

**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).

2024 IL App (4th) 230052-U  
NO. 4-23-0052  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
May 20, 2024  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

PETER GAKUBA,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Winnebago County
THE WINNEBAGO COUNTY PUBLIC DEFENDER’S	)	No. 21MR1036
OFFICE; THE WINNEBAGO COUNTY STATE’S	)	
ATTORNEY’S OFFICE; and THE WINNEBAGO	)	
COUNTY SHERIFF, Individually and in His Official	)	Honorable
Capacity,	)	Lisa R. Fabiano,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court.  
Justices DeArmond and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court properly dismissed plaintiff’s third amended complaint because (1) the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2022)) does not apply to the Winnebago County Public Defender’s Office and (2) both the Winnebago County State’s Attorney’s Office and the Winnebago County Sheriff properly responded to plaintiff’s requests.

¶ 2 Plaintiff, Peter Gakuba, appeals the trial court’s dismissal of his third amended complaint brought under the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2022)), in which he alleged defendants, the Winnebago County Public Defender’s Office (Public Defender’s Office), the Winnebago County State’s Attorney’s Office (State’s Attorney’s Office), and the Winnebago County Sheriff (Sheriff), improperly denied his requests for records pertaining to his convictions for aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2006)). We affirm.

¶ 3

## I. BACKGROUND

¶ 4

### A. Plaintiff's Convictions and Sentences

¶ 5

In June 2015, a jury found plaintiff guilty of three counts of aggravated criminal sexual abuse. Plaintiff was sentenced to consecutive sentences of four years' imprisonment on each count. The appellate court affirmed plaintiff's convictions and sentences. *People v. Gakuba*, 2017 IL App (2d) 150744-U. Plaintiff was released from prison in April 2021.

¶ 6

### B. Plaintiff's FOIA Requests

¶ 7

#### 1. *The Public Defender's Office*

¶ 8

On May 17, 2021, plaintiff sent a FOIA request to the Public Defender's Office for "ALL records (including but not limited to): Discovery documents, notes, memos, emails, faxes, correspondences, [and] letters that specifically name 'Peter Gakuba' or make references to 'Peter Gakuba.'" Plaintiff also requested "ALL personnel records (including but not limited to): employment applications, salaries, wages, performance/employment evaluations and reviews, [and] public correspondences/letters/emails/faxes" of four attorneys in the Public Defender's Office. Citing *Copley Press, Inc. v. Administrative Office of the Courts*, 271 Ill. App. 3d 548, 648 N.E.2d 324 (1995), the court administrator for the circuit court of Winnebago County denied plaintiff's requests, explaining, "The [Public Defender's Office] operates under the authority of the Chief Judge" and "the judiciary and all non-judicial components of the judiciary are not subject to disclosure requirements under [FOIA]."

¶ 9

#### 2. *The State's Attorney's Office*

¶ 10

On June 30, 2021, plaintiff sent a FOIA request to the State's Attorney's Office for "Any and ALL records of 'Peter Gakuba' used in the malicious prosecution and wrongful conviction" in his criminal case. Plaintiff specified "[t]his would include ALL discovery tendered

to [him] (previously when he was *pro se* in the case), and, subsequent court-appointed counsel (over objection): asst. public defender (‘APD’) Shauna Gustafson for preparation of a kangaroo trial on April 27, 2015.”

¶ 11 On July 8, 2021, Lafakeria Vaughn, chief of the Civil Bureau of the State’s Attorney’s Office, extended the period to respond by five days. On July 14, 2021, Vaughn denied plaintiff’s request, explaining “[a]fter a reasonable search for the requested documents, our office was unable to locate [documents responsive] to your request.”

¶ 12 On December 25, 2021, plaintiff sent a second FOIA request to the State’s Attorney’s Office for “any and all documents, letters, memorandums, emails, telephone records, photographs, court pleadings and filings, exhibits, evidence, intra-departmental correspondences, [and] inter-departmental correspondences between the Office of the Illinois Attorney General and ANY other government/quasi-government/agency/proxy of any American or foreign governments.” On January 3, 2022, after acknowledging receipt of plaintiff’s request on December 28, 2021, Vaughn denied it. Vaughn explained the request was “overly broad and it would be unduly burdensome for this office to respond or search for responsive documents, without further description, such as case number or incident, etc.” However, Vaughn “invite[d] [plaintiff] to narrow or reduce [his] request” to make it more “manageable.”

¶ 13 *3. The Sheriff*

¶ 14 In a correspondence dated January 26, 2022, Deputy Chief Mark Karner stated plaintiff sent a FOIA request to the Sheriff on January 11, 2022. The attached form showed plaintiff was requesting “ANY and ALL records for ‘Peter Gakuba’ ” and asserting he is “the only one in America” by that name. (In both a December 15, 2022, hearing and in a written order issued December 21, 2022, the trial court refers to the date of plaintiff’s request as January 18, 2022. The

date listed as “Today’s Date” on the request form attached to Karner’s correspondence shows “1/18/22”). Karner denied plaintiff’s request, explaining it “fail[ed] to state with a reasonable degree of specificity the type of record [he was] seeking and [was] therefore unduly burdensome to locate, review, redact and disseminate.” Karner also explained plaintiff’s request “call[ed] for a wide range of documents that might be exempted from disclosure under Illinois FOIA.” Karner added plaintiff had “the prerogative to confer with [him] to discuss narrowing/amending [his] request to make it less burdensome.”

¶ 15 C. Plaintiff’s FOIA Complaint in the Trial Court

¶ 16 On July 7, 2022, plaintiff filed a third amended complaint against the Public Defender’s Office, the State’s Attorney’s Office, and the Sheriff. Plaintiff sought “pecuniary damages and equitable relief,” a “temporary restraining order,” a “preliminary and permanent injunction,” a “declaratory judgment,” “actual, compensatory and punitive damages,” and “any equitable relief afforded by state and federal constitutional and statutory law” in connection with defendants’ alleged FOIA violations.

¶ 17 Defendants filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2022)), arguing (1) plaintiff’s complaint failed to state a claim for which relief could be granted, (2) defendants responded to plaintiff’s FOIA requests, and (3) plaintiff’s disagreement with defendants’ denials of his requests is not a valid basis for a complaint of this nature.

¶ 18 On November 3, 2022, the trial court granted the motion to dismiss with prejudice as to the Public Defender’s Office and the Sheriff. The court granted the motion to dismiss in part as to the State’s Attorney’s Office and allowed it 14 days to file an affidavit explaining why the requested documents were unavailable. Thereafter, Assistant State’s Attorney Sherry Zack

submitted an affidavit averring that while she was not aware if the records plaintiff requested were disposed of through internal office protocols, his records nonetheless could not be located over an extended search period of 10 days in July 2021.

¶ 19 On December 21, 2022, the trial court found the State’s Attorney’s Office’s affidavit “set forth a valid response as to why it was unable to produce documents requested by [p]laintiff” in June 2021. As for plaintiff’s December 2021 request for documents (which included communications involving the Illinois Attorney General’s Office), the court found both that the State’s Attorney’s Office was “not the appropriate agency to produce the documents requested” and “the request was overly broad and unduly burdensome.” The court allowed the Sheriff 14 days “to file an Affidavit or other pleading explaining why Plaintiff’s request was determined to be overly broad and burdensome.” Thereafter, the Sheriff, through Civil Process Division Manager in Record Janalee Politsch, submitted an affidavit stating that Karner passed away on February 7, 2022, and subsequently, “all of [his] paper files were destroyed \*\*\* so our office has no way of knowing if any of the files that were destroyed were what [plaintiff] was requesting.” Politsch averred she performed “a complete and diligent search” through “both our old and new computer systems and was able to locate some information pertaining to [plaintiff].” Politsch noted she was attaching to her affidavit “[e]verything that [she] was able to obtain” and was sending plaintiff a copy of each document by postal mail and e-mail.

¶ 20 In January 2023, the trial court dismissed the matter “with prejudice as to all defendants.”

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 A. Plaintiff’s Motions Taken With the Case

¶ 24 Before we reach the merits of the case, we must resolve two motions filed by plaintiff, which we took with the case.

¶ 25 1. *Plaintiff's Third Motion to Reconsider Denial of Waiver of Court Fees*

¶ 26 In January 2023, plaintiff filed an “Application for Waiver of Court Fees,” representing his monthly income as \$491.56 (and his total income for the past 12 months as \$3266.82), yet his monthly rent payment as \$3000. Plaintiff did not check either the “Yes” or “No” box regarding receiving government assistance. This court issued an order stating plaintiff’s application “[did] not logically establish indigency” but allowing him to provide documentation confirming his stated income and rent. Thereafter, plaintiff submitted a lease agreement, reflecting a \$3000 monthly rent obligation, and a 2022 W-2 form reflecting a gross income for that year of \$3315. This W-2 form features an “ADP” logo and an employer name of “David B. Shapiro,” though plaintiff does not explain who Mr. Shapiro is or what plaintiff does for him. This court issued an order denying plaintiff’s fee waiver application as his documentation was “insufficient to identify the source and confirm the frequency of [his] income purported to be \$491.56 per month on the application for waiver.”

¶ 27 Plaintiff filed a motion to reconsider this court’s denial of his fee waiver application, arguing his lease and W-2 form constituted “undisputed” proof of his indigency and noting he was a Medicaid recipient and thereby entitled to a fee waiver. In support, plaintiff attached an unfiled application for a fee waiver in a different case and a document reflecting his Medicaid enrollment as of August 2021. This court denied plaintiff’s motion to reconsider.

¶ 28 Plaintiff filed a second motion to reconsider, asserting “[t]he continual denial of [his] undisputed indigency \*\*\* is a manifestation of [this court’s] irrational animus, bias and prejudice.” This court denied plaintiff’s second motion to reconsider.

¶ 29 Plaintiff filed a third motion to reconsider, complaining of this court’s “objectively unreasonable factual assessment” as to his indigency and asserting he receives “‘food stamps’/SNAP benefits.” This court ordered this motion taken with the case.

¶ 30 “The purpose of a motion to reconsider is to bring to the \*\*\* court’s attention (1) newly discovered evidence not available at the time of the hearing, (2) changes in the law, or (3) errors in the court’s previous application of existing law.” *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1140, 815 N.E.2d 476, 481 (2004). Here, plaintiff merely complains of this court’s “objectively unreasonable factual assessment” of his indigency but identifies no change in the law or misapplication of the law warranting reconsideration. “When a party seeks to have a motion to reconsider granted on grounds of newly discovered evidence, the movant must provide a reasonable explanation for why the evidence was not available at the time of the original hearing.” *Stringer*, 351 Ill. App. 3d at 1141. Here, plaintiff does not explain how his receipt of food stamps was information previously unavailable for purposes of reconsideration of this court’s denial. Thus, plaintiff has not met his burden of showing “newly discovered evidence.” *Stringer*, 351 Ill. App. 3d at 1140.

¶ 31 As plaintiff cannot satisfy any of the grounds for a motion to reconsider, his third motion to reconsider the denial of waiver of court fees is denied.

¶ 32 *2. Plaintiff’s Motion to Strike Defendants’ Brief*

¶ 33 The State’s Attorney’s Office appends a “Supplemental Appendix” to its brief. Plaintiff asserts he “can find no citable authority \*\*\* that permits [defendants] to surreptitiously seek review of documents in an appeal that was never reviewed by the trial court.” Accordingly, “the brief must be stricken in its entirety for it cites to this ‘supplemental appendix.’ ”

¶ 34 Illinois Supreme Court Rule 342 (eff. Oct. 1, 2019) allows “[t]he appellee’s brief \*\*\* [to] include in a supplementary appendix other materials from the record that also are the basis of the appeal or are essential to any understanding of the issues raised in the appeal.” The supplemental appendix contains plaintiff’s third amended complaint and notice of appeal. While the supplemental appendix also contains materials outside the record of this case, plaintiff does not provide any support for the proposition that the entire brief should be stricken as a consequence. See *Deutsche Bank National Trust Co. v. Hart*, 2016 IL App (3d) 150714, ¶ 51, 67 N.E.3d 299 (noting a motion filed in a reviewing court runs afoul of the requirement in Illinois Supreme Court Rule 361(a) (eff. Jan. 1, 2015) that a motion “state the relief sought and the grounds therefor” when it “lack[s] appropriate citation to any legal authority.”) We decline plaintiff’s invitation to strike defendants’ brief in its entirety; moreover, we only consider plaintiff’s third amended complaint and, thus, have no need to consider any of the extraneous materials in the supplemental appendix. Accordingly, plaintiff’s motion to strike defendant’s brief is denied.

¶ 35 B. Motions to Dismiss and FOIA

¶ 36 A motion under section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2022)) allows a party to “combine a section 2-615 motion to dismiss based upon a plaintiff’s substantially insufficient pleadings with a section 2-619 motion to dismiss based upon certain defects or defenses.” *Edelman, Combs & Lattuner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164, 788 N.E.2d 740, 747 (2003). This court reviews the trial court’s dismissal of a complaint pursuant to section 2-619.1 *de novo*. *Morris v. Harvey Cycle & Camper, Inc.*, 392 Ill. App. 3d 399, 402, 911 N.E.2d 1049, 1052 (2009).

¶ 37 In Illinois, FOIA governs the inspection of public records. See 5 ILCS 140/1.2 (West 2022) (“All records in the custody or possession of a public body are presumed to be open



to inspection or copying.”). Unless subject to exemption, “[e]ach public body shall make available to any person for inspection or copying all public records.” 5 ILCS 140/3(a) (West 2022). “Any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief.” 5 ILCS 140/11(a) (West 2022). As pertinent to the instant case, FOIA defines “public body” to include “all legislative, executive, administrative, or advisory bodies of the State.” 5 ILCS 140/2(a) (West 2022).

¶ 38 When a public body receives a FOIA request, it must respond in writing within five business days of receiving it. 5 ILCS 140/3(d) (West 2022). The public body may extend the response period by not more than five business days for any of several enumerated reasons, including “the requested records have not been located in the course of routine search and additional efforts are being made to locate them.” 5 ILCS 140/3(e)(iv) (West 2022).

¶ 39 C. This Case

¶ 40 In this case, defendants filed a joint motion to dismiss plaintiff’s third amended complaint, which the trial court granted. On appeal, plaintiff makes a litany of arguments attempting to relitigate his criminal case. However, the core of plaintiff’s argument is the court’s dismissal of his complaint with prejudice was objectively unreasonable. We disagree and find the court did not err in dismissing plaintiff’s complaint with prejudice as to each of the named defendants.

¶ 41 1. *The Public Defender’s Office*

¶ 42 The trial court dismissed the complaint against the Public Defender’s Office with prejudice because the public defender operates as part of the judiciary and is not subject to FOIA. In *Copley Press*, the appellate court held, “The lack of any reference to the courts or judiciary” in the definition of a public body “must be taken as an intent to exclude the judiciary from the

disclosure requirements of [FOIA].” *Copley Press*, 271 Ill. App. 3d at 553. In the employment context, the Illinois Supreme Court has referred to public defender’s offices as operating under the authority of the chief judge of a particular circuit court. *Administrative Office of the Illinois Courts v. State & Municipal Teamsters, Chauffeurs & Helpers Union, Local 726*, 167 Ill. 2d 180, 189, 657 N.E.2d 972, 979 (1995). Plaintiff has not presented any case law refuting this classification. Therefore, the court did not err in dismissing the complaint against the Public Defender’s Office with prejudice.

¶ 43 *2. The State’s Attorney’s Office*

¶ 44 The trial court dismissed the complaint against the State’s Attorney’s Office with prejudice as it provided plaintiff with valid and timely responses to his requests. Plaintiff’s FOIA request was submitted to and received by the State’s Attorney’s Office on June 30, 2021. The State’s Attorney’s Office had until July 8, 2021, to respond. That day, Vaughn extended the response period by five days pursuant to section 3(e)(iv) of FOIA (5 ILCS 140/3(e)(iv) (West 2022)) (“[T]he requested records have not been located in the course of routine search and additional efforts are being made to locate them.”). Zack’s affidavit stated the extension was needed because no files could be located within the initial five-day period. Four business days later, on July 14, 2021, Vaughn denied plaintiff’s request, explaining “[a]fter a reasonable search for the requested documents, our office was unable to locate [documents responsive] to your request.” The State’s Attorney’s Office’s response satisfied the statutory requirements.

¶ 45 Plaintiff’s second FOIA request was received on December 28, 2021. The State’s Attorney’s Office had until January 5, 2022, to respond. Vaughn responded on January 3, 2022, denying the request because it was “overly broad and it would be unduly burdensome for this office to respond or search for responsive documents, without further description, such as case

number or incident, etc.” Section 3(g) of FOIA provides a public body may decline a request on the ground that compliance would be “unduly burdensome” so long as the person requesting the information is given an opportunity to narrow the request. 5 ILCS 140/3(g) (West 2022). The State’s Attorney’s Office provided plaintiff the opportunity to narrow his request, and nothing in the record suggests he did so. Further, plaintiff’s request included communications between the Illinois Attorney General’s Office and other domestic and even foreign governmental entities. The State’s Attorney’s Office is not a part of the Illinois Attorney General’s Office. The State’s Attorney’s Office properly responded to plaintiff’s FOIA requests. Therefore, the trial court did not err in dismissing the complaint against the State’s Attorney’s Office with prejudice.

¶ 46

### 3. *The Sheriff*

¶ 47 The trial court dismissed the Sheriff as a defendant after plaintiff was provided with the relevant documents. According to Karner, plaintiff submitted his FOIA request to the Sheriff on January 11, 2022. The Sheriff had until January 19, 2022, to respond. Karner did not respond until January 26, 2022. However, in compliance with the court’s order of December 21, 2022, Politsch submitted an affidavit averring that while there was no way of knowing whether any of Karner’s paper files destroyed after his death contained documents pertaining to plaintiff, she was providing him, through postal mail and e-mail, “[e]verything that [she] was able to obtain” after searching both the “old and new computer systems.” Thus, at that point, the Sheriff complied with plaintiff’s request. See *Workmann v. Illinois State Board of Education*, 229 Ill. App. 3d 459, 462-63, 593 N.E.2d 141, 144 (1992) (first noting the court could not find any Illinois cases involving a FOIA request for documents which were lost or destroyed, then citing and applying *SafeCard Services, Inc. v. Securities & Exchange Comm’n*, 926 F.2d 1197 (D.C. Cir. 1991), in which the district court, applying the federal version of FOIA, granted the agency’s motion for summary

judgment after requested documents were mistakenly destroyed and where the circuit court explained that if an agency no longer possesses a document “for a reason that is not itself suspect,” then it is not improperly withholding the document). See also *Duncan Publishing, Inc. v. City of Chicago*, 304 Ill. App. 3d 778, 782, 709 N.E.2d 1281, 1285 (1999) (“Once an agency produces all the records related to a plaintiff’s request, the merits of a plaintiff’s claim for relief, in the form of production of information, become moot.”); see also *Roxana Community Unit School District No. 1 v. Environmental Protection Agency*, 2013 IL App (4th) 120825, ¶ 42, 998 N.E.2d 961 (finding the plaintiff’s complaint for injunctive relief and declaratory judgment was moot where the defendant agency “eventually provided plaintiff those documents, albeit after a delay in violation of [FOIA]”). As such, the court properly dismissed the complaint against the Sheriff with prejudice.

¶ 48 In light of the foregoing, we affirm the trial court’s dismissal of plaintiff’s third amended complaint with prejudice as to all defendants.

¶ 49 III. CONCLUSION

¶ 50 For the reasons stated, we affirm the trial court’s judgment and deny both of plaintiff’s motions taken with this case.

¶ 51 Affirmed.