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2015 IL App (3d) 140014-U

Order filed July 23, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

CALVIN MERRITTE,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Plaintiff-Appellant,	)	La Salle County, Illinois.
	)	
v.	)	Appeal No. 3-14-0014
	)	Circuit No. 12-MR-121
THOMAS TEMPLETON and TROY	)	
HOLLAND, in their official capacities,	)	The Honorable
	)	Eugene P. Daugherity
Defendants-Appellees.	)	Judge, Presiding.
	)	

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice McDade and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly ruled that inmate was not entitled to correction officer's medical records or disciplinary adjudication records pursuant to Freedom of Information Act request but was entitled to redacted photograph depicting officer's injury allegedly caused by inmate.

¶ 2 Plaintiff Calvin Merritte, an inmate of the Illinois Department of Corrections, filed a complaint for declaratory judgment and injunctive relief against defendants La Salle County Sheriff Thomas Templeton and La Salle County Assistant State's Attorney Troy Holland after

defendants partially denied an Illinois Freedom of Information Act (FOIA) request plaintiff filed. The trial court dismissed plaintiff's complaint, finding that defendants fully complied with plaintiff's FOIA request. On appeal, plaintiff argues that the trial court abused its discretion by dismissing his complaint because defendants failed to prove that certain documents were exempt from disclosure under FOIA. We affirm in part and reverse in part.

¶ 3 FACTS

¶ 4 On June 6, 2008, plaintiff was an inmate at La Salle County Jail, and La Salle County Sheriff's Deputy John Knepper was working at the jail. Knepper testified at plaintiff's sentencing hearing that an incident occurred between him and plaintiff on June 6, 2008, that resulted in plaintiff biting Knepper on the arm.

¶ 5 In January 2013, plaintiff filed a FOIA request with La Salle County Jail for the following documents:

> "1. John Knepper medical records for [the] 6/6/08 incident with Calvin Merritte in the jail.
>
> 2. Calvin Merritte['s] [g]rievances regarding [the] incident with John Knepper [on] 6/6/08.
>
> 3. John Knepper['s] disciplinary background, complaints, reports, investigations, etc. involving misconduct while performing his duties as a deputy of LaSalle County.
>
> 4. Any and all other information related to the incident [on] 6/6/08 investigative or otherwise."

¶ 6 Defendants responded to plaintiff's request by providing plaintiff with reports from the June 6, 2008 incident drafted by Knepper and La Salle County Sheriff's Deputy Mark Greene.

Defendants also provided plaintiff information regarding the final outcome of disciplinary action taken against Knepper, stating that Knepper was "suspended without pay on December 4, 2008 through January 23, 2009." Defendants denied plaintiff's request for Knepper's medical records, pursuant to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2012)), asserting that those records were prohibited from disclosure. Defendants further responded that grievances filed by plaintiff regarding the June 6, 2008, incident were not retained. Finally, defendants refused to provide any additional documents or information related to alleged misconduct by Knepper, pursuant to section 7(1)(n) of FOIA (5 ILCS 140/7(1)(n) (West 2012)).

¶ 7 After receiving defendants' response to his FOIA request, plaintiff filed an appeal with the Public Access Bureau of the Office of the Attorney General of Illinois (Bureau). Plaintiff stated that the purpose of his appeal was "to further litigation from a malicious prosecution & serve the public interest." In April 2012, the Bureau issued a response indicating that "further inquiry is warranted." Defendant Holland responded to the Bureau's request by providing additional information, after which plaintiff was given the opportunity to respond.

¶ 8 Instead of filing a response with the Bureau, plaintiff filed a complaint for declaratory judgment and injunctive relief against defendants in circuit court. Three days later, the court entered an order denying plaintiff's complaint. Plaintiff appealed, and defendants confessed error, seeking a remand to allow them to "cure any inadvertent errors." We reversed and remanded. *Merritte v. Templeton*, 2013 IL App (3d) 120507 (unpublished summary order under Supreme Court Rule 23).

¶ 9 On remand, defendants supplemented their FOIA response with reports of the June 6, 2008, incident drafted by correction officers Amy Taylor and Robin Ballard, which defendants

inadvertently failed to provide to plaintiff in their original response. Defendants maintained that the remainder of their original FOIA response was complete.

¶ 10 Thereafter, plaintiff filed a motion for production of documents and a request for admissions, seeking admissions from defendants "that there is a video recording of the incident [on] 6/6/08 with the plaintiff (Calvin Merritte) and John Knepper at La Salle County Jail" and "that Mark Greene took a photograph of John Knepper's arm/bite mark that allegedly occurred in the 6/6/08 incident." Defendants filed an answer, denying that there is a video recording of the June 6, 2008 incident but admitting that they have "a photograph of Knepper's arm/bite mark that allegedly occurred in the 6/6/08 incident."

¶ 11 On November 21, 2013, the trial court dismissed plaintiff's complaint, finding that "the FOIA request has been fully complied with and nothing further is required to be provided." Plaintiff filed a motion to reconsider, which the trial court denied.

¶ 12 ANALYSIS

¶ 13 Section 3 of FOIA provides: "Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in section 7 of this Act." 5 ILCS 140/3(a) (West 2012). FOIA defines "public records" as "all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business *** having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c) (West 2012).

¶ 14 Under FOIA, "public records are presumed to be open and accessible." *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997); 5 ILCS 140/1.2 (West

2012). FOIA's exemptions are to be read narrowly. *Lieber*, 176 Ill. 2d at 407; 5 ILCS 140/1 (West 2012). When a public body receives a request for information, it must comply with the request unless one of the narrow statutory exemptions applies. *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 463 (2003); *Lieber*, 176 Ill. 2d at 407.

¶ 15 The public body has the burden of proving by clear and convincing evidence that a record falls within a claimed exemption. 5 ILCS 140/1.2 (West 2012). To meet this burden, the public body must provide a detailed justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversarial testing. *Illinois Education Ass'n*, 204 Ill. 2d at 463.

¶ 16 I

¶ 17 Plaintiff argues that defendants were required to produce Knepper's medical records related to the June 6, 2008 incident, pursuant to his FOIA request. Defendants respond that those records are exempt under section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2012)) because disclosure of medical records is prohibited by law.

¶ 18 Illinois has a strong public policy that favors protecting the privacy rights of individuals with respect to their medical information. *Coy v. Washington County Hospital District*, 372 Ill. App. 3d 1077, 1082 (2007). This policy is articulated and reflected in numerous Illinois statutes. *Id*. Both the Medical Patient Rights Act (410 ILCS 50/3(d) (West 2012)) and the Managed Care Reform and Patient Rights Act (215 ILCS 134/5(a)(4) (West 2012)) recognize that patients have a right to "privacy and confidentiality in health care." Additionally, the Hospital Licensing Act prohibits hospital employees and staff from disclosing patient health information to third parties. 210 ILCS 85/6.17(d) (West 2012). Finally, the Illinois Code of Civil Procedure creates an evidentiary privilege for communications between physicians and patients. 735 ILCS 5/8-802

(West 2012). These statutes recognize that "[i]ndividuals have a right to and an expectation of privacy related to their medical information." *Coy*, 372 Ill. App. 3d at 1082.

¶ 19 Because state law prohibits the disclosure of Knepper's medical records, they are exempt from disclosure under section 7(1)(a) of FOIA, and defendants properly refused to provide them to plaintiff.

¶ 20 II

¶ 21 Plaintiff next argues that defendants were required to provide him with copies of all of the grievances he filed with La Salle County Jail regarding the June 6, 2008, incident. Defendants respond that the jail did not retain copies of the grievances and, therefore, they cannot provide them to plaintiff.

¶ 22 FOIA requires public bodies to make available for inspection and copying all "public records," which includes records that are in the possession of the public body. See 5 ILCS 140/2(c), 140/3(a) (West 2012). Here, La Salle County Jail employees did not retain the grievances plaintiff filed but destroyed them. Because the jail does not have the grievances in its possession and has no way to obtain them, defendants cannot provide the grievances to plaintiff pursuant to his FOIA request.

¶ 23 III

¶ 24 Plaintiff argues that defendants should have provided him with Knepper's disciplinary records, including complaints, reports, and investigations of misconduct allegedly committed by him. Defendants respond that they fully complied with this request by providing plaintiff with the final outcome of the June 6, 2008, incident, which resulted in Knepper being disciplined.

¶ 25 Section 7(1)(n) of FOIA provides an exemption for "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not

extend to the final outcome of cases in which discipline is imposed." 5 ILCS 140/7(1)(n) (West 2012. The Act does not define "adjudication;" however, it is "generally understood to involve a formalized legal process that results in a final and enforceable decision." *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶ 13.

¶ 26 Here, defendants responded to plaintiff's request for Knepper's disciplinary records by providing plaintiff with information about the final outcome of the June 6, 2008, incident between plaintiff and Knepper, which resulted in Knepper being suspended without pay from December 4, 2008, to January 23, 2009. Pursuant to section 7(1)(n) of FOIA, all other information related to Knepper's adjudication was exempt from disclosure. Thus, defendants fully complied with this request.

¶ 27 IV

¶ 28 Finally, plaintiff contends that defendants are unlawfully withholding a video recording of the June 6, 2008, incident, as well as a photograph of Knepper, showing the bite mark plaintiff allegedly inflicted upon him. Defendants respond that they do not have a video recording of the incident and that the photograph of Knepper, which shows Knepper's face as well as the bite mark on his arm, is exempt as "[p]rivate information" pursuant to section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2012)).

¶ 29 Section 7(1)(b) of FOIA provides an exemption for "[p]rivate 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) (West 2012). To determine whether disclosure would constitute an unwarranted invasion of personal privacy, courts take into account (1) the plaintiff's interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy,

and (4) the availability of alternative means of obtaining the requested information. *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 13 (2010).

¶ 30 A

¶ 31 First, defendants did not violate FOIA by failing to produce a video recording of the June 6, 2008, incident between plaintiff and Knepper because defendants have consistently denied that any such recording exists. Since defendants do not have a video recording of the incident, they cannot provide one to plaintiff.

¶ 32 **B**

¶ 33 With respect to the photograph of Knepper, we must balance Knepper's right to privacy against the public's legitimate interest in "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" (5 ILCS 140/1 (West 2012)). See *State Journal Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881, ¶ 44. Relying on the factors set forth above, we find that the proper balance between Knepper's privacy rights and the public's right to disclosure is achieved by requiring defendants to provide plaintiff only with the portion of the photograph that shows the bite mark on Knepper's arm.

¶ 34 Plaintiff claims that he is seeking the photograph and all of the other documents he requested "to further litigation from a malicious prosecution [and] serve the public interest." The statute of limitations for malicious prosecution is two years. 735 ILCS 5/13-202 (West 2012). Here, more than seven years have elapsed since the photograph was taken and Knepper accused plaintiff of causing the injuries depicted therein. The statute of limitations has long since run on any potential litigation related to a malicious prosecution claim. See *id.* Thus, plaintiff's stated

interest in the photograph is not credible. Because plaintiff has failed to identify any other legitimate personal interest in the photograph, this factor weighs against disclosure.

¶ 35 Turning to the public interest factor, the public has an interest in effective law enforcement. *People v. Loggins*, 134 Ill. App. 3d 684, 689 (1985). The public also has an interest and ensuring that public employees are not engaging in misconduct. See *State ex rel. Ledford v. Turcotte*, 536 N.W. 2d 130, 133 (Wis. Ct. App. 1995). Full and complete disclosure of documents related to public employees helps achieve that interest. See *id*.

¶ 36 On the other hand, the public has an interest in the safety of law enforcement officers. *People v. Gonzalez*, 294 Ill. App. 3d 205, 211 (1998). Defendants contend that providing plaintiff, an inmate, with a photograph showing Knepper's face threatens Knepper's safety as a deputy sheriff who works in a county jail. We agree and find that defendants' safety concerns are alleviated by providing plaintiff only with that portion of the photograph that shows Knepper's injury. The public interest weighs in favor of disclosing a redacted photograph.

¶ 37 Here, the invasion of privacy resulting from disclosure of the photograph will be slight. Public law enforcement officers have a reduced expectation of privacy compared to ordinary citizens. *Lissner v. United States Customs Service*, 241 F.3d 1220, 1223 (9th Cir. 2001). A description of a correction officer's injuries allegedly caused by one or more inmates is subject to disclosure when an inmate files a FOIA request. See *Matter of Beyah v. Goord*, 309 A.D. 2d 1049, 1050 (N.Y. App. Ct. 2003). While there are "valid reasons for withholding personal information about prison staff from inmates at institutions" (*Turcotte*, 536 N.W.2d at 132), as long as confidential information regarding the correction officer is redacted, the release of information concerning a correction officer's injuries does not constitute an unwarranted invasion of privacy. See *Beyah*, 309 A.D. 2d at 1050.

¶ 38 The final factor in the privacy analysis also weighs in favor of disclosure because plaintiff cannot obtain the photograph through other means. While defendants argue that plaintiff could obtain the photograph through discovery if he decides to file a lawsuit (see Ill. S. Ct. R. 214 (eff. Jan. 1, 1996)), as set forth above, the statute of limitations for a malicious prosecution action has long since expired. See 735 ILCS 5/13-202 (West 2012). Because plaintiff does not appear to have a viable cause of action, he would not be able to obtain the photograph through discovery.

¶ 39 Here, the relevant factors weigh in favor of disclosure of the photograph that depicts Knepper's injury allegedly caused by plaintiff. However, the photograph should be redacted to show only the injury to Knepper's arm to protect his right to privacy as well as the public's interest in his safety. Defendants are required to solely disclose to plaintiff that portion of the photograph showing the bite mark on Knepper's arm, as it is not exempt from disclosure under section 7(1)(b) of FOIA.

¶ 40 CONCLUSION

¶ 41 The judgment of the circuit court of La Salle County is affirmed in part and reversed in part; cause remanded.

¶ 42 Affirmed in part and reversed in part; cause remanded.