, *Williams*, 2021 IL App (2d) 190971, and *Thomas v. County of Cook*, 2023 IL App (1st) 211656, incorrectly concluded that a FOIA violation must be willful, intentional, and in bad faith in order to warrant the imposition of civil penalties under section 11(j). NBC argued that these decisions failed to honor the use of “or” in section 11(j). NBC alternatively argued that it should prevail even under the standard set forth in *Williams* that the public body must act deliberately, by design, and with a dishonest purpose. See *Williams*, 2021 IL App (2d) 190971, ¶¶ 14-15. NBC argued that the evidence showed that CPD deliberately denied the FOIA requests, the denials were by design as they were consistent with CPD policies, and CPD acted with a dishonest purpose because it was aware that it was not permitted to make a blanket refusal to provide records based on an ongoing investigation, yet it did so in this case.

¶ 21 CPD argued that it had a good faith basis to withhold the records as exempt based on an ongoing investigation. It further argued that NBC failed to establish that CPD acted with a dishonest purpose in withholding the records, and that the testimony at the evidentiary hearing

established that those involved in responding to the requests acted in good faith and did not knowingly violate FOIA when they withheld records from NBC.

¶ 22 The circuit court denied NBC's claim for civil penalties. The court observed that *Williams* required NBC to show that CPD willfully, intentionally, and in bad faith failed to comply with FOIA, and that CPD not only intentionally failed to comply with FOIA, but it did so "deliberately, by design, and with a dishonest purpose." *Williams*, 2021 IL App (2d) 190971, ¶ 15. The court found that CPD did not review each document line-by-line to determine what records could be released and what could be redacted and instead, relied on an internal policy of not releasing any records related to an open investigation. The court observed that at least one witness, Edwards, was aware that CPD could not just deny the release of records in their entirety because the investigation remained open. The court found that CPD's actions were deliberate and by design, but that there was no evidence that CPD acted with a dishonest purpose by withholding the records. The court instead found that "the record reflects, bad policy, confusion and ineptness by CPD," and thus, civil penalties were not warranted. NBC appealed.

¶ 23 On appeal, NBC argues that section 11(j) of FOIA does not require a separate showing of bad faith or dishonest purpose when a public body has willfully and intentionally violated the statute, and that *Williams* and *Thomas* were incorrectly decided to the extent to which they held otherwise. NBC alternatively argues that, even following the test set forth in *Williams*, a plaintiff can demonstrate that a public body acted with "a dishonest purpose" by demonstrating that the public body engaged in conduct that it knows violates the statute. On either basis, NBC asks this court to reverse the circuit court's order declining to impose civil penalties and remand with instructions for the court to impose an appropriate penalty. In response, CPD argues that the circuit court

correctly applied section 11(j) and the record does not support a finding that it acted in bad faith in responding to NBC's FOIA requests.

¶ 24 Neither party asks this court to review the factual findings made by the circuit court. Rather, NBC argues only that the circuit court made a legal error by applying an incorrect interpretation of section 11(j) to the evidence in determining that civil penalties were not warranted. The interpretation of FOIA presents an issue of law, which is reviewed *de novo*. *Green v. Chicago Police Department*, 2022 IL 127229, ¶ 35. "The objective of statutory interpretation is to ascertain and give effect to the legislature's intent, and the most reliable indicator of that intent is the language of the statute, given its plain and ordinary meaning." *Id.* ¶ 37.

¶ 25 Section 11(j) of FOIA states in relevant part:

"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 2024).

¶ 26 NBC argues that the plain text of section 11(j) provides for the imposition of civil penalties based on a showing that the public body either (1) willfully and intentionally failed to comply; or (2) otherwise acted in bad faith. It argues that *Williams* and *Thomas*, which held that a plaintiff must show both a willing and intentional failure to comply with FOIA *and* bad faith or dishonest purpose, incorrectly interpreted the statute by failing to honor the disjunctive "or" in section 11(j).

¶ 27 This court has addressed the interpretation of section 11(j) several times. In *Williams*, the plaintiff sent a FOIA request to the defendant, Winnebago County State’s Attorney, asking for records relating to a criminal case. *Williams*, 2021 IL App (2d) 190971, ¶ 4. The defendant initially claimed an exemption, but later supplied the records. *Id.* The plaintiff then filed a petition for attorney fees and civil penalties. *Id.* ¶ 8. The circuit court denied the request for civil penalties, finding that the defendant did not act in bad faith in its response to the FOIA request. *Id.* ¶ 9.

¶ 28 On appeal, the Second District held that a “‘willful and intentional’ failure to comply with the FOIA is not sanctionable unless that failure was itself in bad faith.” *Id.* ¶ 14. The court “read the phrase ‘willfully and intentionally’ together with ‘otherwise in bad faith,’ and we [held] that, where a public body willfully, intentionally, and in bad faith failed to comply with the FOIA, the court shall impose a civil penalty.” *Id.* This court further held, using the dictionary definitions of willful, intentional, and bad faith, that section 11(j) required a showing that the public body “not only must have intentionally failed to comply with FOIA but must have done so deliberately, by design, and with a dishonest purpose.” *Id.* ¶ 15. The Second District found that there was nothing in the record to show that the defendant intentionally failed to comply with FOIA or did so deliberately, by design, and with a dishonest purpose, and thus, affirmed the denial of civil penalties. *Id.* ¶ 20.

¶ 29 In *Thomas*, the plaintiff, who was convicted of first degree murder, requested records and photographs relating to the autopsy of the murder victim. *Thomas*, 2023 IL App (1st) 211656, ¶ 3. The defendant County of Cook originally claimed an exemption under section 7(1)(c) of FOIA and the plaintiff filed suit. After summary judgment, the circuit court ordered the County to produce the records. *Id.* ¶¶ 4, 10. The circuit court rejected the plaintiff’s claim for civil penalties, finding “the record was devoid of any evidence of willful or intentional conduct by Defendant *** or that Defendant otherwise acted in bad faith in withholding the” autopsy photos. *Id.* ¶ 10. On appeal,

this court relied on *Williams*'s interpretation of section 11(j), and found that the record did not support the plaintiff's assertion that the County's objection to releasing the photographs was motivated by bad faith. *Id.* ¶¶ 15, 21. See also *Edgar Cnty. Watchdogs v. Joliet Twp.*, 2023 IL App (3d) 210520, ¶ 31.

¶ 30 In the present case, the circuit court relied on *Williams* in finding that NBC failed to show that CPD acted "with a dishonest purpose" in denying the FOIA request. See *Williams*, 2021 IL App (2d) 190971, ¶ 15. After the circuit court's order, and after this case was fully briefed, this court issued two decisions on this issue which depart from the reasoning of *Williams* and *Thomas: Tobias v. City of Chicago Office of the Mayor*, 2026 IL App (1st) 241435-U, and *Lucy Parsons Labs v. Chicago Police Department*, 2026 IL App (1st) 250205. After *Tobias* and *Lucy Parsons Labs* were released, NBC filed separate motions to cite each case as supplemental authority, and CPD filed an objection to each motion. We took NBC's motions with the case, and after considering the motions and CPD's objections, we now grant the motions.

¶ 31 In *Tobias*, the plaintiff sought certain text messages from Chicago Mayor Brandon Johnson and his chief of staff. *Tobias*, 2026 IL App (1st) 241435-U, ¶ 3. The Mayor's Office initially requested multiple extensions, but ultimately, did not release the requested records. *Id.* ¶¶ 4-5. After the plaintiff filed suit, the Mayor's Office asserted multiple exemptions in section 7 of FOIA. *Id.* ¶ 7. The circuit court ultimately granted the Mayor's Office's motion for summary judgment, finding that the Mayor's Office produced some responsive records and any delay in producing records was not a deliberate, dishonest attempt to violate FOIA. *Id.* ¶¶ 13-14.

¶ 32 On appeal, this court interpreted section 11(j) and held that "to warrant civil penalties, the City's failure to comply with FOIA had to be done deliberately and by intention/design or the City had to in some different way act dishonestly or fail to fulfill its statutory duty." *Id.* ¶ 49 (emphasis

in original.) This court acknowledged that this interpretation departed from the holdings of *Williams* and *Thomas*, but observed that *Williams* “declin[ed] to honor the disjunctive, ‘or’” in section 11(j). *Id.* This court ultimately held that there was an issue of fact as to whether the City acted in bad faith, if not intentionally and willfully, and remanded the case for the parties to conduct discovery and the court to hold an evidentiary hearing. *Id.* ¶¶ 60-65.

¶ 33 In *Lucy Parsons Labs*, the plaintiff requested email communications from one person at CPD containing a specific phrase over an 11-month period. *Lucy Parsons Labs*, 2026 IL App (1st) 250205, ¶ 1. After CPD failed to produce responsive records or claim any FOIA exemptions, the plaintiff filed suit. The circuit court later entered an agreed order compelling CPD to produce the records. *Id.* Plaintiff then sought civil penalties. *Id.* After an evidentiary hearing, the circuit court held that CPD willfully and intentionally violated FOIA, but did not find that CPD acted in bad faith or with a dishonest purpose. *Id.* ¶ 25. As in this case, the plaintiff claimed that *Williams* and *Thomas* were wrongly decided, but the circuit court found that it was bound by those cases. *Id.*

¶ 34 On appeal, this court addressed the meaning of the phrase “or otherwise acted in bad faith” in a determination that a public body willfully and intentionally failed to comply with FOIA. *Id.* ¶ 37. The court explained that the parties agreed “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.” *Id.* ¶ 37 (citations omitted.).

¶ 35 The *Lucy Parsons Labs* court held that “[i]n 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.’” *Id.* ¶ 37 (citing *Williams*, 2021 IL App (2d) 190971, ¶ 14). This court observed that, “[i]n 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.” *Id.* ¶ 37. The court explained that the “dishonest purpose” standard also originated in *Williams*, but ultimately rejected it, finding that definition to be “unduly narrow” in a way that excluded other ways to show bad faith that did not include a dishonest purpose. *Id.* ¶¶ 38-39. The court acknowledged that subsequent appellate court cases followed *Williams*’s interpretation of section 11(j), but held that *Tobais*’s interpretation was “more compelling than the one provided in *Williams*” and thus adopted it, holding 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.” *Id.* ¶¶ 39-40.

¶ 36 The *Lucy Parsons Labs* court concluded that this framework honored “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.” *Id.* ¶ 40. See also *Rock River Times v. Rockford Public School Dist. 205*, 2012 IL App (2d) 110879, ¶ 49 (not imposing the conjunctive “and” in its articulation of the section 11(j) standard and holding “[o]nce 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.”). The court concluded that the circuit court’s findings that CPD willfully and intentionally failed to comply with FOIA

warranted the imposition of civil penalties, and remanded to the circuit court for a determination of an appropriate penalty. *Lucy Parsons Labs*, 2026 IL App (1st) 250205, ¶¶ 46, 55.

¶ 37 *Tobias* and *Lucy Parsons Labs* both departed from *Williams*'s conclusion that section 11(j) requires a showing that a public body acted willfully, intentionally, *and* in bad faith, and that the public body acted "deliberately, by design, and with a dishonest purpose." *Williams*, 2021 IL App (2d) 190971, ¶ 15. We agree with this court's decisions in *Tobias* and *Lucy Parsons Labs* that section 11(j) does not require separate showings that the public body both "willfully and intentionally" violated FOIA *and* did so "in bad faith," or with a "dishonest purpose." This analysis is true to the language of section 11(j), which allows for the imposition of civil penalties when "a public body willfully and intentionally failed to comply with this Act, or otherwise acted in bad faith." 5 ILCS 140/11(j) (West 2024). We agree with *Tobias* and *Lucy Parsons Labs* that this court's decision in *Williams* "failed to honor the disjunctive 'or'" in section 11(j), and in doing so created a more demanding standard for the imposition of civil penalties than contemplated by the text of the statute. *Tobias*, 2026 IL App (1st) 241435-U, ¶ 49; *Lucy Parsons Labs*, 2026 IL App (1st) 250205, ¶ 37. Thus, we decline to follow *Williams* or *Thomas*.

¶ 38 CPD argues that *Williams*, *Thomas*, and subsequent cases following those decisions correctly interpreted section 11(j). It argues that in *Lacey v. Village of Palatine*, 232 Ill. 2d 349, 363 (2009), our supreme court interpreted the phrase "or otherwise" in a way that supports the holding of *Williams*. We disagree. In *Lacey*, the supreme court interpreted a provision of the Domestic Violence Act, which provided that "[a]ny act of omission or commission by any law enforcement officer acting in good faith in rendering emergency assistance or otherwise enforcing this Act" was immune from liability unless the act was the "result of willful or wanton misconduct." *Id.* at 360-61; 750 ILCS 60/305 (West 2002). Our supreme court interpreted the phrase "otherwise enforcing"

and observed that “otherwise” meant “different” or “in different circumstance: under other conditions.” *Id.* at 363 (quoting Webster’s Third New International Dictionary 1598 (2002)). The court concluded that the provision required that the officer be “enforcing the Act” at all relevant times, and that the preceding term “rendering emergency assistance” was just one such example. *Id.* at 361-63. CPD argues that, just as “enforcing the Act” is a requirement for limited immunity in the Domestic Violence Act, acting in “bad faith” is a requirement for civil penalties under FOIA.

¶ 39 We find our interpretation of section 11(j) is consistent with the reasoning of *Lacey*. The provision at issue in *Lacey* involved a provision of the Domestic Violence Act that provided for limited immunity for law enforcement officers performing functions enforcing that Act. It follows that such immunity only applies when the officer is enforcing the Domestic Violence Act, rather than when he is performing any other duties. Additionally, as pointed out by CPD, the “otherwise” clause at issue in *Lacey* is preceded by examples of conduct that could be considered “enforcing the Act,” such as “providing emergency assistance.” In this case, section 11(j) lists an example of conduct that is “otherwise in bad faith” that warrants the imposition of civil penalties: a willful or intentional violation of FOIA. 5 ILCS 140/11(j) (West 2024). This suggests that a willful or intentional violation of FOIA is one of multiple ways a plaintiff can show that a public body acted in bad faith such that civil penalties are warranted. See *Lucy Parsons Labs*, 2026 IL App (1st) 250205, ¶ 37. We reject CPD’s argument.

¶ 40 CPD next argues that the federal “rule of lenity,” a doctrine, CPD argues, where ambiguous statutes that impose a penalty are construed strictly against the imposition of penalties, should apply to interpret section 11(j) of FOIA in a way that limits the availability of civil penalties. See, e.g., *Bittner v. United States*, 598 U.S. 85, 101 (2023). However, as this court held in *Lucy Parsons Labs*, application of that doctrine here would improperly “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 FOIA [citation] and the 2010 addition of language of section 11(j) superfluous.” *Lucy Parsons Labs*, 2026 IL App (1st) 250205, ¶ 48. Further, courts apply the rule of lenity only in cases of ambiguity and here, CPD concedes that section 11(j) is not ambiguous. See *id.* Given those considerations, we reject CPD’s argument. See *id.* ¶¶ 48-50 (rejecting the same argument).

¶ 41 Based on our interpretation of section 11(j) of FOIA, the circuit court’s factual findings supported the imposition of civil penalties. The circuit court found that CPD’s conduct was “deliberate and by design,” but that CPD did not act with “a dishonest purpose” as required by *Williams*, and therefore, civil penalties were not warranted. As the circuit court’s use of the phrase “deliberate and by design” was drawn from *Williams*’s discussion of the definitions of “willful” and “intentional,” we presume that the circuit court used “deliberate and by design” as synonymous with “willfully and intentionally,” an interpretation we reject. See *Williams*, 2021 IL App (2d) 190971, ¶ 15. We hold that the circuit court’s finding that CPD’s violation of FOIA was “deliberate and by design” was sufficient to impose civil penalties under section 11(j), and therefore, we reverse the circuit court’s order denying the claim for civil penalties and remand for a determination of an appropriate civil penalty. *Lucy Parsons Labs*, 2026 IL App (1st) 250205, ¶ 55; *Tobias*, 2026 IL App (1st) 241435-U, ¶ 49.

¶ 42 As we find that the circuit court’s factual findings were sufficient to support the imposition of civil penalties, we need not address NBC’s alternative argument that the evidence supported a finding that CPD acted with “a dishonest purpose” under *Williams*. We likewise need not address CPD’s argument that the record does not support a finding of bad faith because such an argument relies on *Williams*’s erroneous interpretation of section 11(j).

¶ 43 For the foregoing reasons, the circuit court's denial of civil penalties is reversed and the case is remanded for the circuit court to consider an appropriate penalty.

¶ 44 Reversed and remanded.