2013 IL App (1st) 120560-U

FIRST DIVISION
FILED: MARCH 11, 2013

No. 1-12-0560

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WARREN R. GARLICK,	)	Appeal from the Circuit
	)	Court of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11 CH 34198
	)	
LISA MADIGAN, in her official capacity as Attorney	)	
General of the State of Illinois,	)	Honorable
	)	Mary L. Mikva,
Defendant-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court did not err in dismissing the plaintiff's complaint.

¶ 2 The plaintiff, Warren Garlick, appeals the circuit court's order dismissing his complaint, filed pursuant to the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq*. (West 2010)), against the defendant, Lisa Madigan (in her official capacity as Attorney General of the State of Illinois). For the reasons that follow, we affirm the circuit court's judgment.

¶ 3 The parties do not dispute the relevant facts, which we draw from the plaintiff's complaint,

the defendant's motion to dismiss, and the exhibits attached thereto. On March 18, 2011, the plaintiff submitted a FOIA request asking the defendant to provide him data regarding the operations of the defendant's Public Access Coordinator (PAC), which was created to oversee Illinois public bodies' compliance with FOIA. The plaintiff's request sought PAC request identifiers as well as the dates that the requests were open and closed for investigation, but the request specifically stated, in bold typeface, that the plaintiff was "not interested in the identity" of the requesting parties. The request also detailed the plaintiff's preference that the defendant provide the requested data in a specific electronic and tabulated format. On March 25, the defendant's office responded that it would not create a report "tabulated to [the plaintiff's] specifications" but would provide him an already-existing report containing his requested information, in both printed and electronic forms. The defendant's response also noted that the names of requesting entities had been redacted from the plaintiff's report.

¶ 4 On April 3, 2011, the Chicago Tribune newspaper (Tribune) published an article regarding the PAC's performance, and the online version of that article allowed readers to download data the Tribune had obtained from the PAC. Those data included the names that had been redacted from the plaintiff's report.

¶ 5 On April 6, 2011, the plaintiff contacted the defendant's office to note that the Tribune data included information that had been redacted from his report. He stated that he had "no objection to those redactions" but that he "would like an explanation *** as to why this happened." The April 6 correspondence contained no requests beyond this request for an explanation. On April 13, 2011, the defendant's office responded by explaining that the defendant was not required to assert

exemptions to FOIA in all instances and that, in the case of the Tribune article, the defendant determined that public interest outweighed the value of keeping the previously-redacted data private. Two days later, the plaintiff contacted the PAC to request "a review of [the] redactions," which he viewed as "arbitrar[ily] and capricisou[ly] *** releas[ing] information to some entities while denying the same to others." He closed his correspondence by asking the PAC to provide him a document without redactions. On April 27, 2011, the defendant's office wrote a letter concluding that the defendant's actions did not violate FOIA.

¶ 6 On May 16, 2011, the plaintiff filed a second FOIA request, this time seeking all correspondence between the Tribune defendant's office or the PAC. The defendant was given the information he requested, and the correspondence indicated that the defendant's press office worked to give the Tribune its requested data in the Tribune's preferred format.

¶ 7 On September 30, 2011, the plaintiff filed a one-count complaint asserting that the above facts established the defendant's violation of FOIA, and seeking declarations to that effect. The plaintiff also sought an injunction compelling the defendant to provide him an unredacted report, civil penalties, and costs. The defendant moved to dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2010)), on the grounds that the plaintiff had received all information he requested and the defendant did not violate FOIA. The circuit court granted the defendant's motion, and the plaintiff filed this timely appeal.

¶ 8 Because the plaintiff now challenges the circuit court's decision to grant the defendant's motion to dismiss his complaint, we begin by reviewing the standards for our review of that decision. A motion to dismiss may be brought under either section 2-615 of the Code (735 ILCS 5/2-615

(West 2010)) or section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)). A dismissal under section 2–615 admits all well-pled facts and attacks the legal sufficiency of the complaint. 735 ILCS 5/2–615 (West 2010); *La Salle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 790, 758 N.E.2d 382 (2001). A motion to dismiss under section 2–619, on the other hand, admits the legal sufficiency of the complaint but raises defects, defenses, or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. *Krilich v. American National Bank & Trust Co. of Chicago*, 334 Ill. App. 3d 563, 569–70, 778 N.E.2d 1153 (2002); 735 ILCS 5/2–619(a)(9) (West 2010). Although the defendant's motion was nominally filed pursuant to section 2-619, the circuit court relied at least partially on the notion that the plaintiff had failed to state a valid claim. In any event, a motion to dismiss under either section 2–615 or section 2–619 admits all well-pled allegations in the complaint and reasonable inferences to be drawn from the facts. *In re Chicago Flood Litigation*, 176 Ill.2d 179, 184, 680 N.E.2d 265 (1997). Our review of a dismissal under either section is *de novo*. *Van Meter v. Darien Park District*, 207 Ill.2d 359, 368, 799 N.E.2d 273 (2003).

¶ 9 The plaintiff's first argument on appeal is that the circuit court erred in concluding that he did not state a claim under FOIA based on the defendant's failure to provide him records in his preferred format. FOIA was enacted to ensure citizens' access to " 'full and complete information regarding the affairs of government.' " *American Federation of State, County & Municipal Employees, AFL-CIO v. County of Cook*, 136 Ill. 2d 334, 341, 555 N.E.2d 361 (1990) (hereinafter *AFSCME*) (quoting Ill. Rev. Stat. 1985, ch. 116, par. 201). To that end, FOIA "creates a simple mechanism whereby a public body must comply with a proper request for information." *AFSCME*, 136 Ill. 2d at 341.

FOIA "is not designed, though, to provide access to information to the extent that it disrupts the efficient functioning of a government agency." *AFSCME*, 136 Ill. 2d at 341. Thus, FOIA includes several "narrow exceptions" and limitations to the government's duty to disclose. *AFSCME*, 136 Ill. 2d at 341. Among these limitations, our supreme court has explained, is the notion that "the provider of information is not required to prepare its records in a new format merely to accommodate a request for certain information (*AFSCME*, 136 Ill. 2d at 343). Here, the defendant provided the plaintiff the information that he requested, in electronic form, from existing public records. To the extent the plaintiff preferred to receive those data in a different format, FOIA places the burden on him, and not the defendant, to reconfigure the information.

¶ 10 The plaintiff does not seriously challenge the above principles; he instead focuses his argument on the idea that he was treated differently from the Tribune, whose request for a particular format was accommodated by the defendant. The defendant's treatment of the Tribune's request, however, has no bearing on whether its treatment of the plaintiff's request complied with FOIA. The plaintiff nonetheless argues that this disparate treatment violates the equal protection guarantees of the federal and Illinois constitutions (see U.S. Const. amend XIV, Ill. Const. art. I, §2). However, "[t]he threshold inquiry in equal protection analysis is whether similarly situated persons are treated dissimilarly." *Brazas v. Property Tax Appeal Board*, 339 Ill. App. 3d 978, 984, 791 N.E.2d 614 (2003). Here, the plaintiff and the Tribune were not similarly situated, because the Tribune obtained its information by dealing with the defendant's press liaison, not through an FOIA request. Thus, we see no equal protection violation in this case.

¶ 11 The plaintiff also adds an extensive argument that the defendant's disclosure of less

information to him than to the Tribune harms the public policy interests that animate FOIA. However, the provision of additional information to the Tribune does nothing to diminish the government's duty to comply with FOIA. To the extent the plaintiff believes that FOIA should require additional disclosures where the information provider has elsewhere exceeded FOIA's disclosure requirements, his argument is with the legislature, not the courts.

¶ 12 The plaintiff's second argument on appeal is that the defendant violated FOIA by redacting information from the data it provided him. However, as the defendant observes, the plaintiff's FOIA requests specifically stated, in emphasized typeface, that he did not seek the redacted information. To counter this observation, the plaintiff asserts that his April 6 letter to the defendant should be interpreted as a new FOIA request for the redacted information. That letter, though, makes no request for anything other than an explanation for the defendant's actions, and it in fact repeats the plaintiff's position that he had "no objection" to the redactions. We cannot interpret it as a new request for the redacted information. Likewise, although the defendant's April 15 correspondence with the PAC requested the redacted information, the correspondence itself was very clearly framed as a request for review. That type of request, authorized pursuant to section 9.5 of FOIA (5 ILCS 140/9.5 (West 2010)), initiates the very procedure that its name suggests: it requires the public body to investigate and explain its prior response. By its nature, then, such a request cannot be interpreted as an entirely new FOIA request. Accordingly, we agree with the defendant that its redactions did not cause its response to the plaintiff's FOIA request to be deficient.

¶ 13 For the foregoing reasons, we conclude that the circuit court did not err in granting the defendant's motion to dismiss the plaintiff's complaint, and we affirm its judgment.

¶ 14 Affirmed.