E-FILED
Transaction ID: 1-20-0547
File Date: 3/24/2021 9:53 AM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 20-0547

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MATT CHAPMAN,

Plaintiff-Appellee,

v.

CHICAGO DEPARTMENT OF FINANCE,

Defendant-Appellant.

On Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division
No. 2018-CH-14043
The Honorable Sanjay T. Tailor, Judge Presiding

REPLY BRIEF OF DEFENDANT-APPELLANT

CELIA MEZA
Acting Corporation Counsel
of the City of Chicago
2 N. LaSalle Street, Suite 580
Chicago, Illinois 60602
(312) 744-3173
elizabeth.tisher@cityofchicago.org
appeals@cityofchicago.org

BENNA RUTH SOLOMON
Deputy Corporation Counsel
MYRIAM ZRECZNY KASPER
Chief Assistant Corporation Counsel
ELIZABETH MARY TISHER
Assistant Corporation Counsel
Of Counsel

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

ARGUMENT

The CANVAS database contains sensitive personal and financial information about individuals whom the City has cited for parking and traffic violations. Chapman requested the database schema for CANVAS, or in other words, information about the structure of CANVAS and how the data is organized and stored within the system. This information is plainly exempt under section 7(1)(o) of Illinois's Freedom of Information Act ("FOIA"). It constitutes a "file layout," which is expressly exempt without a showing that its disclosure would jeopardize the security of CANVAS. Nevertheless, the Chicago Department of Finance ("CDF") also demonstrated by clear and convincing evidence that disclosure of the requested information would jeopardize the security of the CANVAS system. The judgment of the circuit court should be reversed.

In response, Chapman offers nothing to support disclosure of the database schema. Instead, he distorts our arguments, misrepresents the record, fails to meaningfully distinguish our authority, and ignores the plain language and express intent of FOIA. He also repeatedly asserts that FOIA's policies of transparency and accountability require that CDF disclose the database schema, but he fails to explain how disclosure of the internal structure of a government database that contains sensitive information about members of the public furthers the goals of the Act. We address Chapman's arguments in detail below.

I. SECTION 7(1)(o) EXPRESSLY EXEMPTS THE RECORDS CHAPMAN REQUESTED.

Section 7(1)(o) exempts "[a]dministrative or technical information associated with automated data processing operations," which includes "file layouts." 5 ILCS 140/7(1)(o). Because file layouts are specifically listed within section 7(1)(o), they are expressly exempt without a showing that their disclosure would jeopardize the security of the system. Brief and Appendix of Defendant-Appellant [hereafter "CDF Br."] 21-28. Chapman requested information about the structure of CANVAS and how the data is stored and organized within that system, and this constitutes a file layout within the meaning of section 7(1)(o). Id. at 29-31. Chapman responds that these arguments are waived, Brief of Plaintiff-Appellee [hereafter "Chapman Br."] 25-26, but the record does not support waiver. He alternatively argues that FOIA's narrow construction rule and policy of transparency permit neither a per se exemption for file layouts, id. at 19-25, nor a broad definition of file layout, id. at 26-28, and that the evidence in the record demonstrates that the information Chapman requested does not constitute a file layout, id. at 29-30. These arguments fail.

A. The Proper Interpretation Of Section 7(1)(o) Is Squarely Before The Court.

Chapman argues that CDF waived the proper interpretation of section 7(1)(o) by not raising it on summary judgment. Chapman Br. 25. There was no waiver. The purpose of the waiver rule "is to preserve judicial resources

by requiring parties to bring issues to the trial court's attention, thereby allowing the trial court the opportunity to correct any errors." Romito v. City of Chicago, 2019 IL App (1st) 181152, ¶ 33. That is precisely what CDF did here; it raised section 7(1)(o)'s proper interpretation at trial, giving the court the opportunity to rule on it. And the court did so. R. 33-34. Where the trial court specifically rules on a particular issue, "the rationale underlying the waiver rule does not apply." People v. Hadley, 179 Ill. App. 3d 152, 158 (5th Dist. 1989). Furthermore, because canons of statutory construction "are the principles that guide this court's construction of statutes," they cannot be waived. JPMorgan Chase Bank, N.A. v. Earth Foods, Inc., 238 Ill. 2d 455, 462 (2010). Thus, regardless of any waiver, this court has an independent obligation to consider the proper interpretation of section 7(1)(o).

Chapman does not cite any authority that a party waives an issue by raising it for the first time at trial; nor does he address our arguments that the circuit court's ruling on the merits overcomes any waiver and that this court has an obligation to consider the proper construction of statutes. Instead, he cites Village of Arlington Heights v. Anderson, 2011 IL App (1st) 110748, for the proposition that "[t]heories not raised during summary judgment proceedings are waived on review." Id. ¶ 15; Chapman Br. 25. But in that case, the defendant appealed the circuit court's grant of summary judgment to the plaintiff, so the defendant, by not raising an issue in its summary judgment motion, did not give the court an opportunity to rule on

it. Anderson, 2011 IL App (1st) 110748, ¶¶ 1, 8, 15. Thus, Anderson merely reflects the "well-established principle of appellate practice that contentions not raised in the trial court are waived and may not be raised for the first time on appeal." Romito, 2019 IL App (1st) 181152, ¶ 33. CDF raised the proper interpretation of section 7(1)(o) in the circuit court, and the court ruled on its merits.

Chapman next argues that CDF waived its ability to assert section 7(1)(o) at all. Chapman Br. 25-26. He cites Maydak v. U.S. Department of Justice, 218 F.3d 760 (D.C. Cir. 2000), for the proposition that, under the federal FOIA, the government "must assert all exemptions at the same time, in the original district court proceedings." Id. at 764; Chapman Br. 25. Even on Chapman's view that this is the applicable rule under Illinois's FOIA, CDF plainly satisfied this requirement – it cited section 7(1)(o) in its letter denying Chapman's request, C. 17-18; referenced that letter in its answer to Chapman's complaint, C. 25; and argued the applicability of section 7(1)(o) in its summary judgment briefing, C. 44-45, 63-66, and at trial, R. 44 ("the only issue before this Court is the applicability of the Section 7(1)(o) exemption"). Chapman observes that CDF did not expressly caption the exemption as an affirmative defense in its answer and inconsistently used the terms "could" and "would" in referencing the exemption, Chapman Br. 26, but he cites no authority that these alleged technical deficiencies render CDF's assertion of

section 7(1)(o) invalid.[1] On the contrary, Maydak holds that a public body need only "assert the exemption in such a manner that the district court can rule on the issue." 218 F.3d at 765. Again, CDF repeatedly raised section 7(1)(o) in the circuit court, and the court ruled on it. For this reason, the cases Chapman cites holding that a party's failure to plead an affirmative defense results in waiver, Chapman Br. 26, are inapposite, as they stand only for the unremarkable proposition that a party waives a defense by failing to raise it in a timely manner in the trial court, see Greer v. Illinois Housing Development Authority, 122 Ill. 2d 462, 508 (1988) (affirmative defenses must be "raised in a timely fashion in the trial court"); Landreth v. Raymond P. Fabricius, P.C., 2018 IL App (3d) 150760, ¶ 35 (defendant failed to plead "or otherwise raise [statute-of-limitations defense] before the trial court"); Ruddock v. First National Bank of Lake Forest, 201 Ill. App. 3d 907, 918 (2d Dist. 1990) (defendants raised statute-of-limitations defense "for the first time during closing arguments"). Again, that is not what happened here.

B. File Layouts Are Expressly Exempt Under Section 7(1)(o).

Consistent with the last antecedent doctrine, section 7(1)(o)'s

[1] Chapman notes that CDF missed the statutory deadline in responding to his request. Chapman Br. 26. To the extent he is suggesting this constitutes waiver, that is incorrect. A public body's failure to respond within the statutory deadline is "considered a denial of the request." 5 ILCS 140/3(d). The only consequences of an untimely response are that the public body may not impose fees for copies and may not treat the request as unduly burdensome. Id.

qualifying phrase "if disclosed, would jeopardize the security of the system" modifies only "any other information" and not any of the specifically listed items, including file layouts. CDF Br. 21-28. Accordingly, file layouts are expressly exempt without a showing that their disclosure would jeopardize the security of the system. Chapman cites several cases he argues demonstrate that qualifying phrases "should apply to all items in the list." Chapman Br. 19-20. But none of those cases undermines the application of the last antecedent doctrine here.

Chapman first cites two federal cases, Paroline v. United States, 572 U.S. 434 (2014), and United States v. Bass, 404 U.S. 336 (1971). In Paroline, the U.S. Supreme Court considered whether to apply the last antecedent doctrine to a statute requiring the court to order restitution to victims of certain federal crimes involving the sexual exploitation and abuse of children. 572 U.S. at 439. The provision at issue stated that the court must order "the full amount of the victim's losses" for six enumerated categories of expenses and "any other losses suffered by the victim as a proximate result of the offense." Id. at 445-46. The Court rejected the victim's argument that proximate cause modifies only the immediately preceding phrase "any other losses suffered by the victim" and not any of the enumerated items. Id. at 446-47. As the Court explained, proximate cause plays a "traditional role in causation analysis," id. at 446, and the victim's reading would require the defendant to pay restitution for expenses not proximately caused by the

defendant's conduct, id. at 447-48. Importantly, the Court did not disapprove of the last antecedent doctrine, but merely observed that the Court "has not applied [the doctrine] in a mechanical way where it would require accepting 'unlikely premises.'" Id. at 447 (quoting United States v. Hayes, 555 U.S. 415, 425 (2009)).

Likewise, in Bass, the Court considered whether to apply the last antecedent doctrine to a statute penalizing any convicted felon "who receives, possesses, or transports in commerce or affecting commerce . . . any firearm." 404 U.S. at 337. The Court rejected the argument that the qualifying phrase "in commerce or affecting commerce" applies only to "transports," on the ground that such a reading would give the statute "a curious reach." Id. at 340. As the Court explained, "virtually all transportations, whether interstate or intrastate, involve an accompanying possession or receipt, [so] it is odd indeed to argue that on the one hand the statute reaches all possessions and receipts, and on the other hand outlaws only interstate transportations." Id. at 340-41. Again, the Court merely concluded that there was "no reason consistent with any discernible purpose of the statute to apply an interstate commerce requirement to the 'transports' offense alone." Id. at 341.

Application of the last antecedent doctrine to section 7(1)(o) does not result in any "unlikely premises" or give the statute a "curious reach." On the contrary, a construction that per se exempts certain administrative and

technical data processing operations is necessary to protect the sensitive data contained in government computer systems – in this case the personal and financial information about members of the public – and to prevent disruption of the government's operation of those systems. "'Judges are not cyber specialists,'" Long v. Immigration & Customs Enforcement, 464 F. Supp. 3d 409, 421 (D.D.C. 2020) (quoting Long v. Immigration & Customs Enforcement, 149 F. Supp. 3d 39, 53 (D.D.C. 2015)), so a construction of section 7(1)(o) that requires the circuit court to determine, for each and every request for administrative and technical information associated with automated data processing operations, whether the government has shown by clear and convincing evidence that disclosure would pose a security risk would undoubtedly lead to the release of information that would allow cyberhackers to breach government computer systems. For this reason, application of the last antecedent doctrine is consistent with the purpose of FOIA. While the General Assembly enacted FOIA to "promote[ ] the transparency and accountability of public bodies," it also directed that the Act "is not intended to cause an unwarranted invasion of personal privacy," "unduly burden public resources," or "disrupt the duly-undertaken work of any public body." 5 ILCS 140/1. An interpretation of section 7(1)(o) that per se exempts certain administrative and technical information is necessary to carry out this directive – in this case, to protect the sensitive data contained in government computer systems and prevent disruption of the government's

operations – while still allowing the public to request records stored in those systems, to the extent those records do not fall under one of the other statutory exemptions.

Chapman argues that application of the last antecedent doctrine would produce the "absurd" result of exempting all administrative and technical information "even if no harm would result from their disclosure," which would conflict with FOIA's narrow construction rule and its policy of promoting transparency. Chapman Br. 21. He further argues that, "had the General Assembly wanted to make all 'administrative and technical information' exempt, there would be no need to include the closing [catchall] phrase." Id. at 20. But Chapman mischaracterizes our argument and ignores section 7(1)(o)'s plain language and FOIA's express legislative intent. For starters, even on Chapman's view that the qualifying phrase "would jeopardize the security of the system" applies to the specifically listed items, it is possible that no harm would result from disclosure, since the qualifying phrase requires only that public bodies body show a possibility of harm, CDF Br. 32-42, not that actual harm would result. Furthermore, we do not argue that section 7(1)(o) provides a blanket exemption for all administrative and technical information irrespective of the risk of harm. As we explain, the General Assembly already determined that disclosure of the items specifically listed in section 7(1)(o) would jeopardize the security of the system. Id. at 22-23. It also recognized that it would not be possible to list

every example of administrative and technical information that may fall within the exemption, and accordingly included a catchall for any other information the disclosure of which would jeopardize the security of the system. Id. That reading not only follows from the application of the last antecedent doctrine, but it is also aligns with the Illinois Supreme Court's interpretation of similarly phrased statutory provisions in People v. Newton, 2018 IL 122958, and Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401 (1997). CDF Br. at 23-24. Finally, as we note above, the General Assembly expressly stated that the Act shall not cause unwarranted invasions of personal privacy, unduly burden public resources, or disrupt government operations, so an interpretation of section 7(1)(o) that broadly protects government computer systems – and the sensitive data they contain – from potential threats, is entirely consistent with the Act's express goals. And while statutory exemptions, as a general matter, are construed narrowly, where the legislature purposefully drafts broad language to protect government systems from security threats, the narrow construction rule cannot defeat that broad language. Mayer Brown LLP v. Internal Revenue Service, 562 F.3d 1190, 1194 (D.C. Cir. 2009).

Chapman next cites Oommen v. Glen Health & Home Management, Inc., 2020 IL App (1st) 190854, Chapman Br. 20, but that case also does not help him. There, the court considered whether to apply the last antecedent doctrine to a provision of the Illinois Whistleblower Act defining an employee

to include any licensed physician who practices "at a hospital, nursing home, clinic, or any medical facility that is a health care facility funded, in whole or in part, by the State." Oommen, 2020 IL App (1st) 190854, ¶ 42. The court noted that "our supreme court has frequently applied" the doctrine, but added that "the rule can assuredly be overcome by other indicia of meaning," such as "where the listed items are simple, parallel, and of the type a reader would expect to see together." Id. ¶ 43 (citing Lockhart v. United States, 136 S. Ct. 958, 972 n.2 (2016) (Kagan, J., dissenting)). In such situations, "the reader will intuitively apply the final modifier to each item in the list." Id. That is the case with the terms hospital, nursing home, clinic, and any medical facility – they are simple, parallel, and often seen together. Id. But section 7(1)(o) contains no such elegant phrasing; it provides a long list of terms, of varied lengths and syntaxes, many with which the reader may not even be familiar. As the U.S. Supreme Court explained in Lockhart, when a list contains a series of items that readers are not used to seeing together and which contain "unexpected internal modifiers or structure," it is difficult for the reader "to carry the final modifying clause across" all items in the list. 136 S. Ct. at 963. That describes section 7(1)(o).

Finally, Chapman cites State Farm Mutual Auto Insurance Co. v. Murphy, 2019 IL App (2d) 180154, to argue that the last antecedent doctrine applies only where the language of the statute is ambiguous. Chapman Br. 21. He further argues that CDF never demonstrated that section 7(1)(o) is

ambiguous and that, in any event, any ambiguity in section 7(1)(o) must be resolved in favor of disclosure. Id. Chapman misses the point of the last antecedent doctrine. It is a rule of grammatical construction that is applied "unless the intent of the legislature, as disclosed by the context and reading of the entire statute, requires" an extension of the final qualifier to the more remote terms in the statute. In re E.B., 231 Ill. 2d 459, 467 (2008). And State Farm is not inconsistent with that principle. There, the court declined to apply the last antecedent doctrine to an insurance policy because doing so would lead to the "absurd result" of defining the term "insured" to include any person who uses any automobile or recreational vehicle regardless of their connection to any other individual insured under the policy. 2019 IL App (2d) 180154, ¶¶ 34-35. In other words, the intent of the drafters was clear that the final qualifier extended to all terms in the list. As we explain above, the General Assembly has not exhibited any clear intent that the last antecedent doctrine should not apply to section 7(1)(o); on the contrary, application of the last antecedent doctrine is consistent with the purpose of FOIA and necessary to protect against threats to the security of government computer systems.

Next, Chapman argues that comma placement is not dispositive and that the General Assembly has inconsistently used commas throughout FOIA. Chapman Br. 22-23. We do not argue that comma placement is dispositive; we merely point out that the lack of a comma offsetting the

qualifying phrase provides support for the application of the last antecedent doctrine. CDF Br. 27-28. That the General Assembly inconsistently used commas throughout FOIA only proves our point; the General Assembly knew how to offset qualifying phrases with punctuation but chose not to do so in certain circumstances. The two provisions Chapman cites regarding "test questions, scoring keys, and other examination materials," Chapman Br. 22-23, are not instructive because they involve the type of simple, parallel, commonly grouped items discussed in Oommen. But where the General Assembly drafted exemptions providing long lists of items of varied lengths and syntaxes, not commonly seen together, it elected to use a comma to offset any qualifying phrases it intended would apply to all items in the list. See, e.g., 5 ILCS 140/7(1)(k) (exempting certain construction-related documents pertaining to "power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security") (emphasis added); id. § 7(1)(v) (exempting "[v]ulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health of safety of the community, but only to the extent that

disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public") (emphasis added). That the General Assembly chose not to use a comma in section 7(1)(o), despite its similar complexity, strongly suggests it intended the qualifying phrase to apply only to "any other information" and not the specifically listed items.

Chapman next argues that the cases we cite applying the last antecedent doctrine are distinguishable because the terms in the statutory provisions involved in those cases were connected with "or," while the terms in section 7(1)(o) are connected with "and." Chapman Br. 23-24. Chapman does not explain why that distinction is meaningful or cite any authority in support of this proposition. He states that the use of "and" signifies that the items in the list are part of the same group, id. at 23, but that does not compel the conclusion that the qualifying phrase applies to all terms. If anything, the use of "and" in section 7(1)(o) supports a reading consistent with the last antecedent doctrine. The General Assembly clearly provided that, in addition to the items specifically listed, section 7(1)(o) exempts other administrative or technical information on a case-by-case basis upon a showing that disclosure of the requested information would jeopardize the security of the system.

Finally, Chapman attempts to distinguish Lieber because the provision at issue there "used an entirely different structure." Chapman Br. 24.

Again, Chapman does not explain why that distinction is meaningful. The provision at issue in Lieber exempted "'[i]nformation that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.'" Lieber, 176 Ill. 2d at 408 (quoting 5 ILCS 140/7(1)(b) (West 1994)). It then provided an enumerated, nonexclusive list of information exempted under that subsection. Id. at 409. The supreme court held that the enumerated items were per se exempt without a showing that their disclosure would constitute a clearly unwarranted invasion of personal privacy. Id. at 409-10. Thus, Lieber is instructive on how courts should construe FOIA exemptions that contain specifically listed items, as well as a broad catchall category. And it vitiates Chapman's argument that FOIA's presumption of transparency demands that all such exemptions be construed to apply qualifying language to the specifically listed terms.

C. The Records Chapman Requested Are File Layouts.

Chapman requested "an index of the tables and columns within each table of CANVAS" and "the column data type," which constitutes a file layout within the meaning of section 7(1)(o). CDF Br. 29-31. Chapman argues that a broad definition of file layout "runs contrary" to FOIA's narrow construction rule. Chapman Br. 27. But, as we explain above, even FOIA's narrow construction cannot overcome broadly written statutory terms, particularly where government security is at risk. Mayer, 562 F.3d at 1194. Moreover, where the legislature drafts a statute addressing technological or scientific

terms that are constantly evolving and could be rapidly rendered obsolete, it is necessary to read those terms broadly in order to "confer the flexibility to forestall such obsolescence." Massachusetts v. Environmental Protection Agency, 549 U.S. 497, 532 (2007). Here, the General Assembly's understanding of the term file layout when FOIA was enacted nearly forty years ago would undeniably be obsolete in the context of modern computer technology. For this reason, Chapman's argument that file layout is a "highly technical" term that cannot be defined by dictionary definitions, Chapman Br. 27, fails; any narrow, "highly technical" definition would be rapidly rendered obsolete. And although Chapman criticizes our reliance on dictionary definitions, he cites no authority to support his view that the term file layout must be ascribed some meaning other than its common one.

Chapman argues that the definition of file layout we articulate in our opening brief conflicts with Coffing's own testimony. Chapman Br. 29. But that assertion is not supported by the record. Coffing defined file layout as "the instructions that the database management system uses to create the database that the data is then store in." R. 67-68. He further explained that, because the requested "table names and column data" are part of the "structure of the database," R. 67, that information is considered the file layout for the CANVAS system, R. 68. As we explain, a file layout is the arrangement of the information stored in the database, CDF Br. 29-30, or in other words, the "blueprint for data storage," CMAX/Cleveland, Inc. v. UCR,

Inc., 804 F. Supp. 337, 344 n.3 (M.D. Ga. 1992). That is entirely consistent with Coffing's testimony that a file layout contains the "instructions" for how the data is stored. Put simply, Chapman requested information about the configuration of the database, and a file layout contains information about the configuration of the database. And while Ptacek opined that "schemas are not file layouts," R. 145, as Chapman points out, Chapman Br. 29, he failed to substantiate his belief with any evidence or even explain to the court what he believes a file layout is. "An expert's opinion is only as valid as the reasons for the opinion." Wiedenbeck v. Searle, 385 Ill. App. 3d 289, 293 (1st Dist. 2008). And "conclusory opinions based on sheer, unsubstantiated speculation should be considered irrelevant." Id. Thus, the information Chapman requested is a file layout, which is expressly exempt.

II. CDF SATISFIED ITS BURDEN OF PROVING THAT DISCLOSURE OF THE REQUESTED RECORDS WOULD JEOPARDIZE THE SECURITY OF THE CANVAS SYSTEM.

Section 7(1)(o) requires only that a public body show a possibility of harm, CDF Br. 32-42, and CDF satisfied its burden of proving by clear and convincing evidence that disclosure of the database schema would jeopardize the security of CANVAS, id. at 42-50. Chapman responds that nothing in FOIA indicates that section 7(1)(o) requires only a possibility of harm, Chapman Br. 15-18, and that the circuit court's ruling that CDF failed to prove the requested records are exempt under section 7(1)(o) is not against the manifest weight of the evidence, id. at 9-14. These arguments fail.

A. Section 7(1)(o) Requires Only That A Public Body Show A Possibility Of Harm To The Security Of The System.

The plain language of section 7(1)(o) indicates that public bodies need only show a possibly of harm to the security of the system, a reading that is evident from the ordinary meaning of the term "jeopardize," CDF Br. 32-33, and from the statute as a whole, id. at 33-34. This reading is also consistent with the need to protect the sensitive data contained in government computer systems, id. at 34-35, and with how federal courts have interpreted a comparable exemption under the federal FOIA, id. at 35-42. Chapman asserts that CDF waived this plain language argument by failing to raise it in the circuit court, Chapman Br. 14, but the record plainly shows otherwise. CDF argued at trial that the term jeopardize "means to endanger or threaten or to make less secure" and that, accordingly, it need only show that disclosure "would cause some risk." R. 107; see also id. (statute does not "quantify the risk," require "a substantial risk," or require that it be "more likely than not a cyber attack is going to occur"). And Chapman's argument that CDF improperly relies on federal cases not presented in the circuit court, Chapman Br. 15, should be rejected. Parties are, of course, not limited on appeal to the cases they cited in the circuit court. See Oommen, 2020 IL App (1st) 190854, ¶ 45 (declining to "strictly limit [Oommen] to the sources he cited in his briefs below" and ruling he did not waive his ability to cite legislative history for first time on appeal) (citing Brunton v. Kruger, 2015 IL

117663, ¶ 76); see also 1010 Lake Shore Association v. Deutsche Bank National Trust Co., 2015 IL 118372, ¶¶ 17-18 (permitting appellant to cite new canon of statutory construction on appeal) (citing Brunton, 2015 IL 117663, ¶ 76).

Chapman next urges the court to "reject CDF's interpretation" of section 7(1)(o). Chapman Br. 15. He argues that the federal cases we cite "are readily distinguishable and conflict with the Illinois FOIA" and that there are "key differences and no parallel language between" section 7(1)(o) and the federal exemption at issue in those cases. Id. This misses our point. We analyze the plain language of section 7(1)(o), and in particular rely on the ordinary meaning of jeopardize – "to expose to danger or risk" or "the possibility of loss or injury." CDF Br. 32-33. Although the federal FOIA exemption applicable to requests for database schema and similar information does not use the term "jeopardize" itself, it uses language that parallels the definition of jeopardize. In particular, it exempts from production information that "could reasonably be expected to risk circumvention of the law." Id. at 35. As we explain, federal courts interpret this to mean "the chance of a reasonably expected risk," rather than "an actual or certain risk" or "an undeniably or universally expected risk." Id. at 36. Because the standard is comparable under both statutes, precedent applying that exemption is instructive here.

Chapman does not address our plain language argument; in fact, he studiously avoids addressing the term jeopardize at all. Instead, he focuses on the difference between "would" and "could," arguing that the term "could" allows for "withholdings based on mere 'chances' and 'possibilities,'" while the term "would" connotes definiteness. Chapman Br. 16. This fails to come to grips with the term "jeopardize," which is the operative word in the statute. As we explain above, the term "jeopardize" itself allows for withholdings based on mere possibilities, so it does not matter that section 7(1)(o) does not use the term "could" – the word "jeopardize" itself does that work. Chapman also distracts from the plain language of section 7(1)(o) by pointing to FOIA's requirement that public bodies have the burden of proving records are exempt by clear and convincing evidence. Chapman Br. 18. This confuses what public bodies are required to prove with how much evidence is required to prevail. In this case, public bodies are required only to show a possibility of harm, but they are required to prove this by clear and convincing evidence. These principles are not irreconcilable.

B. CDF Met Its Burden Of Showing That Disclosure Of The Database Schema Would Jeopardize The Security Of The CANVAS System.

CDF met its burden of proving by clear and convincing evidence that disclosure of the database schema would jeopardize the security of the CANVAS system, as the undisputed evidence demonstrates that knowledge of the database schema provides an adversary with some advantage in

attacking the system. CDF Br. 42-50. Chapman argues that the circuit court's ruling is not against the manifest weight of the evidence, Chapman Br. 9-14, but in so doing he ignores his own expert's position, which was that the schema has "some value to [an adversary] in helping him plan his attack," R. 151-52, as it would allow an adversary to "choose which application . . . to go after," R. 149; that knowledge of the schema would "help [an adversary] isolate the systems" that contain sensitive information, "so [the adversary] wouldn't have to take the time to attack lots of other applications," R. 149-50; that, although the schema will not aid an adversary in breaching the database in the first place, it may help him once inside the database, R. 131; and that, once an adversary breaches the system using an SQL injection, he can then extract the schema from the database, R. 131, 152, and use it "to make a targeted query of the database," R. 131. Thus, contrary to Chapman's assertion, it was undisputed that disclosure of the schema would jeopardize the security of the system. Chapman observes that the circuit court found it "of no moment" that the schema may help an adversary select which application to target, Chapman Br. 13, but he fails to address our argument that this finding is against the manifest weight of the evidence, CDF Br. 45.

Finally, Chapman argues that the circuit court has "vast discretion on which witness's testimony should be accepted or rejected" and that it properly rejected Coffing's testimony as "vague and undeveloped." Chapman Br. 10.

But Chapman fails to address the cases we cite, CDF Br. 41-42, explaining that the courts must accord "substantial weight" to a public body's determination that disclosure of records will pose a security risk, e.g., Wolf v. Central Intelligence Agency, 473 F.3d 370, 374 (D.C. Cir. 2007). He also fails to meaningfully distinguish Garlick v. Naperville Township, 2017 IL App (2d) 170025, which we cite for the principle that "[a] public body can meet its burden to show an exemption applies only by providing some objective indicia that the exemption is applicable." Id. ¶ 49 (quotation and alteration omitted); CDF Br. 48-49. These cases demonstrate that the circuit court should have accorded weight to Coffing's testimony and not dismissed it as vague and conclusory.

III. FOIA SECTION 5 DOES NOT REQUIRE CDF TO PRODUCE THE RECORDS CHAPMAN REQUESTED.

Chapman argues that FOIA section 5 "affirmatively requires CDF to disclose" the database schema. Chapman Br. 30; see also id. at 17, 27-28. This argument is baseless. Section 5 requires public bodies to "maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control" and to "furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained." 5 ILCS 140/5. "The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act." Id. Nothing in this text requires public bodies to disclose information about the internal structure of their databases. As

Coffing explained, database schema consists of the precise field names within the database. R. 92. A section 5 list might describe CANVAS as containing information about individuals who have received parking and traffic citations, but disclosure of the database schema would reveal whether, for example, the last name field is coded as "f underscore name," "L underscore name," "last underscore name," or something else. See R. 92. That precise technical and personal information is not necessary to aid individuals in making FOIA requests, says nothing about how the electronic records in CANVAS may be obtained, and goes well beyond section 5's requirement that the list be "reasonably detailed." And to the extent Chapman suggests section 5 provides a means for obtaining records otherwise exempt under section 7, that argument should be rejected outright. Such a construction would render the section 7 exemptions meaningless. "No part of a statute should be rendered meaningless or superfluous." Rushton v. Department of Corrections, 2019 IL 124552, ¶ 14.

* * * *

Contrary to Chapman's repeated assertions, this case is not about transparency and accountability. Chapman did not request records of the data contained in CANVAS; nor did he request a description of the categories of records maintained by CDF and how those records may be obtained. He asked for information about the internal structure of the CANVAS system, which contains sensitive personal and financial information about members

of the public. Disclosure of this information will not further any goals of the Act. Instead, it will create an opportunity for cyberhackers to steal or manipulate the sensitive data and to disrupt CDF's operations. The judgment should be reversed.

CONCLUSION

For the foregoing reasons, this court should reverse the judgment of the circuit court.

Respectfully submitted,

CELIA MEZA
Acting Corporation Counsel
of the City of Chicago

BY: s/Elizabeth Mary Tisher
ELIZABETH MARY TISHER
Assistant Corporation Counsel
2 North LaSalle Street, Suite 580
Chicago, Illinois 60602
(312) 744-3173
elizabeth.tisher@cityofchicago.org
appeals@cityofchicago.org

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) & (b). The length of this brief, excluding the pages containing or words contained in 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, is 5,867 words.

s/ Elizabeth Mary Tisher
ELIZABETH MARY TISHER, Attorney

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that I served the foregoing brief on the persons listed below via *File & Serve Illinois* on March 24, 2021.

Matt Topic
Merrick Wayne
LOEVY & LOEVY
311 North Aberdeen Street, Suite 300
Chicago, Illinois 60607
foia@loevy.com

s/ Elizabeth Mary Tisher
ELIZABETH MARY TISHER, Attorney