

NOTICE
Decision filed 08/18/26. 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.

2026 IL App (5th) 250498-U
NO. 5-25-0498
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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

CLEOTHER TIDWELL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Madison County.
	)	
v.	)	No. 24-MR-371
	)	
CITY OF ALTON,	)	Honorable
	)	Ronald J. Foster Jr.,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE BOLLINGER delivered the judgment of the court.
Justices Boie and McHaney concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court’s order dismissing the plaintiff’s complaint, as plaintiff cannot establish the City of Alton violated the Freedom of Information Act in response to his request.

¶ 2 Plaintiff, Cleother Tidwell, appeals the March 10, 2025, order of the circuit court of Madison County, dismissing his complaint against defendant, the City of Alton. For the following reasons, we affirm the dismissal.

¶ 3 I. BACKGROUND

¶ 4 On December 16, 2024, plaintiff, acting *pro se*, filed a complaint against defendant alleging violations of the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2022)). Attached as exhibits to plaintiff’s complaint were a letter dated October 22, 2024, from the FOIA officer to

plaintiff (exhibit 1); a letter dated November 7, 2024, from the FOIA officer to plaintiff (exhibit 2); and a FOIA request form dated October 7, 2024, and signed by plaintiff (exhibit 3).

¶ 5 The complaint alleged that on or about October 15, 2024, plaintiff submitted a FOIA request to defendant. The request was dated October 7, 2024, and was directed to the City Clerk for the City of Alton and requested “the court docket for 21-L-222 aka Ayron Womack vs American Water Works, City of Alton, IL, defendants.” On October 22, 2024, the FOIA officer wrote to plaintiff advising his FOIA request was denied because the “City does not have access to this case.” The FOIA officer suggested that plaintiff follow up with the “Madison County Court System.” A second letter from the FOIA officer was sent to plaintiff on November 7, 2024, again advising him that the “City of Alton does not have record of this case,” and suggested that plaintiff “contact Madison County Illinois offices for information on this case.”

¶ 6 On January 7, 2025, defendant filed a motion to dismiss the complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2022)). Defendant argued the complaint should be dismissed because it was not a violation of FOIA for a public body to fail to provide a requesting individual with information that is not in the public body’s records or does not exist.

¶ 7 A hearing on the motion to dismiss was held on March 10, 2025. The circuit court granted defendant’s motion to dismiss the same day. The order noted,

“[i]n the present case, Plaintiff submitted a FOIA request to the wrong public body. Defendant notified the Plaintiff it did not possess the records requested and directed the Plaintiff to the public body which most likely have the records he is seeking. Therefore, the Court finds that the Defendant did not violate FOIA when it did not produce records which were not in its possession.”

¶ 8 Plaintiff filed a motion for reconsideration on April 14, 2025, which was denied on April 21, 2025. Plaintiff filed a late notice of appeal on June 16, 2025.

¶ 9 II. ANALYSIS

¶ 10 On appeal, plaintiff argues that “I do not understand how the City of Alton does not have a public record of lawsuits against itself in 2025.” Plaintiff also argues that throughout his suit against the City of Alton, someone, including the presiding judge, should have “tapped a few keys on his government keyboard and printed out the lawsuit.”

¶ 11 Our review of an order granting a motion to dismiss is *de novo*. *Pinkston v. City of Chicago*, 2023 IL 128575, ¶ 21. On *de novo* review, this court may affirm the circuit court’s judgment on any basis established by the record and law. *Funkhouser v. City of Granite City*, 2025 IL App (5th) 240666, ¶ 22.

¶ 12 In reviewing a dismissal under section 2-619, this court construes all well-pleaded facts and makes all reasonable inferences in the plaintiff’s favor. *Goral v. Dart*, 2020 IL 125085, ¶ 27; *Smith v. Jones*, 2025 IL App (5th) 231136, ¶ 19. However, it “disregard[s] all legal and factual conclusions in the complaint that are not supported by specific factual allegations.” *McHenry Township v. County of McHenry*, 2022 IL 127258, ¶ 57. Similarly, “unsupported conclusions, opinions, or speculation are insufficient to” survive a section 2-619 motion to dismiss. *Northwestern Illinois Area Agency on Aging v. Basta*, 2022 IL App (2d) 210234, ¶ 47 (citing *Valfer v. Evanston Northwestern Healthcare*, 2016 IL 119220, ¶ 20; *Rojo v. Tunick*, 2021 IL App (2d) 200191, ¶ 41).

¶ 13 “The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of the litigation.” *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). Section 2-619(a)(9) of the Code provides for dismissal where “the claim asserted

against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9) (West 2022). “The affirmative matter must be apparent on the face of the complaint or otherwise be supported by affidavits or other evidentiary material.” *Strauss v. City of Chicago*, 2022 IL 127149, ¶ 54.

¶ 14 FOIA provides a means for the inspection and copying of public records in the custody and possession of a public body. 5 ILCS 140/1 *et seq.* (West 2022). “FOIA does not compel public bodies to turn over information the public bodies do not normally retain.” *Barner v. Fairburn*, 2019 IL App (3d) 180742, ¶ 12.

¶ 15 In the present action, the affirmative matter that defeats plaintiff’s claim is apparent as part of the complaint. Plaintiff’s complaint did not allege defendant was in possession of the requested documents. Rather, the complaint asserted the “records sought in the FOIA are non-exempt records of the City of Alton.” Further, plaintiff’s complaint sets forth:

“As the attached records of the City of Alton returned to me constituting their reason for denial, the FOIA does not contain any support for the City’s reason to not simply download the public document and record of the lawsuit filed by Ayron Womack against the City of Alton, Illinois.”

“[A]n agency cannot improperly withhold records that it does not maintain.” (Internal quotation marks omitted.) *Chicago Recycling Coalition v. City of Chicago Department of Streets & Sanitation*, 2023 IL App (1st) 220154, ¶ 40. Plaintiff’s complaint establishes that the City of Alton did not maintain records of a lawsuit, but instead asked the City of Alton to obtain it and provide it to plaintiff. Defendant did not violate FOIA, and the circuit court properly dismissed the complaint.

¶ 16 Finally, we note that the present appeal is frivolous. “An appeal is deemed frivolous if a reasonable, prudent attorney acting in good faith would not have brought it.” *Edwards v. City of Henry*, 385 Ill. App. 3d 1026, 1039 (2008). After making his initial FOIA request, plaintiff was advised of the proper public body to make his request for a court file to the Madison County Court System. Instead of proceeding to the public body that maintains court records, plaintiff filed a complaint which, among other things, suggested that despite the records not being in the possession of the City of Alton, it should “simply download the public document and record of the lawsuit filed by Ayron Womack against the City of Alton, Illinois.” After this complaint was dismissed, plaintiff filed an appeal with this court. In his appellant’s brief, plaintiff suggests that the circuit court should have “tapped a few keys on his government keyboard and printed out the lawsuit,” and presumably provide it to plaintiff. Plaintiff attempted to circumvent the proper procedure to obtain the records he desires. After being advised he needed to request records from another body, he filed suit; then, when his suit was dismissed, and the order again noted the request was to the wrong public body, he appealed. None of which a reasonably prudent attorney acting in good faith would have proceeded with.

¶ 17 We previously admonished plaintiff regarding his filing of frivolous appeals on June 15, 2026. See *Tidwell v. Edwards*, 2026 IL App (5th) 240233-U. As the appellant’s brief in the present appeal was filed before that order, we again admonish plaintiff that while we do not sanction him at this time, the court is authorized to impose a procedural sanction requiring him to obtain leave of court before filing a new appeal if he continues to pursue frivolous and/or vexatious appeals. See *People v. Austin*, 2014 IL App (4th) 140408, ¶ 24 (“It is well settled that courts of this state may take measures to restrain litigants from maintaining vexatious litigation.”).

¶ 18

III. CONCLUSION

¶ 19 For the reasons stated above, we affirm the decision of the circuit court.

¶ 20 Affirmed.