

No. 128275

IN THE
SUPREME COURT OF ILLINOIS

SANDRA HART,	)	On Appeal from the Appellate Court of
	)	Illinois, Fifth Judicial District, No. 5-19-
Plaintiff-Appellee,	)	0258,
)	
v.	)	There Heard on Appeal from the Circuit
	)	Court of the Third Judicial Circuit,
ILLINOIS STATE POLICE,	)	Madison County, Illinois, No. 18 MR
	)	611,
Defendant-Appellant.)	
	)	The Honorable
	)	DAVID W. DUGAN,
	)	Judge Presiding.

KENNETH L. BURGESS, SR.,	)	On Appeal from the Appellate Court of
	)	Illinois, Fifth Judicial District, No. 5-20-
Plaintiff-Appellee,	)	0421,
)	
v.	)	There Heard on Appeal from the Circuit
	)	Court of the Third Judicial Circuit,
ILLINOIS STATE POLICE,	)	Madison County, Illinois, No. 20 MR
	)	608,
Defendant-Appellant.)	
	)	The Honorable
)	CHRISTOPHER P. THRELKELD,
)	Judge Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ORAL ARGUMENT REQUESTED

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NATURE OF THE ACTION

Sandra Hart and Kenneth Burgess each submitted a request to the Illinois State Police (“ISP”) under the Illinois Freedom of Information Act (“FOIA”), seeking production of their applications for Firearms Owner’s Identification (“FOID”) cards and their denial or revocation letters from ISP. ISP denied the requests, citing section 7.5(v) of FOIA, 5 ILCS 140/7.5(v) (2020), which prohibits releasing the names and information of individuals who have applied for FOID cards. For Burgess’s request, ISP also argued that it was bound by a permanent injunction entered by a circuit court in another case prohibiting the release of FOID card information.

Hart and Burgess each filed FOIA actions in the circuit court, and their subsequent motions for summary judgment were granted on the ground that, in the circuit courts’ view, section 7.5(v) contains an unwritten exception to its blanket prohibition on disclosure. ISP appealed both judgments.

The appellate court consolidated the appeals and affirmed the circuit court’s orders, holding that section 7.5(v) of FOIA does not apply if a person seeks his or her own information, and that the permanent injunction did not preclude ISP from releasing the requested documents.

ISP petitioned for leave to appeal in the consolidated cases, and this Court granted the petition.

ISSUES PRESENTED FOR REVIEW

1. Whether section 7.5(v) of FOIA, which by its plain language prohibits public bodies like ISP from releasing the names and information of individuals who have applied for FOID cards, contains an unwritten exception that requires disclosure of an individual's own FOID card information in response to a FOIA request.

2. Whether a permanent injunction entered by the circuit court in a different case that prohibits ISP from releasing FOID card information to the public takes precedence over any disclosure of FOID card information required by FOIA.

JURISDICTION

The Illinois Appellate Court, Fifth Judicial District, issued its decision affirming the circuit courts' judgments in this case on February 18, 2022. A1. ISP sought and received extensions of time to file a petition for leave to appeal by June 3, 2022. This Court granted ISP's petition, and thus has jurisdiction over this appeal under Illinois Supreme Court Rule 315.

STATUTES INVOLVED

Section 140/7.5 of FOIA provides, in relevant part:

Statutory exemptions. [T]he following shall be exempt from inspection and copying:

Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owner's Identification Act, or applied for or received concealed carry licenses under the Firearm Concealed Carry Act, unless otherwise authorized by the Firearm Concealed Carry Act; and databases under the Firearm Concealed Carry Act, records of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act.

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

Section 140/7(1)(b) of FOIA provides, in relevant part:

[T]he following shall be exempt from inspection and copying:

(b) Private information, unless disclosure is required by another provision of this Act, a State or federal law or a court order.

5 ILCS 140/7(1)(b) (2020).

Section 140/2(c-5) of FOIA provides:

"Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone number, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

5 ILCS 140/2(c-5) (2020).

Section 140/7(1)(c) provides, in relevant part:

[T]he following shall be exempt from inspection and copying:

Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information.

“Unwarranted invasion of personal privacy” means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information.

5 ILCS 140/7(1)(c) (2020).

STATEMENT OF FACTS

The Enactment of Section 7.5(v) of FOIA

In spring 2011, the Associated Press submitted a FOIA request to ISP seeking the names of FOID card holders and the expiration dates of their cards. *See* <https://www.shawlocal.com/2011/03/01/atty-general-ill-should-release-foid-card-list/arkzad8> (last visited Jan. 6, 2023). ISP denied the FOIA request, and based on a request for review filed by the Associated Press, the Illinois Attorney General issued a nonbinding opinion concluding that the names of FOID card holders and the expiration dates of their cards were subject to disclosure under FOIA. Ill. Att’y Gen. PAC Req. Rev. Ltr. 10313 (Mar. 1, 2011).

In May 2011, the Illinois General Assembly responded by enacting section 7.5(v) of FOIA, which provides that the following is exempt from disclosure:

Names and information of people who have applied for or received Firearm Owner’s Identification Cards under the Firearm Owner’s Identification Act, or applied for or received concealed carry licenses under the Firearm Concealed Carry Act, unless otherwise authorized by the Firearm Concealed Carry Act; and databases under the Firearm Concealed Carry Act, records of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act.

5 ILCS 140/7.5(v) (2020). The sponsor of the bill that became this law noted

concern about potential criminal misuse of FOID card information were it to become public. No. 5-19-0258 C54-55.¹

Hart's FOIA Request

In August 2018, Hart, through her attorney, filed a written request with ISP for documents under FOIA. No. 5-19-0258 C9. Hart sought two types of documents: (1) ones related to her own FOID card, including “any and all applications for same, and any and all documentation related to any legal disabilities that have or may cause her to be ineligible for a FOID card”; and (2) “whatever documents [ISP had] showing the processing time for FOID appeals.” *Id.*

ISP denied Hart's FOIA request. No. 5-19-0258 C11. In denying the request, ISP's FOIA officer explained that section 7.5(v) of FOIA prohibited the release of the names and information of individuals who have applied for or received a FOID card or a concealed carry license. *Id.* The FOIA officer further explained that ISP did not maintain documents showing the processing time for FOID appeals, and that it was not required to create records responsive to the second part of Hart's request. *Id.*

Hart's Circuit Court Proceedings

Hart then filed a two-count complaint in the circuit court under FOIA.

¹ There are two records on appeal in this consolidated appeal. Hart's record is cited as “No. 5-19-0258 C__” and Burgess's record is cited as “No. 5-20-0421 C__.”

No. 5-19-0258 C7-8. In count I, Hart sought production from ISP of her “own records” related to her FOID card application. No. 5-19-0258 C7. She later withdrew the second count of her complaint seeking the processing time for FOID appeals, No. 5-19-0258 C65, and that request is not at issue before this Court.

ISP filed a motion to dismiss the action based on section 2-619(a)(9) of the Code of Civil Procedure, 735 ILCS 5/2-619(a)(9) (2020). No. 5-19-0258 C27. In its supporting memorandum, ISP explained that count I of Hart’s complaint was barred by affirmative matter; specifically, her request was exempt from disclosure under section 7.5(v) of FOIA because she sought the name and information of a person who applied for or received a FOID card. No. 5-19-0258 C35. ISP pointed out that the plain language of section 7.5(v) made no exception for an individual’s own FOID card documents. No. 5-19-0258 C36-39.

Hart filed a response to ISP’s motion to dismiss combined with her own motion for summary judgment. No. 5-19-0258 C50. She argued that the exemption in section 7.5(v) of FOIA did not apply to an individual’s request for his or her own FOID card documents. No. 5-19-0258 C50-51. As support, she cited to two pages of the Senate transcript from the 97th Illinois General Assembly, which discussed keeping FOID application information private but nowhere mentioned such an unwritten exemption. No. 5-19-0258 C54-55.

The circuit court thereafter entered an order denying ISP's motion to dismiss and granting Hart's motion for summary judgment as to count I. No. 5-19-0258 C86-92. The circuit court reasoned that the use in section 7.5(v) of FOIA of the plural "names" and "people" suggested that it did not apply to a FOID card applicant seeking his or her own documents. No. 5-19-0258 C90-91. Accordingly, the circuit court ordered ISP to produce Hart's application for a FOID card and its letter denying her application. No. 5-19-0258 C91-92. ISP appealed. No. 5-19-0258 C93-94.

Subsequently, Hart moved for attorney fees and costs incurred in litigating the FOIA action, which the circuit court granted. No. 5-19-0258 Sup C14, C61. ISP filed an amended notice of appeal from the circuit court's orders both granting summary judgment and awarding attorney fees and costs under FOIA. No. 5-19-0258 Sup C63-64. The circuit court stayed its orders pending resolution of ISP's appeal. No. 5-19-0258 Sup C61.

Burgess's FOIA Request

In 2020, Burgess filed a request with ISP for documents under FOIA. No. 5-20-0421 C12. Specifically, he sought his "file related to" his FOID card application, including "any and all" letters to him concerning its denial. *Id.* In addition to his name and birth date, Burgess provided his "application number . . . 00978067," and stated that "somehow number 35160419 applies, so that you can find my file." *Id.*

As it had done with Hart, ISP denied Burgess's request, citing section 7.5(v) of FOIA. No. 5-20-0421 C58-59.

Burgess's Circuit Court Proceedings

Burgess then filed a complaint in the circuit court for production of the requested documents under FOIA. No. 5-20-0421 C7-8. In the complaint, he noted that the circuit court had issued an order granting relief in Hart's case; he attached the circuit court's order in *Hart* to his complaint and stated that her case was "identical" to his. No. 5-20-0421 C7. As relief, Burgess sought the production of the requested documents, along with attorney fees and costs incurred in litigating the FOIA action. *Id.*

Subsequently, Burgess moved for summary judgment, relying on the circuit court's order in *Hart*. No. 5-20-0421 C34. ISP filed a cross-motion for summary judgment and supporting memorandum. No. 5-20-0421 C43, C46. In its motion, ISP again explained that the documents sought by Burgess were exempt from disclosure under section 7.5(v) of FOIA, as they included the name and information of an individual who applied for or received a FOID card. No. 5-20-0421 C48-51. ISP pointed out that section 7.5(v)'s plain language made no exception for an individual's own FOID card records. No. 5-20-0421 C51-53. Acknowledging that the circuit court in *Hart* read the exemption to exclude individuals who sought their own records, ISP explained that the General Assembly did create some statutory exceptions to FOIA that

were based on who was requesting documents, but did not do so in section 7.5(v). No. 5-20-0421 C52-53.

ISP later filed an amended summary judgment motion and supporting memorandum. No. 5-20-0421 C94, C97. Besides reiterating the arguments in its initial motion, ISP noted that it was bound by a permanent injunction entered by the circuit court in *Illinois State Rifle Association v. Department of State Police*, No. 11 CH 151. No. 5-20-0421 C101. That injunction prohibits ISP from releasing documents that would identify any person who has applied for a FOID card, who has been issued or denied a FOID card, or whose FOID card has expired or been revoked. 5-20-0421 C120-21. Citing this Court's decision in *In re Appointment of Special Prosecutor*, 2019 IL 122949, ISP explained that a public body does not improperly withhold documents under FOIA if that body is barred from disclosing those documents under an existing court order. *Id.*

The circuit court entered an order granting Burgess's motion for summary judgment for "the reasons set forth in [the circuit court's] order in *Hart v. ISP*" and denying ISP's cross-motion. No. 5-20-0421 C122

Burgess thereafter petitioned for attorney fees and costs under FOIA. No. 5-20-0421 C123. The circuit court granted that petition, although it later reduced the amount awarded after considering ISP's response to the petition. No. 5-20-0421 C145, C165.

ISP appealed. No. 5-20-0421 C186. The circuit court granted ISP's motion to stay its orders pending appeal. No. 5-20-0421 C165, C167, C184.

Appellate Court Proceedings

The appellate court consolidated the appeals in *Hart* and *Burgess*, and ultimately affirmed the circuit courts' judgments. *Hart v. Ill. State Police*, 2022 IL App (5th) 190258, ¶¶ 9, 34 (A19, 15). It held that 7.5(v) of FOIA does not prohibit the release of "any specific document," and that, in using the plural "names" and "people," the legislature provided an exception to section 7.5(v) for individuals seeking their own FOID card documents. *Id.* at ¶¶ 25, 32 (A11-12, 15). The appellate court further declared that section 7(1)(c) of FOIA, 5 ILCS 140/7(1)(c) (2020), which prohibits public bodies from releasing "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information," meant that FOID card applicants could consent to the release of their own documents and that, by submitting a FOIA request, they provided the necessary consent. *Id.*

The appellate court also declared that an individual's written FOIA request, "by necessity to identify the application and denial letter sought, should provide ISP with sufficient information to demonstrate that the requester was seeking his/her own information." *Id.* at ¶ 29 (A13). Finally, the court ruled, the permanent injunction did not bar ISP from releasing the

requested FOID card information, as that injunction was “entered pursuant to FOIA.” *Id.* at ¶ 32 (A15).

This Court allowed ISP’s petition for leave to appeal.

ARGUMENT

- I. Without exception, the plain language of FOIA exempts the names and other information of individuals who have applied for FOID cards from public disclosure.
- A. This Court reviews issues of law, including questions of statutory construction, *de novo*.

The appellate court in this case affirmed the judgments of the circuit courts, which granted the summary judgment motions of Hart and Burgess and denied the motions to dismiss and for summary judgment of ISP. *See Hart*, 2022 IL App (5th) 190258, ¶¶ 9, 34 (A9, 15); No. 5-20-0421 C122, C145, C165; No. 5-19-0258 C86-92, Sup C14, 61. This Court reviews rulings on such motions *de novo*. *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). On *de novo* review, this Court “give[s] no deference to the determinations by the lower courts.” *Stone St. Partners, LLC v. City of Chi. Dep’t of Admin. Hearings*, 2017 IL 117720, ¶ 4.

Moreover, pure questions of law, such as questions relating to the proper interpretation of FOIA, like those presented here, are subject to *de novo* review. *Sun-Times*, 2022 IL 127519, ¶ 24. In construing a statute, the primary goal is to ascertain and effectuate the legislature’s intent. *Id.* at ¶ 26. Legislative intent is best evidenced by the language used in the statute, and if the statute is clear and without ambiguity, it must be given effect as written. *Id.* And a statute’s terms must be given their ordinary meaning. *Id.* Only if a

statute's language is ambiguous should this Court resort to further aids of construction, such as examining legislative history. *Roberts v. Alexandria Transp., Inc.*, 2021 IL 126249, ¶ 44.

B. The language of FOIA at issue here is plain and unambiguous.

In this case, Hart and Burgess 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. ISP denied both requests based on section 7.5(v) of FOIA (and, with respect to Burgess's request, the existence of an injunction entered in another case that prohibited ISP from releasing these documents). *See* No. 5-19-0258 C11; No. 5-20-0421 C165, C167, C184. As explained below, ISP's decisions to deny these FOIA requests were proper based on the plain language of FOIA.

The General Assembly has declared FOIA's public policy to be that "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.*

At the same time, the General Assembly, recognizing that some records or information in a public body's possession are not public and should not be disclosed, has codified exemptions within the statute itself. *See, e.g.*, 5 ILCS 140/7, 140/7.5(v) (2020); *Sun-Times*, 2022 IL 127519, ¶ 29 (“However, a public body may withhold information that is exempt from disclosure.”).

As relevant here, section 7.5(v) of FOIA creates a blanket statutory exemption against public disclosure of FOID card information. Specifically, section 7.5(v) states that the following shall be exempt from disclosure:

“Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owner's Identification Act, or applied for or received concealed carry licenses under the Firearm Concealed Carry Act, unless otherwise authorized by the Firearm Concealed Carry Act[.]”
5 ILCS 140/7.5(v) (2020). Section 7.5(v)'s plain language thus mandates that the names and information of individuals who have applied for or received FOID cards are exempt from disclosure.

And the statute's language includes no exception for a person seeking his or her own FOID card information. Indeed, FOIA's language exempts *all* names and information of those who have applied for or received FOID cards. “Information” is not expressly defined in FOIA. But in defining a term that is not defined in a statute, the Court may look to the dictionary definition of a

term. *In re Marriage of Zamudio & Ochoa*, 2019 IL 124676, ¶ 19. The dictionary defines “information” as “the communication or reception of knowledge or intelligence; knowledge obtained from investigation, study, or instruction; intelligence, news; facts, data.” <https://www.merriam-webster.com/dictionary/information> (last visited Jan. 6, 2023). Under this definition, which provides the ordinary meaning of the term “information,” documents relating to plaintiffs’ FOID card applications is “information” of people who have applied for or received FOID cards. As such, those documents plainly were exempt under section 7.5(v) of FOIA.

Section 7.5(v) of FOIA is thus clear and unambiguous. For that reason, its terms should be given their plain and ordinary meaning, without the need to resort to other aids of construction, including legislative history. After all, “[t]he purpose of” moving beyond a statute’s clear terms to look to “legislative history is to resolve ambiguities, not to create them.” *People v. Hill*, 333 Ill. App. 3d 783, 791 (2d Dist. 2002).

But even if section 7.5(v)’s terms were not plain and unambiguous, the legislative history confirms ISP’s interpretation. As noted, in 2011, the Associated Press submitted a FOIA request to ISP for the names of FOID card holders and the cards’ expiration dates. *See* <https://www.shawlocal.com/2011/03/01/atty-general-ill-should-release-foid-card-list/arkzad8>; <https://www.nbcchicago.com/news/local/madigan-wants-gun-owners-names-public/1920899/> (last visited Jan. 6, 2023). This Court may take judicial notice

of this fact. *See People v. Henderson*, 171 Ill. 2d 124, 134 (1996) (courts may take judicial notice of commonly known facts); *Hoogasian v. Reg'l Transp. Auth.*, 58 Ill. 2d 117, 126 (1974) (news-media coverage proper subject of judicial notice). ISP denied the request and on a request for review by the Associated Press, the Attorney General issued a nonbinding opinion ruling that the names and expiration dates were subject to disclosure under the version of FOIA in effect at the time. Ill. Att'y Gen. PAC Req. Rev. Ltr. 10313 (Mar. 1, 2011).

Within five weeks, the General Assembly drafted section 7.5(v), which it voted to enact in May 2011 and which became effective two months later, 2011 Ill. Leg. Serv. P.A. 97-80 (H.B. 3500) (West), exempting the names and information of individuals who have applied for or received FOID cards from disclosure. By amending FOIA in this way on the heels of the Attorney General's opinion, the General Assembly clearly conveyed its intent to change FOIA insofar as the prior version of FOIA authorized disclosure of this information. *Cf. J.S.A. v. M.H.*, 224 Ill. 2d 182, 207-08 (2007) (considering that statute was amended "only 17 days after this court's decision in *Doe*" in interpreting its current meaning). ISP has found nothing in the drafting history of section 7.5(v), and the appellate court did not identify anything from that history, to suggest that the General Assembly intended for section 7.5(v) to be anything other than a complete prohibition on releasing FOID card information.

Whether based on the plain language of section 7.5(v) of FOIA, or on the provision's legislative history, this Court should conclude that ISP properly denied the FOIA requests of Hart and Burgess, both of whom sought information from ISP about people who had applied for or received FOID cards.

C. FOIA's plain language does not supply an unwritten exception that permits a FOID card applicant or cardholder to obtain his or her own information through a FOIA request.

Notwithstanding the plain language of section 7.5(v) of FOIA, the appellate court read an unwritten exception into the exemption, concluding that section 7.5(v) does not prohibit the release of an individual's own FOID card information. *Hart*, 2022 IL App (5th) 190258, ¶¶ 25, 32 (A11-12, 15). The appellate court's strained reading of FOIA cannot stand, especially on *de novo* review.

When construing a statute, a court is not at liberty to depart from its plain language. *See Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990). Thus, a court may not, under the guise of statutory construction, “supply omissions, remedy defects, annex new provisions, substitute different provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of language employed in the statute.” *King v. First Cap. Fin. Servs. Corp.*, 215 Ill. 2d 1, 26 (2005). Nor may a court “‘correct’ a perceived error or oversight by the legislature.” *People v. Grant*, 2022 IL 126824, ¶ 25. Put simply, a court cannot “read words into a statute”

that are not there. *Kozak v. Ret. Bd. of Firemen's Annuity & Benefit Fund of Chi.*, 95 Ill. 2d 211, 216 (1983). Here, though, the appellate court did exactly that: it read into the plain words of section 7.5(v) an exception to the exemption for individuals seeking their own FOID card information, thus impermissibly “legislating from the bench.” *People v. Brockman*, 143 Ill. 2d 351, 369 (1991).

In the appellate court’s view, section 7.5(v) of FOIA allows an individual to request his or her own FOID card information because the General Assembly used the plural version of two nouns, “names” and “people.” *Hart*, 2022 IL App (5th) 190258, ¶ 21. The appellate court’s reading, however, fails to account for the Statute on Statutes. The General Assembly has provided in section 1.03 of the Statute on Statutes, which predates FOIA, that “words importing the plural number may include the singular.” 5 ILCS 70/1.03 (2020). The legislature was presumably aware of its own rules of statutory construction when it enacted section 7.5(v) of FOIA.

The appellate court’s interpretation also overlooks section 7(1)(b) of FOIA, which makes “private information” exempt from disclosure. 5 ILCS 140/7(1)(b) (2020). Section 2(c-5) of FOIA defines “private information” as

unique identifiers, including a person’s social security number, driver’s license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as

otherwise provided by law or when compiled without possibility of attribution to any person.

5 ILCS 140/2(c-5) (2020). An individual's FOID card application and response letter contain many of these unique identifiers, including the applicant's home address, social security number, driver's license number, e-mail address, and personal telephone number. The application for a FOID card illustrates this point, and a copy of a blank application is in the appendix to this brief, *see* A36. And the application is a proper subject of judicial notice by this Court, as it is a government form. *See People v. Johnson*, 2021 IL 125738, ¶ 54 (government documents may be judicially noticed).²

In addition to providing these unique identifiers designated as private by section 7(1)(b) of FOIA, an applicant must disclose any history of mental illness, admission to a mental health facility, addiction to narcotics, or involvement in juvenile delinquency proceedings. A36. This information is not only private under section 7(1)(b), but it also is protected from disclosure by Illinois, and in some instances federal, law. *See, e.g.*, 740 ILCS 110/1 *et seq.* (2020) (providing for confidentiality of mental health information); 705 ILCS 405/1-7 (2020) (same with respect to juvenile law enforcement records);

² As of 2015, applicants seeking a FOID card may no longer use a paper form, but instead must access a portal to create a password-protected account and then fill out an application online. <https://isp.illinois.gov/Foid/AppInstructions> (last visited Jan. 6, 2023). The online application asks an applicant to provide the same information as the paper application, which the FOID Act requires ISP to consider before issuing or denying a card. *See* 430 ILCS 65/4 (2020).

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3846317/> (explaining that HIPAA and 42 C.F.R. §§ 2.1 *et seq.* require that information about addiction be kept confidential) (last visited Jan. 6, 2023).

When its plain meaning is honored, section 7.5(v), read both alone and in conjunction with section 7(1)(b), does not contain an exception allowing FOID card applicants or cardholders to obtain their own information through a FOIA request. The appellate court’s reading essentially inserted the phrase “unless the individual is requesting their own documents” into the statute, despite the fact that its plain language assigns no significance to the identity of the person seeking FOID card information via FOIA. *See* 5 ILCS 140/7.5(v) (2020).

And the statute’s silence as to a requestor’s identity is meaningful because, under FOIA, there is no process for a public body to verify whether the person who submits a written FOIA request is actually the individual whose information is being sought. Regarding this point, the appellate court postulated that it would be simple for a public body to verify the requestor’s identity, *see Hart*, 2022 IL App (5th) 190258, ¶ 29 (A13), but that is an absurd and unsupported view, which this Court should avoid, *see Christopher B. Burke Eng’g Ltd. v. Heritage Bank of Cent. Ill.*, 2015 IL 118955, ¶ 17 (court should avoid “interpreting statutes in a manner that would create absurd results”).

Indeed, section 3(d) of FOIA provides a tight deadline of only five days for a public body to respond to a request for documents. It states, in relevant part:

Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. Denial shall be in writing as provided in Section 9 of this Act. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request.

5 ILCS 140/3(d) (2020). Although a public body may extend the time to respond to a FOIA request, it may do so only for certain enumerated reasons, none of which involve additional time to verify whether the person who asked for the records is the person to whom the records pertain. *See* 5 ILCS 140/3(e) (2020). Failure to respond within the deadline is considered a denial and the requestor may file an action in the circuit court for injunctive relief under section 11 of FOIA. 5 ILCS 140/11 (2020). Thus, if ISP were to answer a FOIA request for a person's FOID card information by seeking additional verification to confirm the requester's identity, even within FOIA's initial narrow response deadline, the requester might be able to treat that as a denial of the FOIA request, and thus subject ISP to a court action.

And the General Assembly easily could have carved out an exception to section 7.5(v) of FOIA for requestors seeking information about their own FOID card applications. But it did not do so. Indeed, the legislature plainly

identified an exception for the names and information of people who applied for or received concealed carry licenses under the Firearm Concealed Carry Act, *see* 5 ILCS 140/7.5(v) (2020) (specifically exempting names of and information about concealed carry applicants and licensees “unless otherwise authorized by the Firearm Concealed Carry Act”), but it created no similar exception for FOID card applicants and holders. Under well-established principles of statutory construction, that omission from one section or statute but inclusion in another should be considered legally meaningful. *See People ex rel. Devine v. \$30,700 U.S. Currency*, 199 Ill. 2d 142, 151-52 (2002). Thus, if the General Assembly intended for an exception authorizing FOID card applicants and cardholders to obtain their own FOID card information through FOIA, it could and would have done so expressly.

In fact, FOIA contains several exemptions, the availability of which depends on the requestor’s identity. For example, section 7(e-5) of FOIA exempts from inspection and copying any public records requested by “persons committed” to the Illinois Department of Corrections “if those materials are available” in the library of the facility where the inmate is incarcerated. 5 ILCS 140/7(e-5) (2020). As another example, the Illinois Department of Corrections is exempt from producing to inmates any records pertaining to staff rosters and staffing assignments, even though such records might be available to members of the general public. *See* 5 ILCS 140/7(e-6) (2020). But

again, FOIA's plain language creates no exception allowing FOID card applicants and cardholders to obtain their own FOID card information.

Similarly, when the General Assembly has intended for individuals to be able to inspect and copy their own records, it has included explicit statutory language to that effect, as it did in the Juvenile Court Act. *See* 705 ILCS 405/1-7, 1-8 (2020) (providing that Juvenile Court records are confidential but a juvenile may inspect or copy his or her own records). Again, the omission of similar language from section 7.5(v) of FOIA should be given meaning by this Court.

For these reasons, the appellate court erred in its interpretation of section 7.5(v) of FOIA. The statute's plain language does not allow a person to obtain their own FOID card information, and there is no basis to read such an exception into the Act.

D. The appellate court also erred in reading section 7(1)(c) to allow a FOIA requestor to consent to the disclosure of their own FOID card information.

Although the plain language of section 7.5(v) of FOIA contains no language to this effect, the appellate court read section 7(1)(c) of FOIA, 5 ILCS 140/7(1)(c) (2020), as allowing a FOID card holder to consent to the release of "their own personal information." *Hart*, 2022 IL App (5th) 190258, ¶ 25 (A11-12). That interpretation was erroneous because the information in a FOID card application or denial letter is not "personal information" under section

7(1)(c), but rather “private information” under section 7(1)(b), which contains no consent provision.

As explained *supra* pp. 20-22, under section 7(1)(b) of FOIA, “private information” is exempt from inspection and copying, 5 ILCS 140/7(1)(b) (2020). Section 2(c-5) of FOIA defines “private information” as “unique identifiers” and lists a dozen examples. 5 ILCS 140/2(c-5) (2020). Notably, neither section 7(1)(b) nor section 2(c-5) authorize the disclosure of “private information,” even with consent. The appellate court’s conclusion that individuals may consent to the release of their own FOID card information erroneously conflated “private information” that may not be disclosed under section 7(1)(b) with “personal information contained within *public* records,” to the disclosure of which the subject of that information may consent, 5 ILCS 140/7(1)(c) (2020) (emphasis added). *See Hart*, 2022 IL App (5th) 190258, ¶¶ 25, 32.

Unlike section 7(1)(b), which concerns “unique identifiers” that may never be disclosed, section 7(1)(c) concerns records that are otherwise public but contain potentially embarrassing information, such as witness names in a traffic accident report, *see, e.g., Staske v. City of Champaign*, 183 Ill. App. 3d 1, 4-5 (4th Dist. 1989), or witness statements in a state university’s investigation into sexual misconduct by a coach, *see, e.g., State Journal-Register v. Univ. of Ill. Springfield*, 2013 IL App (4th) 120881, ¶¶ 56, 58. The

appellate court's interpretation of section 7(1)(c) to allow disclosure of information that is private under section 7(1)(b) misread both provisions.

E. Hart and Burgess may obtain the information that they sought from ISP by other means, outside of FOIA.

The appellate court's strained reading of section 7.5(v) of FOIA—to provide for the disclosure of an individual's own FOID card information—not only defies the statute's plain language, but it is an unnecessary means to an end. That is because 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.

For example, the Illinois Department of Employment Security allows individuals who have applied for unemployment benefits to access their own information, such as the history of payments, through the agency's website. *See* <https://ides.illinois.gov/unemployment/insurance.html> (last visited Jan. 6, 2023).³ The Illinois Secretary of State similarly has a process for individuals with driver's licenses to obtain a copy of their own driving records. *See* https://www.ilsos.gov/departments/drivers/drivers_license/purchaseabstract.html (last visited Jan. 6, 2023). And the Illinois Department of Revenue allows taxpayers to request a copy of their own tax returns, if they offer adequate

³³ Information on a government website is subject to judicial notice. *Bd. of Educ. of Richland Sch. Dist. No. 88A v. City of Crest Hill*, 2021 IL 126444, ¶ 5.

proof of identity. <https://tax.illinois.gov/search-results.html?q=il-4506+request&contentType=document> (last visited Jan. 6, 2023).

Like these and other Illinois agencies, ISP has a process that individuals, including Hart and Burgess, may use to obtain their own FOID card information. ISP's homepage has a general "quick link" to FOID card information. *See* <https://isp.illinois.gov/Foid> (last visited Jan. 6, 2023). The tab for the Office of Firearms Safety, <https://isp.illinois.gov/FirearmsSafety>, has a "Contact Us" tab, <https://isp.illinois.gov/FirearmsSafety/ContactUs> (last visited Jan. 6, 2023), directing individuals to an email address that they may use to request and obtain information related to their own FOID card status. The Firearms Safety page also lists the reasons why a FOID application might be rejected or a FOID card revoked. <https://isp.illinois.gov/FirearmsSafety>. At the bottom of that page, the following text appears: "What do I do if I don't understand why my FOID card was revoked or my FOID Application was denied or otherwise cannot find what I need on this webpage?" *Id.* Again, in that instance, the applicant is invited to use the e-mail address in the "Contact Us" tab. There was, therefore, no need for Hart and Burgess to submit a FOIA request to ISP, and, as explained, the plain language of FOIA did not allow them to obtain the information they are seeking under the Act.

II. Additionally, Hart and Burgess’s FOID card information was exempt under FOIA because ISP was bound to follow an injunction prohibiting its disclosure.

ISP’s denial of the FOIA requests by Hart and Burgess for their own FOID card information was correct for the additional reason that, in late 2011, the circuit court in a different case, *Illinois State Rifle Association v. Department of State Police*, No. 11 CH 151, entered a permanent injunction, which remains in place today, that forbids ISP from disclosing this information. Specifically, the injunction prohibits the release of information submitted in relation to an individual’s FOID card application, including information

that identifies or describes a person, including but not limited to an individual’s name, street address, telephone number, electronic mail address, date of birth, physical description, photograph, medical or mental health information, Social Security number, driver’s license number, state identification number, FOID card number, or other similarly unique identifying information.

No. 5-20-0421 C92-93. As reported in the press at the time, the injunction was necessary at least in part because ISP “often” received FOIA requests from inmates seeking to obtain information about the FOID card status of “their victims or specific law enforcement officers.” <https://www.pjstar.com/story/news/2011/12/08/names-foid-cardholders-will-not/42290677007/> (last visited Jan. 6, 2023).

Although under FOIA, the circuit court has jurisdiction “to order the production of any public records improperly withheld from the person seeking

access,” 5 ILCS 140/11(d) (2020), this Court has held that a public body does not improperly withhold documents under FOIA if the public body is barred from releasing them under an existing court order, *see In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 66.

In *In re Special Prosecutor*, the Better Government Association (“BGA”) submitted FOIA requests seeking documents related to a criminal investigation and proceedings before a special grand jury, *id.* at ¶¶ 8-12, even though the criminal court handling the special grand jury had previously entered a protective order prohibiting dissemination of the information contained in the documents, *id.* at ¶ 7. The public bodies denied the FOIA requests, explaining that they were prohibited from disclosing the responsive materials by the criminal court’s order. *Id.* at ¶ 11. After the BGA sued to compel production, this Court confirmed that the documents were not subject to disclosure under FOIA. As the Court explained, “a lawful court order takes precedence over the disclosure requirements of FOIA.” *Id.* at ¶ 66 (citing *GTE Sylvania, Inc. v. Consumers Union of the U.S., Inc.*, 445 U.S. 375 (1980)). That is because when a court enters an injunction, “the injunction must be obeyed, however erroneous it may be, until it is modified or set aside by the court itself or reversed by a higher court.” *Id.* at ¶ 64. In other words, the Court elaborated, “a FOIA lawsuit may not be used to collaterally attack an injunction prohibiting disclosure of records.” *Id.* at ¶ 67. Instead, “the requester must first have the court that issued the injunction modify or vacate

its order barring disclosure,” and, “[i]f the issuing court refuses,” “the FOIA requester may challenge the refusal in a direct appeal.” *Id.*

Here, the appellate court acknowledged this Court’s decision in *In re Special Prosecutor* but 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. But this is not a material distinction. The injunction does not state that it does not apply in circumstances where the parties disagree about whether FOIA requires disclosure of documents otherwise covered by the injunction. Accordingly, if ISP were to produce the documents that plaintiffs requested, that would violate the injunction, exposing ISP to further litigation and, potentially, an award of attorney fees and imposition of sanctions. Yet if ISP obeys the injunction, it risks being found in contempt of the appellate court’s order. Accordingly, even if this court were to agree with the appellate court’s reading of FOIA, ISP should not be required to release the records sought by Hart and Burgess until they have successfully sought to have the circuit court lift its permanent injunction.

* * *

Because Hart and Burgess were not entitled to the information that they sought based on the plain language of FOIA, the appellate court erred in reading into section 7.5(v) of FOIA an unwritten exception to FOIA’s exemption for the names and information of people who have applied for or

obtained FOID cards. And at a minimum, the existence of the permanent injunction prohibiting disclosure of the information should prohibit disclosure until that injunction has been modified or lifted.

CONCLUSION

For these reasons, Defendant-Appellant Illinois State Police asks this Court to reverse the judgment of the appellate court in these consolidated appeals.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) 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 33 pages.

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A P P E N D I X

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NOTICE
Decision filed 02/18/22. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2022 IL App (5th) 190258

NOS. 5-19-0258, 5-20-0421 cons.

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

SANDRA HART,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
)	
v.	)	No. 18-MR-611
)	
THE ILLINOIS STATE POLICE,	)	Honorable
	)	David W. Dugan,
Defendant-Appellant.	)	Judge, presiding.

KENNETH L. BURGESS SR.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
)	
v.	)	No. 20-MR-608
)	
THE ILLINOIS STATE POLICE,	)	Honorable
	)	Christopher P. Threlkeld,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE BOIE delivered the judgment of the court, with opinion. Justices Welch and Wharton concurred in the judgment and opinion.

OPINION

¶ 1 In separate actions filed in the circuit court of Madison County, the plaintiffs, Sandra Hart and Kenneth L. Burgess Sr., filed complaints under the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2018)), seeking the circuit court to compel the defendant, Illinois State Police (ISP), to produce documents related to the plaintiffs’ applications for firearm owners’

identification (FOID) cards pursuant to the Firearm Owners Identification Card Act (FOID Card Act) (430 ILCS 65/0.01 *et seq.* (West 2018)). ISP had denied the plaintiffs' FOIA requests for the production of the documents stating that the documents were exempt from disclosure under section 7.5(v) of FOIA (5 ILCS 140/7.5(v) (West 2018)). Because these matters are of the same nature and involve the same issues on appeal, we consolidate these cases as a matter of judicial economy. *Edwards v. Addison Fire Protection District Firefighters' Pension Fund*, 2013 IL App (2d) 121262, ¶ 41 ("Illinois courts favor consolidation of causes where it can be done as a matter of judicial economy.").

¶ 2 On motions for summary judgment, the circuit court held that ISP failed to carry its burden in demonstrating that section 7.5(v) of FOIA authorizes or directs ISP to withhold from the plaintiffs their own personal applications for a FOID card or the ISP's denial letters¹ sent to the plaintiffs. As such, the circuit court entered summary judgments in favor of the plaintiffs and directed ISP to produce the documents along with awarding the plaintiffs' fees and costs.

¶ 3 ISP now appeals the circuit court's judgments arguing that the circuit court erred in finding that the documents requested by the plaintiffs were not exempt from disclosure under section 7.5(v) of FOIA (5 ILCS 140/7.5(v) (West 2018)). ISP further argues in the Burgess case that the documents were exempt from disclosure because ISP was bound by a permanent injunction that prohibited the disclosure of the documents. For the following reasons, we affirm the circuit court's judgments.

¶ 4

BACKGROUND

¹In the Hart case, the ISP's letter at issue notified Hart of the revocation of her FOID card. In the Burgess case, Burgess's FOIA request sought documents related to "the denial of my application"; however, Burgess's appellee brief indicates the ISP's letter at issue notified Burgess of the revocation of his FOID card. This court will refer to these two letters collectively as the "denial letters."

¶ 5 On August 31, 2018, Hart made a written request through counsel to ISP pursuant to FOIA for “any and all documents related to Ms. Hart’s FOID card, any and all applications for same, and any and all documentation related to any legal disabilities that have or may cause her to be ineligible for a FOID card.”² On May 6, 2020, Burgess made a written request to ISP pursuant to FOIA for “my file related to my Firearm Owners Identification Card application, as well as specifically, any and all letters to me concerning the denial of my application and the reasons therefore.” The plaintiffs’ FOIA requests were denied by ISP. The letters³ issued by ISP denying the plaintiffs’ FOIA requests cited and quoted section 7.5(v) of FOIA (*id.*) as the basis for the denials.

¶ 6 On September 14, 2018, Hart filed a complaint in the circuit court, and on June 23, 2020, Burgess filed a complaint in the circuit court. Both complaints were filed pursuant to FOIA and requested that the circuit court compel ISP to produce the requested documents. In the Hart case, ISP filed a motion to dismiss on November 29, 2018, and Hart filed a response to ISP’s motion to dismiss and a cross-motion for summary judgment on December 10, 2018. The circuit court conducted a hearing and heard arguments on ISP’s motion to dismiss on February 22, 2019. On April 12, 2019, the circuit court entered a written order stating that the case was taken under advisement and directing ISP to file the documents responsive to Hart’s FOIA request under seal within 14 days. ISP complied with the circuit court’s order on May 17, 2019.

¶ 7 On May 24, 2019, the circuit court entered a seven-page written order denying ISP’s motion to dismiss and granting Hart’s motion for summary judgment. The circuit court found that

²Hart’s written FOIA request to ISP also contained a request for “whatever documents you have showing the processing time for FOID appeals.” On February 22, 2019, Hart withdrew that portion of her FOIA request and, as such, it was not an issue in the lower court nor is it an issue on appeal.

³Electronic correspondence from ISP to Hart’s counsel dated September 12, 2018, and correspondence from ISP to Burgess dated May 19, 2020.

“what the legislature intended was to prevent a dissemination to or by third parties of the names and personal information of FOID applicants, and not the release of an applicant’s application or the ISP’s denial of the applicant’s application. A contrary interpretation would create an absurd result.”

¶ 8 The circuit court’s written order of May 24, 2019, further stated that ISP had “failed to carry its burden in showing that 7.5(v) authorizes or directs ISP to withhold from the plaintiff her application for a FOIA card or its letter of denial.” As such, the circuit court directed ISP to produce true and accurate copies of “(1) the plaintiff’s Application for Firearm Owner’s Identification Card; (2) Letter of May 10, 2010 from [ISP] directed to plaintiff, together with the enclosures^[4] thereto” within 30 days. ISP filed a notice appealing the circuit court’s May 24, 2019, order on June 21, 2019.⁵ On March 5, 2020, the circuit court entered judgment in favor of Hart and against ISP and awarded costs and fees to Hart. The judgment also stated that the circuit court’s order of May 24, 2019, directing the disclosure of the documents, remained in effect but was stayed pending the completion of the appellate process.

¶ 9 In the Burgess case, Burgess filed a motion for summary judgment on July 30, 2020. Burgess’s motion for summary judgment attached the circuit court’s order of May 24, 2019, that granted summary judgment in the Hart case. Burgess’s motion for summary judgment stated that he moved for summary judgment on the basis of law as explained in the circuit court’s May 24, 2019, order. ISP filed a cross-motion for summary judgment on August 27, 2020, and an amended cross-motion for summary judgment *instanter* on October 23, 2020. The circuit court held a

⁴The only enclosure to ISP’s letter dated May 10, 2010, was a self-addressed envelope for the return of Hart’s FOID card.

⁵ISP filed a motion to stay and hold in abeyance its appeal pending the supplementation of the circuit court’s disposition of the fees and costs. This court granted by ISP’s motion on September 19, 2019, and this appeal was reinstated by order of this court on March 23, 2020.

hearing and issued a written order on October 23, 2020. The circuit court's written order, in relevant part, stated as follows:

“Argument had on Plaintiff's motion for summary judgment and Defendant's amended cross motion for summary judgment. For the reasons set forth in Judge Dugan's order in *Hart v ISP*, Plaintiff's motion granted, Defendant's motion denied. Defendant to produce the letter and application within 30 days.”

On November 20, 2020, the circuit court entered a written judgment in favor of Burgess and against ISP and awarded cost and fees to Burgess. On December 18, 2020, ISP filed a timely notice of appeal, and as stated above, we have consolidated the Burgess and Hart cases on appeal as a matter of judicial economy.

¶ 10

ANALYSIS

¶ 11 Before proceeding with the analysis, we note that ISP filed a suggestion of death in the Hart case on April 5, 2021. The suggestion of death alleged that a person with the same name, birthdate, and birthplace as Hart had died on April 26, 2020. As such, this court placed the Hart case in abeyance pending further order of the court and directed counsel for Hart to file a substitution of party for the decedent pursuant to section 2-1008(b) of the Code of Civil Procedure (735 ILCS 5/2-1008(b) (West 2020)), on or before July 5, 2021. Counsel for Hart did not contest the suggestion of death and no substitution of party was made within the time allotted or at any time during the pendency of this appeal.

¶ 12 The death of the appellee, however, did not render this matter moot since a judgment for damages had been entered and a judgment survives the death of either party. *Wedig v. Kroger Grocery & Baking Co.*, 278 Ill. App. 378, 381 (1935). Further, based upon the suggestion of death, this court determined that Hart was deceased at the time of the filing of the appellee's brief. Since

no substitution of the party was filed or any authority for a continued attorney-client relationship provided, counsel for Hart had no authority to file the appellee brief in this matter. See *Robison v. Orthotic & Prosthetic Lab, Inc.*, 2015 IL App (5th) 140079, ¶ 12 (“An attorney’s employment and his authority are revoked by the death of his client, and an attorney cannot proceed where he does not represent a party to the action.”). As such, this court entered an order on September 29, 2021, striking the appellee’s brief in the Hart case and directing that the appeal be submitted for decision on the appellant’s brief only. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (“if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee’s brief, the court of review should decide the merits of the appeal”). Therefore, this court has not considered the appellee’s brief filed in the Hart case in its analysis of this consolidated appeal.

¶ 13 We also note that the circuit court’s orders limited the documents to be disclosed by ISP to the plaintiffs’ applications and ISP’s denial letters. Hart’s initial FOIA request sought “any and all documents” and Burgess’s FOIA request sought “my file.” A review of the secured record that was before the circuit court in the Hart case⁶ indicates that ISP possessed additional documents related to the revocation of Hart’s FOID card. We note that no party challenged the circuit court’s limitation of the documents to be disclosed in the lower court’s proceedings and that it is not an issue on appeal. As such, our analysis is confined to the circuit court’s finding that the plaintiffs’ own application for a FOID card and ISP’s denial letter were not prohibited from disclosure pursuant to section 7.5(v) of FOIA. See *Huang v. Brenson*, 2014 IL App (1st) 123231, ¶ 22 (“Failure to raise an issue in the trial court generally results in forfeiture of that issue on appeal.”);

Hawkes v. Casino Queen, Inc., 336 Ill. App. 3d 994, 1004 (2003) (“Any issue that has not been

⁶There is nothing in the record on appeal indicating that ISP was required to provide the circuit court with all documents responsive to Burgess’s FOIA request. As such, this court is unaware of whether ISP possessed additional documents related to Burgess’s FOIA request.

sufficiently or properly presented to this court for review is waived.”). Therefore, we make no determinations or findings regarding whether any additional documents that may be in the possession of ISP related to a FOID application, the denial of a FOID application, or the revocation of a FOIA card are required to be disclosed pursuant to an individual’s FOIA request. We will now proceed to the merits of this appeal.

¶ 14 ISP argues on appeal that the circuit court erred in determining that the plaintiffs’ applications for a FOID card pursuant to the FOID Card Act and ISP’s denial letters were not exempt from disclosure under section 7.5(v) of FOIA (5 ILCS 140/7.5(v) (West 2018)). The interpretation of a statute presents a question of law, subject to *de novo* review. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 41. Under a *de novo* standard of review, this court does not defer to the lower court’s judgment or reasoning but performs the same analysis that the lower court would perform. *Arthur v. Catour*, 216 Ill. 2d 72, 78 (2005). We also review a circuit court’s grant of summary judgment under a *de novo* standard. *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 280 (2007).

¶ 15 The primary objective of statutory construction is to ascertain and give effect to the legislature’s true intent and meaning. *Sandholm*, 2012 IL 111443, ¶ 41. “The language of the statute is the best indication of legislative intent, and our inquiry appropriately begins with the words used by the legislature.” *Brucker v. Mercola*, 227 Ill. 2d 502, 513 (2007). Where the statutory language is clear and unambiguous, it must be applied as written without resort to extrinsic aids of statutory construction. *Id.* In determining a statute’s plain meaning, a court may consider the problems sought to be remedied, the reason for the law, the purposes to be achieved, and the consequences of construing a statute one way or another in determining a statute’s plain meaning. *People v. Gutman*, 2011 IL 110338, ¶ 12.

¶ 16 Further, all provisions of a statute should be viewed as a whole (*Brucker*, 227 Ill. 2d at 514), and all words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation. *Sandholm*, 2012 IL 111443, ¶ 41. Statutes are to be construed so that no word, clause, or sentence is rendered meaningless or superfluous. *Gutman*, 2011 IL 110338, ¶ 12.

¶ 17 Section 1 of FOIA provides the public policy and legislative intent of FOIA and states, in relevant part, as follows:

“Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. ***

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. 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.” 5 ILCS 140/1 (West 2018).

¶ 18 Section 1.2 of FOIA further provides that “[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying.” *Id.* § 1.2. Therefore, in conducting our analysis, we must be mindful that it is the public policy of Illinois, and that there exists a statutory mandate, that public records are presumed to be open and accessible. Section 1.2 also places the burden of proving by clear and convincing evidence that a record is exempt from

disclosure on the public body. *Id.* In line with section 1.2, the statutory exemptions contained in section 7 of FOIA “ ‘are to be read narrowly.’ ” *Mancini Law Group, P.C. v. Schaumburg Police Department*, 2021 IL 126675, ¶ 16 (quoting *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997)).

¶ 19 In this matter, ISP argues that the records requested by the plaintiffs are exempt under section 7.5(v) of FOIA, which states as follows:

“§ 7.5. 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 or applied for or received a concealed carry license under the Firearm Concealed Carry Act, unless otherwise authorized by the Firearm Concealed Carry Act; and databases under the Firearm Concealed Carry Act, records of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act.”
5 ILCS 140/7.5(v) (West 2018).

¶ 20 The circuit court found that a narrow reading of the specific language of section 7.5(v) strongly suggested that

“it does not encompass for purposes of exemption a FOID application that is requested by the applicant herself, nor communications authored by the ISP and previously served on the requesting applicant. The legislature employed the words ‘names’ and ‘people’ in plural forms. This would suggest that the legislature

addressed the possibility that absent such an exemption, the names of applicants and their personal information could be widely misused ***.”

¶ 21 ISP argues that the plain language of section 7.5(v) exempts from disclosure “*all* names and information of people who have applied for or received FOID cards under the FOID Act” (emphasis in original) and that the circuit court improperly turned to legislative history to add an exception to the FOID Card Act not found in its plain terms. We disagree. 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. See, *e.g.*, 750 ILCS 50/1(G) (West 2020) (the Adoption Act stating, “The singular includes the plural and the plural includes the singular and the ‘male’ includes the ‘female’, as the context of this Act may require.”); 215 ILCS 5/2(m) (West 2020) (the Illinois Insurance Code stating, “Personal pronouns include all genders, the singular includes the plural and the plural includes the singular.”); 620 ILCS 5/24 (West 2020) (the Illinois Aeronautics Act stating, “For the purposes of this Act the singular shall include the plural, and the plural the singular.”).

¶ 22 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.

¶ 23 We must also interpret section 7.5(v) in light of other relevant provisions of the statute. *Sandholm*, 2012 IL 111443, ¶ 41.

¶ 24 Section 7(1)(c) of FOIA states:

“Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, *unless the disclosure is consented to in writing by the individual subjects of the information.*”

(Emphasis added.) 5 ILCS 140/7(1)(c) (West 2018).

¶ 25 The above provision indicates that the legislature, in prohibiting the release of personal information, provided an exception wherein an individual could consent in writing to the release of their own information. Section 7.5(v) only prohibits the *names and information of people* who have applied for or received FOID cards and contains no prohibition of the release of any specific document, such as an application or denial letter. The only prohibition on the release of specific records contained in section 7.5(v) relates to the Firearm Concealed Carry Act (430 ILCS 66/1 *et seq.* (West 2018)). As such, section 7.5(v) prohibits the release of personal information of individuals who have applied for or received FOID cards, and section 7(1)(c) indicates that an individual can consent in writing to the release of their own personal information. In this matter, the plaintiffs were requesting their own applications and denial letters, and their written FOIA

requests indicated a consent in writing by the subject of the information. Therefore, when interpreting section 7.5(v) in light of section 7(1)(c), we find that the plaintiffs' applications and denial letters were not prohibited from disclosure where the plaintiffs consented to the release of their own information.

¶ 26 The circuit court also found the following to be consistent with the plain language of section 7.5(v):

“The disclosure of the names and personal information, such as addresses, of FOID card holders discloses by implication those who are not card holders and presumably not gun owners. The potential for placing those individuals at risk from crime simply by reason of their choice not to own a gun was a concern raised by Illinois State Senator Dillard. He envisioned that disclosure of the names and addresses of FOID card holders would ‘give burglars a map to systematically burglarize our neighborhoods and our farms.’ [Citation.] Regardless of the validity of that concern, it nevertheless illustrates that what the legislature intended was to prevent a dissemination to or by third parties of the names and personal information of FOID applicants, and not the release of an applicant’s application or the ISP’s denial of the applicant’s application. A contrary interpretation would create an absurd result.”

¶ 27 “[A] court presumes that the General Assembly did not intend absurdity, inconvenience, or injustice in enacting legislation.” *People v. Casler*, 2020 IL 125117, ¶ 24. Here, Burgess states that “it makes absolute sense for the government to keep private names and addresses of FOID card holders” but argues that he already knows his own name, address, and that his FOID card was

revoked. Burgess argues that he “just wants to know *why*” (emphasis in original) in order to seek an appeal of the revocation. We agree.

¶ 28 The plaintiffs here are simply seeking another copy of their own information, which they have consented to be released, and are not seeking the “names and information of people.” Moreover, attempting to appeal an ISP’s decision without first knowing the basis for that decision would cause an inconvenience to both the individual and ISP since it would be impossible for an individual to deny or demonstrate the removal of a liability that was the basis for the ISP’s decision. Thus, we conclude that interpreting section 7.5(v) to prohibit the release of the plaintiffs’ own applications and denial letters would create an absurd result.

¶ 29 ISP also argues that “there is no way for a public body to verify whether the individual who submits a written FOIA request is actually the person whose information is being sought” and thus disclosure of the information would defeat the General Assembly’s concern that individuals might access FOID information for unlawful purposes. We find this argument unpersuasive as the individual’s written FOIA request, by necessity to identify the application and denial letter sought, should provide ISP with sufficient information to demonstrate that the requester was seeking his/her own information. If not, section 7(c) of FOIA requires a written consent from the individual for the release of his/her own information, and if the individual’s FOIA request is insufficient to demonstrate a written consent for his/her own information, additional verifying information could be required before the release of the information.

¶ 30 Finally, ISP argues in the Burgess case that the documents related to Burgess’s FOID card application were exempt from disclosure because ISP was bound by a permanent injunction that prohibited their disclosure. On December 5, 2011, the Honorable Chief Judge Michael E. Brandt of the Tenth Judicial Circuit, Peoria County, Illinois, entered an agreed order for permanent

injunction in the matter of Illinois State Rifle Ass'n v. Illinois State Police, No. 11-CH-151 (Cir. Ct. Peoria County). The agreed order for permanent injunction contained the following provisions:

“6. The Freedom of Information Act (5 ILCS 140/1 *et seq.*), and as amended, exempts certain information from disclosure, inspection, or copying. Pursuant to the Freedom of Information Act, the State Police, its officers, employees, and agents, shall be prohibited from releasing, in response to a request made under the Freedom of Information Act, any personally identifying information—as defined *infra* in ¶7—containing any of the following:

a. Records identifying, directly or indirectly, any person who has applied for a FOID card, who has been issued or denied a FOID card, or whose FOID card has expired or been revoked;

* * *

7. As used in this Order, the term ‘personally identifying information’ means information submitted to the State Police related to a FOID card application or the FTIP program that identifies or describes a person, including but not limited to an individual’s name, street address, telephone number, electronic mail address, date of birth, physical description, photograph, medical or mental health information, Social Security number, driver’s license number, state identification number, FOID card number, or other similarly unique identifying information.”

ISP raised this issue in its amended motion for summary judgment and argued the issue at the circuit court’s hearing on October 23, 2020. The circuit court, however, made no finding regarding the permanent injunction and granted summary judgment based on the ruling in the Hart case, which did not address the issue.

¶ 31 We acknowledge that a public body does not improperly withhold records pursuant to FOIA when the public body is barred from disclosing them under an existing court order. See *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 66 (holding that “a lawful court order takes precedence over the disclosure requirements of FOIA”). However, the permanent injunction specifically states that the injunction is pursuant to FOIA, and for the reasons stated above, we have found that FOIA does not prohibit the release of the plaintiffs’ applications and denial letters. Consequently, it is for these same reasons, we find that the permanent injunction does not prohibit the release of the plaintiffs’ application and denial letters. 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.

¶ 32 Based on the above, we find that section 7.5(v) of FOIA does not prohibit the release of the plaintiffs’ application or denial letters since the word “people” by its plain meaning necessitates more than a single individual and section 7(1)(c) provides for the release of personal information with the written consent of the individual that is the subject of the information. We further find that the permanent injunction entered in the matter of *Illinois State Rifle Ass’n v. Illinois State Police* does not prohibit the release of the plaintiffs’ application or denial letters for the same reasoning since the permanent injunction was entered pursuant to FOIA.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, we affirm the judgments of the circuit court.

¶ 35 Affirmed.

No. 5-19-0258

Cite as: *Hart v. Illinois State Police*, 2022 IL App (5th) 190258

Decision Under Review: Appeal from the Circuit Court of Madison County, Nos. 18-MR-611, 20-MR-608; the Hon. David W. Dugan and the Hon. Christopher P. Threlkeld, Judges, presiding.

**Attorneys
for
Appellant:** Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Valerie Quinn, Assistant Attorney General, of counsel), for appellant.

**Attorneys
for
Appellee:** Thomas G. Maag, of Maag Law Firm, LLC, of Wood River, for appellees.

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED
MAY 24 2019
CLERK OF CIRCUIT COURT # 83
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

SANDRA HART,

Plaintiff

-vs-

ILLINOIS STATE POLICE

Defendant

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No. 18 MR 611

ORDER

This matter comes before the court on the defendant’s Motion to Dismiss pursuant to 735 ILCS 5/2-219 and the plaintiff’s Motion for Summary Judgment. The parties have briefed and argued their respective positions; the court, having been fully advised in the premises, finds and orders as follows:

Background:

The plaintiff filed her two (2) count complaint pursuant to the Illinois Freedom of Information Act. 5 ILCS 140/1, et. seq. (“FOIA”) alleging that the plaintiff made a written request for certain documents believed to be in the possession of the Illinois State Police. Specifically, the plaintiff requested “any and all documents related to Ms. Hart’s FOID card, any and all applications for same, and any all documentation related to any legal disabilities that have or may cause her to be ineligible for a FOID card.” (Undesignated Exhibit to Pl.’s Complaint – Letter to ISP from Pl.’s Counsel dated 8/31/18).¹

According to the plaintiff’s complaint, on September 12, 2018, the defendant responded to the plaintiff’s FOIA request by denying the same and claiming that 5 ILCS 140/7.5(v) provides for an exemption under FOIA. (Undesignated Exhibit to Pl.’s Complaint – Letter from ISP FOIA Officer, Erin Davis).

¹ Plaintiff made further requests for information regarding processing times for disposition of appeals. This request was orally withdrawn during oral argument.

The defendant filed its Motion to Dismiss (“Motion”) arguing that the ISP properly denied the FOIA request because the FOIA provides for an exemption to the production of FOID card information. Plaintiff responded and filed her Cross Motion for Summary Judgment.

Motion Practice:

A motion to dismiss under section 2–619 admits the legal sufficiency of the complaint but asserts a defense that defeats it. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31, 364 Ill.Dec. 40, 976 N.E.2d 318. When considering a section 2–619 motion, a court must accept as true all well-pleaded facts in the complaint, as well as any inferences that may reasonably be drawn in plaintiff’s favor. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55, 356 Ill.Dec. 733, 962 N.E.2d 418; *Morr–Fitz, Inc. v. Blagojevich*, 231 Ill.2d 474, 488, 327 Ill.Dec. 45, 901 N.E.2d 373 (2008). Dismissal of a complaint under section 2–619 is appropriate only if the plaintiff can prove no set of facts that would support a cause of action. *In re Estate of Boyar*, 2013 IL 113655, ¶ 27, 369 Ill.Dec. 534, 986 N.E.2d 1170.

A motion to dismiss under section 2-619(a)(9) admits the legal sufficiency of the plaintiff’s complaint but asserts that the claim against the defendant is barred by an affirmative matter that avoids the legal effect of or defeats the claim. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55, 356 Ill.Dec. 733, 962 N.E.2d 418. An “affirmative matter” is a type of defense that negates a cause of action completely or refutes critical conclusions of law or conclusions of material fact that are unsupported by specific factual allegations contained in or inferred from the complaint. *Smith v. Waukegan Park District*, 231 Ill.2d 111,121 (2008); *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill.2d 112, 115, (1993). The “affirmative matter” must be apparent on the face of the complaint or supported by affidavits or other evidentiary materials, and it must do more than refute a well-pleaded fact in the complaint. *Epstein v. Chicago Board of Education*, 178 Ill.2d 370, 383 (1997). Section 2-619(a)(9) does not authorize the defendant to submit affidavits or evidentiary matters for the purposes of contesting the plaintiff’s factual allegations and presenting its version of the facts. *Reynolds v. Jimmy John’s Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 34, 370 Ill.Dec. 628, 988 N.E.2d 984. See also *Kuykendall v. Schneidewind*, 2017 IL App (5th) 160013, ¶ 32, 79 N.E.3d 770, 779.

In contrast, a motion for summary judgment is a fact motion. Summary judgment is appropriate when “the pleadings, depositions, and admissions on file, together with the affidavits,

if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2–1005(c). The purpose of summary judgment is not to try a question of fact, but to determine whether a genuine issue of material fact exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill.2d 32, 42–43, 284 Ill.Dec. 302, 809 N.E.2d 1248 (2004). *Illinois State Bar Ass'n Mut. Ins. Co. v. Law Office of Tuzzolino & Terpinas*, 2015 IL 117096, ¶ 14, 27 N.E.3d 67, 70.

A genuine issue of material fact precluding summary judgment exists where the material facts are disputed or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts. Summary judgment is a drastic means of disposing of litigation and, therefore, should be granted only when the right of the moving party is clear and free from doubt. *Adames v. Sheahan*, 233 Ill. 2d 276, 295 (2009).

The court must construe the pleadings, depositions and affidavits strictly against the moving party and liberally in favor of the opponent. Although use of the summary judgment procedure can be an efficient means for disposing of certain lawsuits, it is a drastic measure that should be employed only when the right of the moving party is clear and free from doubt. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 271, 166 Ill.Dec. 882, 586 N.E.2d 1211 (1992).

There are no material facts in dispute in this matter. Rather, the question raised by the pleadings is one of construction or interpretation of certain provisions of the Illinois Freedom of Information Act.²

The Illinois Freedom of Information Act:

A few of the statements of public policy and legislative intent announced in the FOIA are particularly applicable here:

Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of

² It is questionable that the legislature intended or even contemplated that FOIA would be used as a means to replace one's own lost or misplaced government documents. However, defendant does not raise the issue of whether the request under FOIA was proper.

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.

* * *

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

Certain information, however, is exempt from disclosure. 5 ILCS 140/7.5(v) provides:

§ 7.5. 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 or applied for or received a concealed carry license under the Firearm Concealed Carry Act, unless otherwise authorized by the Firearm Concealed Carry Act; and databases under the Firearm Concealed Carry Act, records of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act.

Consistent with the noble purposes of FOIA, the burden of any public entity claiming that requested information is exempt under the act is not easily carried: "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

Our Supreme Court has stated of FOIA generally and of the public policy behind FOIA specifically, that “ [r]elying upon this clear statement of public policy and legislative intent, this court has repeatedly held that the exceptions to disclosure set forth in the Act are to be read narrowly. (citations). Thus, when a public body receives a proper request for information, it must comply with that request unless one of the narrow statutory exemptions set forth in section 7 of the Act applies. *Illinois Educ. Ass'n v. Illinois State Bd. of Educ.*, 204 Ill. 2d 456, 463, 791 N.E.2d 522, 527 (2003)

The defendant argues that the plain language of 7.5(v) creates an exemption for the type of information that the plaintiff seeks to obtain. It suggests that the information sought by the plaintiff falls squarely within the language of the 7.5(v). Therefore, the defendant argues, that even the plaintiff's own application for a FOID card and the ISP's letter in response directed to the plaintiff contain the “[n]ames and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act” because those documents reference the plaintiff by name. As a result, the defendant contends, the exemption applies and it need not produce the requested documents.

The defendant urges this court to adhere to a basic tenet of statutory construction that requires a court not to “depart from the plain language and meaning of [a] statute by reading into it exceptions, limitations or conditions that the legislature did not express.” *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189. It should not be forgotten, however, that “[w]hen construing a statute, the cardinal rule, to which all other rules and canons are subordinate, is to ascertain and give effect to the true intent of the legislature. The best evidence of legislative intent is the language used in the statute itself, which must be given its plain, ordinary and popularly understood meaning.” *Nelson v. Kendall County*, 2014 IL 116303, ¶ 23, 10 N.E.3d 893, 898–99. Also important is that “[t]he statute should be evaluated as a whole, with each provision construed in connection with every other relevant section. If the language of the statute is clear, it must be given effect without resort to other interpretive aids.” *Id.*

A narrow reading of the specific language that the legislature utilized in drafting 7.5(v) strongly suggests that it does not encompass for purposes of exemption a FOID application that is requested by the applicant herself, nor communications authored by the ISP and previously served on the requesting applicant. The legislature employed the words “names” and “people” in plural

forms. This would suggest that the legislature addressed the possibility that absent such an exemption, the names of applicants and their personal information could be widely misused for purposes not associated with “. . .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) Such a reading is entirely consistent with the plain language of the second sentence of 7.5(v) which exempts from production both data and records about applicants and of the review board. In keeping with the rule of construction requiring that the statute be read as whole, it is neither clear nor convincing that a narrow reading of the entirety of the 7.5(v) exception would justify the ISP in denying production to the plaintiff her application and the ISP’s response to her application. Common sense compels the same result.

The disclosure of the names and personal information, such as addresses, of FOID card holders discloses by implication those who are not card holders and presumably not gun owners. The potential for placing those individuals at risk from crime simply by reason of their choice not to own a gun was a concern raised by Illinois State Senator Dillard. He envisioned that disclosure of the names and addresses of FOID card holders would “give burglars a map to systematically burglarize our neighborhoods and our farms.” (Ill. Senate 97th Gen. Assy., May 20, 2011) Regardless of the validity of that concern, it nevertheless illustrates that what the legislature intended was to prevent a dissemination to or by third parties of the names and personal information of FOID applicants, and not the release of an applicant’s application or the ISP’s denial of that applicant’s application. A contrary interpretation would create an absurd result.

The defendant also argues that to require the release of the application and denial letter to the plaintiff would be the equivalent of creating an exception to 7.5(v). The court disagrees. 7.5(v) is the exception and it is one that is to be narrowly read. By this ruling the court is not making an exception to the exception but rather it is applying the plain language and meaning of 7.5(v) and confining it to the purpose for which it was enacted.

In short, the defendant has failed to carry its burden in showing that 7.5(v) authorizes or directs the ISP to withhold from the plaintiff her application for a FOID card or its letter of denial.

Conclusion:

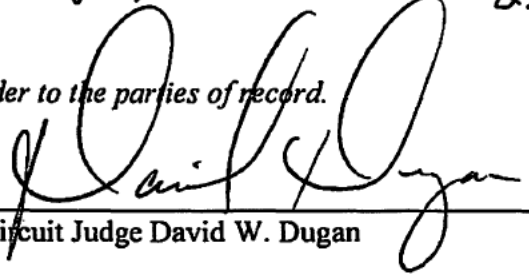
The defendant's Motion to Dismiss is hereby DENIED. The plaintiff's motion for summary judgment is hereby GRANTED.

The defendant, Illinois State Police, shall within thirty (30) days of the date of this Order deliver to the plaintiff and/or her attorney true and accurate copies of: (1) the plaintiff's Application for Firearm Owner's Identification Card; (2) Letter of May 10, 2010 from MSgt. Michael W. Vorreyer directed to plaintiff, together with the enclosures thereto.

Case set for status, per Judge Dugan, 7/12/19 @ 9 AM. P.J.

IT IS SO ORDERED. *Clerk to send copies of this order to the parties of record.*

Entered: 5-24-19


Circuit Judge David W. Dugan

THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Kenneth Burgess

Plaintiff/Petitioner

vs.

Illinois State Police

Defendant/Respondent

FILED

OCT 23 2020

CLERK OF CIRCUIT COURT #66
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

No. 20

Div. MR

608

ORDER

Before the Court on various motions, The Court rules as follows:

1. Defendant's Motion for Leave to file Defendant's Amended Cross Motion for Summary Judgment and Memorandum of Law in support, granted without objection, Motion and memo deemed filed in tandem.

2. Argument had on Plaintiff's motion for summary judgment and ~~cross~~ Defendant's Amended Cross Motion for Summary Judgment. For the reasons set forth in Judge Nugan's order in Hart v ISP, Plaintiff's motion granted, Defendant's motion denied. Defendant to produce the letter and application within 30 days.

3. Plaintiff to file fee petition within 14 days, Defendant given 28 days to respond.

Date October 23, 2020

[Signature]

Judge
A024

Oct: *[Signature]*



APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

SANDRA HART,)	
)	
Plaintiff-Appellee,)	
	)	No. 18 MR 611
v.)	
)	
ILLINOIS STATE POLICE,	)	The Honorable
	)	DAVID W. DUGAN,
Defendant-Appellant.	)	Judge Presiding.

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendant Illinois State Police (“ISP”) hereby appeals to the Illinois Appellate Court, Fifth Judicial District, from an order entered on May 24, 2019, by the Honorable Judge David W. Dugan of the Circuit Court for the Third Judicial Circuit, Madison County, Illinois, which denied ISP’s motion to dismiss and granted Plaintiff Sandra Hart’s motion for summary judgment in an action under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (2016), and directed ISP to deliver copies of certain documents to Hart within 30 days of the order. A copy of the circuit court’s order is attached hereto.

By this appeal, ISP respectfully requests that the appellate court reverse and

vacate the circuit court's order, and grant any other appropriate relief.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

By: /s/ Nadine J. Wichern
NADINE J. WICHERN
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-5659/1497
Primary e-service:
CivilAppeals@atg.state.il.us
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nwichern@atg.state.il.us

June 21, 2019

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

SANDRA HART,)	
)	
Plaintiff-Appellee,)	
	)	No. 18 MR 611
v.)	
)	
ILLINOIS STATE POLICE,	)	The Honorable
	)	DAVID W. DUGAN,
Defendant-Appellant.	)	Judge Presiding.

AMENDED NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendant Illinois State Police (“ISP”) hereby appeals to the Illinois Appellate Court, Fifth Judicial District, from orders entered on May 24, 2019, and March 5, 2020, by the Circuit Court for the Third Judicial Circuit, Madison County, Illinois, which denied ISP’s motion to dismiss and granted Plaintiff Sandra Hart’s motion for summary judgment in an action pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, directed ISP to deliver copies of certain documents to Hart within 30 days of the end of the appeal, and awarded attorney fees and costs to Hart. A copy of each order of the circuit court is attached hereto.

ISP filed a notice of appeal on June 21, 2019, from the circuit court’s May 24, 2019 order; that appeal was docketed by the Illinois Appellate Court, Fifth Judicial District, as No. 5-19-0258; and that appeal has been stayed by the appellate court pending issuance of the circuit court’s order on attorney fees and costs.

By this appeal, ISP respectfully requests that the appellate court reverse and vacate both orders of the circuit court, and grant any other appropriate relief.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

By: /s/ Nadine J. Wichern
NADINE J. WICHERN
Assistant Attorney General
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March 19, 2020

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

KENNETH L. BURGESS, SR.,)	
)	
Plaintiff-Appellee,)	
	)	No. 2020MR000608
v.)	
)	
ILLINOIS STATE POLICE,	)	The Honorable
	)	CHRISTOPHER P. THRELKELD,
Defendant-Appellant.	)	Judge Presiding.

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendant Illinois State Police (“ISP”) hereby appeals to the Illinois Appellate Court, Fifth Judicial District, from an order entered on October 23, 2020, by the Honorable Judge Christopher P. Threlkeld of the Circuit Court for the Third Judicial Circuit, Madison County, Illinois, which denied ISP’s cross-motion for summary judgment and granted Plaintiff Kenneth L. Burgess Sr.’s motion for summary judgment in this action brought under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, and directed ISP to deliver copies of certain documents to Burgess within 30 days of the order (a timeframe that it later stayed pending this appeal). ISP also appeals from the circuit court’s order of November 23, 2020 (which replaced its order of November 20, 2020) awarding \$3,404.55 in attorney fees and costs to Burgess. A copy of the circuit court’s orders entered on October 23, 2020, November 20, 2020, and November 23, 2020, are attached hereto.

By this appeal, ISP respectfully requests that the appellate court reverse and

vacate the circuit court's orders, and grant any other appropriate relief.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

By: /s/ Nadine J. Wichern
NADINE J. WICHERN
Assistant Attorney General
100 West Randolph Street
12th Floor
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December 18, 2020

STATE OF ILLINOIS
97th GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

48th Legislative Day

5/20/2011

bill.

SECRETARY ROCK:

House Bill 3500.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR CROTTY)

Senator Dillard.

SENATOR DILLARD:

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,

STATE OF ILLINOIS
97th GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

48th Legislative Day

5/20/2011

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.

PRESIDING OFFICER: (SENATOR CROTTY)

Is there any discussion? Senator Jacobs.

SENATOR JACOBS:

Madam President, I just rise in strong support of Senator Dillard's bill. This is a commonsense approach to something that could have turned into a bad problem. I'd urge a Aye vote.

PRESIDING OFFICER: (SENATOR CROTTY)

Senator Forby.

SENATOR FORBY:

Thank you. I think Senator Dillard done a great job on this House Bill 35 {sic}. You know, we ought to have some rights and this rights is for the people protect {sic}. And what they're trying to do is let the bad people have the rights. Let's keep the rights in the good people's hands today and let's vote Yes for this bill. Thank you very much.

PRESIDING OFFICER: (SENATOR CROTTY)

Thank you. Is there any other discussion? There being none, the question is, shall House Bill 3500 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 42 voting Aye, 1 voting Nay, 2 voting Present. House Bill 3500, having received the -- the required constitutional majority, is declared passed. House Bill 3591. Senator Mulroe. Out of the record. House Bill 3636. Senator Mulroe. Out of the record.

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ILLINOIS
PEORIA COUNTY

ILLINOIS STATE RIFLE ASSOCIATION, an)	FILED
Illinois not-for-profit corporation, JAMES P.)	ROBERT M. SPEARS
HANLEY, NORMAN W. PARSLEY, KEVIN)	DEC 05 2011
L. MONK, ERIC D. HENSON; and)	CLERK OF THE CIRCUIT COURT
JOHN/JANE DOES 1-12)	PEORIA COUNTY, ILLINOIS
)	
Plaintiffs,)	Case No. 11-CH-151
)	
v.)	Hon. Chief Judge Michael E. Brandt
)	
THE DEPARTMENT OF STATE POLICE OF)	
THE STATE OF ILLINOIS and the)	
DIRECTOR of the ILLINOIS DEPARTMENT)	
OF STATE POLICE,)	
)	
Defendants.)	
)	

AGREED ORDER
ENTERING A PERMANENT INJUNCTION

This matter coming on for hearing on the Amended Petition of the Plaintiffs, Illinois State Rifle Association, et. al., the Court finds that the parties have entered into a stipulation to resolve the claims in the Amended Petition and have presented an agreed order as follows:

FINDINGS OF FACT

1. In Illinois, a prerequisite to the acquisition or possession of firearms, firearm ammunition, stun guns, and/or tasers is the successful application for a Firearm Owner's Identification card ("FOID card"). 430 ILCS 65/.01 *et seq.* (the "FOID Card Act").

2. Similarly, it is a prerequisite to the acquisition of a firearm, stun gun, or taser from a federally licensed firearms dealer in Illinois that an individual first undergo a background check pursuant to the FOID Card Act and the Firearms Transfer Inquiry Program ("FTIP"). *See* 430 ILCS 65/.01, *et seq.*; 430 ILCS 65/3.1; 20 Ill. Admin. Code § 1235.10, *et seq.*

3. The Department of State Police of the State of Illinois ("State Police") administers the FOID and FTIP programs. *See* 430 ILCS 65/01, *et seq.*

4. Incident to its administration of the FOID and FTIP programs, the State Police acquires and maintains personally identifying information regarding each individual who seeks to lawfully possess or acquire a firearm, firearm ammunition, stun gun, and/or taser in the State of Illinois.

5. In implementing the FOID Card Act, the Legislature stated that it sought to establish a "practical and workable system by which law enforcement authorities will be afforded an opportunity to identify those persons who are prohibited . . . from acquiring or possessing firearms and firearm ammunition and . . . stun guns and tasers." 430 ILCS 65/1.

ORDERS

6. The Freedom of Information Act (5 ILCS 140/1 *et seq.*), and as amended, exempts certain information from disclosure, inspection, or copying. Pursuant to the Freedom of Information Act, the State Police, its officers, employees, and agents, shall be prohibited from releasing, in response to a request made under the Freedom of Information Act, any personally identifying information—as defined *infra* in ¶ 7—containing any of the following:

a. Records identifying, directly or indirectly, any person who has applied for a FOID card, who has been issued or denied a FOID card, or whose FOID card has expired or been revoked;

b. Records identifying, directly or indirectly, any person who was the subject of an inquiry to the FTIP program to determine that person's eligibility to acquire a firearm, stun gun, or taser as a prospective transferee within the State of Illinois;

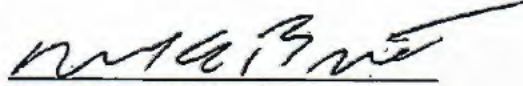
c. Records identifying, directly or indirectly, any person who has undergone

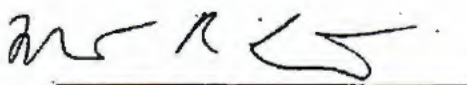
a background check pursuant to the FTIP program or whose personally identifying information was submitted to the State Police pursuant to the FTIP program.

7. As used in this Order, the term "personally identifying information" means information submitted to the State Police related to a FOID card application or the FTIP program that identifies or describes a person, including but not limited to an individual's name, street address, telephone number, electronic mail address, date of birth, physical description, photograph, medical or mental health information, Social Security number, driver's license number, state identification number, FOID card number, or other similarly unique identifying information.

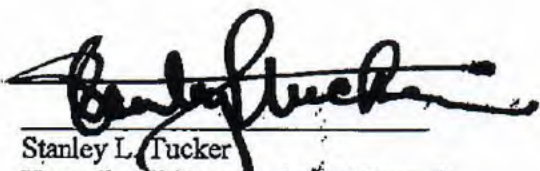
8. This is a final and appealable Order entering a permanent injunction, each party to bear its own fees and costs, and the Court maintains continuing jurisdiction for the purposes of enforcing or modifying this injunction.

DATED: December 5, 2011


Hon. Michael E. Brandt
Chief Judge

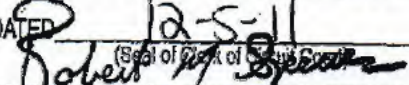

James R. Thompson
Matthew R. Carter
Winston & Strawn LLP
35 West Wacker Dr.
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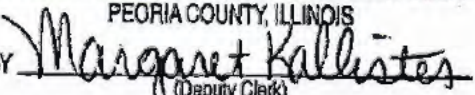
Special Assistant Attorneys General for Defendants


Stanley L. Tucker
Hartzell, Gidden, Tucker & Hartzell
608 Wabash Avenue
P.O. Box 70
Carthage, Illinois 62321

Attorney for Plaintiffs

I HEREBY CERTIFY THE ABOVE TO BE CORRECT.

DATED 12-5-11

(Seal of Clerk of the Court)
ROBERT M. SPEARS, CLERK OF THE CIRCUIT COURT
PEORIA COUNTY, ILLINOIS

BY 
(Deputy Clerk)

Remit exactly \$10.00 in check or money order payable to FOID. THIS FEE IS NONREFUNDABLE

Official Use Only

Last Name

Grid for Last Name

First Name

Grid for First Name

Middle Initial

Grid for Middle Initial

Suffix

Grid for Suffix

Mailing Address (Illinois Residency Required)

Grid for Mailing Address

Apt. #

Grid for Apt. #

City/Town

Grid for City/Town

State

Grid for State

Zip Code

Grid for Zip Code

County

Grid for County

Date of Birth (MM/DD/YYYY)

Grid for Date of Birth

List Any Previous Names (Last Name, First Name, Middle Initial)

Grid for Previous Names

Social Security Number

Grid for Social Security Number

GENDER: Male Female

HEIGHT: ft in

EYE COLOR: SELECT ONE:

Brown Black Blue Green Hazel

HAIR COLOR: SELECT ONE:

Brown Bald Grey White Blonde Black Red Other

RACE: Black White Other

WEIGHT: lbs

1. Place of Birth (U.S. State or Foreign Country)

Grid for Place of Birth

1a. Are you a United States citizen/naturalized citizen? Yes No

If NO, you must provide your alien registration number or provide other proof of documentation.

Alien #

Grid for Alien #

(Alien # - Resident Alien Card/Permanent Resident Card) (Admission # Form I-94/I-94W)

If you are 18 years of age or older, you must provide your most current Illinois Driver's License # or Illinois State Identification #.

Illinois Driver's License Number OR Illinois State Identification Number

Grid for License/ID Number

- 2. Have you ever been convicted of a felony?
3. In the past 5 years, have you been a patient in a mental institution...
4. Are you addicted to narcotics?
5. Are you intellectually disabled?
6. Are you subject to an existing order of protection...
7. Within the past 5 years, have you been convicted of battery...
8. Have you ever been convicted of domestic battery...
9. Have you ever been adjudicated a delinquent minor...
10. Are you an alien who is unlawfully present...
11. Have you ever been adjudicated as a mental defective?

Warning: This application is governed by the Firearm's Owner's Identification (FOID) Card Act and must be completed by the applicant or his/her parent or legal guardian in its entirety...

Area Code Daytime Phone Number

Grid for Area Code and Phone Number

e-mail:

SIGNATURE REQUIRED (Please sign inside the box)

Signature box

Signature Certification: My signature authorizes the Illinois State Police to verify answers given with any government or private entity authorized to hold records relevant to my citizenship, criminal history and mental health treatment or history...

Date:

IF YOU ARE UNDER 21: The minor applicant and their parent or legal guardian must complete this section. The signature of the applicant's parent or legal guardian is required on both the front of the application and on the back affidavit.

Parent or Legal Guardian Information

Relationship: Mark with an X
Father
Mother
Legal Guardian

Parent/Guardian Last Name

Grid for Parent/Guardian Last Name

First Name

Date of Birth (MM/DD/YYYY)

Grid for Date of Birth

Male Female

Illinois Driver's License or State ID#

Grid for License/ID#

- 1. Have you (the minor) ever been convicted of a misdemeanor other than a traffic violation?
2. Have you (the minor) ever been adjudged delinquent?
3. Are you (the minor) subject to a petition alleging you are a delinquent minor for the commission of an offense that if committed by an adult would be a felony?

Signature of Parent/Legal Guardian Required

PARENT/LEGAL GUARDIAN AFFIDAVIT ONLY FOR "UNDER 21 YEARS OF AGE" APPLICATIONS

Parent or Legal Guardian Signature Certification: I being first duly sworn upon oath, states as follows: (1) I am not currently prohibited from holding a FOID card insofar as: (a) I have not been convicted of a felony or have been granted relief from such conviction to hold a FOID card; (b) I have not, in the past 5 years, been a patient in a mental institution or any medical facility used primarily for the care or treatment of persons for mental illness; (c) I am not addicted to narcotics; (d) I am not intellectually disabled; (e) I am not subject to an existing order of protection which prohibits me from possessing a firearm; (f) I have not, within the past 5 years, been convicted of battery, assault, aggravated assault, violation of an order of protection, or a substantially similar offense in which a firearm was used or possessed; (g) I have not ever been convicted of a domestic battery or a substantially similar offense (misdemeanor or felony); (h) I have not been adjudicated a delinquent minor for the commission of an offense that if committed by an adult would be a felony; (i) I am not an alien who is unlawfully present in the United States; and (j) I have never been adjudicated as a mental defective. (2) I hereby give my consent for this minor applicant to possess and acquire firearms and firearm ammunition and understand I shall be liable for any damages resulting from the minor applicant's use of firearms or firearm ammunition. **FURTHER AFFIANT SAYETH NOT.**

I hereby authorize the Illinois State Police to verify answers given with any government or private entity authorized to hold records relevant to my citizenship, criminal history and mental health treatment or history.

Parent or Legal Guardian Signature

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

Note: Any person who is prohibited from acquiring or possessing firearms or firearm ammunition by any Illinois state statute or by federal law is ineligible for a FOID card.

Please allow 30 days for processing and delivery of your Firearm Owner's Identification Card.

Printed by the Authority of the State of Illinois



With this application you must include:

- Photograph
 - FOID Fee - \$10.00
 - Signature
- CHECK OR MONEY ORDER ONLY*

Mail To:
Illinois State Police - FOID
Post Office Box 19233
Springfield, IL 62794-9233

Commission on Accreditation for Law Enforcement Agencies



Internet Address <http://www.isp.state.il.us>
Customer Service Telephone: 217-782-7980
(For Hearing Impaired only TDD 1-800-255-3323)

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CERTIFICATE OF FILING AND SERVICE

I certify that on January 11, 2023, I electronically filed the foregoing **Brief and Appendix of Defendant-Appellant** 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.

Thomas Maag
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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/ Valerie Quinn
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