2016 IL App (2d) 150381-U
No. 2-15-0381
Order filed February 22, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WARREN R. GARLICK,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-CH-2263
	)	
NAPERVILLE TOWNSHIP,	)	Honorable
	)	Terence M. Sheen,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in dismissing plaintiff's complaint for failure to state a violation of section 8.5 of the Freedom of Information Act, where the question whether the public record is reasonably accessible was properly pleaded and presents a question appropriately addressed in a summary judgment motion or at trial. Reversed and remanded.

¶ 2 In this case, we address whether plaintiff, Warren R. Garlick, stated a cause of action that section 8.5 of the Freedom of Information Act (Act) (5 ILCS 140/1 *et seq.* (West 2014)) requires defendant, Naperville Township, a public body that maintains a database of over 32,000 property tax parcel records, to provide an electronic copy of that database, *in its entirety*, in response to a request under the Act, if it provides access to those records online, but only on a *record-by-*

record basis. For the following reasons, we conclude that plaintiff sufficiently pleaded a cause of action and that the trial court erred in dismissing, pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)), his complaint for declaratory and injunctive relief. The question of reasonable access is one properly brought by a summary judgment motion or addressed at trial. Reversed and remanded.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff, Warren R. Garlick, is a resident of River Forest, which is situated in Cook County. Defendant, Naperville Township, is a unit of local government situated in Du Page County and a "public body" under the Act. 5 ILCS 140/2(a) (West 2014).

¶ 5 The township assesses all real property within its boundaries for local taxation purposes. There are about 32,000 real estate property records/parcels within its jurisdiction. As part of the assessment process, the township gathers, assembles, and maintains information concerning the valuing and assessing of the parcels. The information is entered into and stored in a database that the township commissioned and over which it has control.

¶ 6 As part of the database system, the township commissioned a webserver that allows the public to retrieve property information *on a parcel-by-parcel basis* from the computerized database system that the township compiled and maintained. The URL link to its webserver is: http://www.napervilletownship.com/SD/Naperville/assessordb/search.aspx. Thus, when a member of the public connects to the webserver, a web database query form appears, allowing the user to enter either a property parcel number or a street address. The server does not allow a user to search multiple parcels/addresses at one time. Further, a user cannot perform a search based on any other property information in the data display page, such as property size, property

age, number of bedrooms, number of bathrooms, etc. Nor can one perform, collectively, a statistical analysis of the parcels.

¶ 7 On December 4, 2014, plaintiff submitted a request to defendant, Naperville Township, asking that the township provide him property details and assessment data for the entire township. Specifically, he sought a copy of: (1) the database in its native file format (*i.e.*, in the electronic format maintained by the township); and (2) the "N07" root/parent directory and all sub-directories, including the jpeg files stored within these sub-directories, preserving the existing sub-directory structure onto a suitable electronic media.

¶ 8 On December 12, 2014, the township responded to plaintiff's request, stating that it was not going to provide him with the electronic records that he had requested. It asserted that, pursuant to section 8.5 of the Act, which was recently enacted, it was no longer required to provide plaintiff with these electronic records in the manner or format that he had requested where it had posted the information on its website. It directed plaintiff to the website for the online data, noting that it consisted of over 32,000 individual property records. The letter further stated:

> "The property records software, as currently constituted, is incapable of generating assessment records on a Township-wide basis. In addition, it is not feasible to provide the records requested, as the Assessor's Office does not have possession of or access to the database in its native file format. (See 5 ILCS 104/6(a)). Nor is the Assessor's Office required to create such a file under [the Act]. (See 5 ILCS 140/1)."

The letter also stated that, although plaintiff's request was silent on the issue, the Assessor was treating his request as a commercial request.

¶ 9 On December 19, 2014, plaintiff, *pro se*, filed against the township a complaint for declaratory judgment and injunctive relief, alleging a violation of the Act. 5 ILCS 140/11(a) (West 2014). He alleged that his request amounted to "nothing more than a single 'cut and paste' operation, imposing no significant burdens on the Township." Plaintiff asserted that the township was compelling him to launch 32,000 independent web database search queries, copy each of them and paste them into a table of his own creation. He estimated that such a project would involve over 2,600 hours of his time, thus, vitiating the Act's purpose, which could not have been the General Assembly's intent in enacting section 8.5. Addressing the township's claim that it was not feasible to provide the requested records, plaintiff asserted that the township did have possession of and access to the data and that it was stored on its local server at the township's office and backed up in the cloud. He also asserted that the copying of the database did not constitute the *creation* of a new record for which the township had no statutory obligation to meet.

¶ 10 Pursuant to section 2-615 of the Code, the township moved to dismiss plaintiff's complaint, arguing that plaintiff failed to state a cause of action under the Act because: (1) the statute unambiguously no longer required a public body to copy public records that are available online; (2) the undisputed facts showed that plaintiff had reasonable access to the records he requested and that section 8.5 does not dictate how or in what form that records must be posted online; (3) the legislative history supported its position; and (4) the Act does not require a public body to spend funds to benefit private individuals, such as creating, maintaining, or producing records in a specific format. Accordingly, it sought dismissal with prejudice. (The motion did not address the township's statement in its denial letter that its software was incapable of

generating the records on a township-wide basis or that it did not possess or have access to the database in its native file format.)

¶ 11 After hearing, the trial court granted the township's motion, finding that: (1) the township complied with section 8.5 of the Act; (2) there were no allegations that any information was missing; and (3) "[i]t just requires a little longer format and search, but it is published as required by law."[1] Plaintiff, *pro se*, appeals.[2]

¶ 12 II. ANALYSIS

¶ 13 Plaintiff appeals from the trial court's section 2-615 dismissal of his complaint. In ruling on a section 2-615 motion to dismiss, all well-pleaded facts and all reasonable inferences that may be drawn from those facts are accepted as true. *Rockford Memorial Hospital v. Havrilesko*, 368 Ill. App. 3d 115, 120 (2006). However, a plaintiff may not rely on mere conclusions of law or fact unsupported by specific factual allegations. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). The critical inquiry is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). Only those facts apparent from the face of the pleadings, matters of which the court can take

[1] The order did not specify whether dismissal was with or without prejudice. However, the township's motion requested a dismissal with prejudice and the trial court's order states that the motion "is granted." Thus, under the circumstances, the ruling was with prejudice and the dismissal was appealable. *Hozian v. Sweeney*, 202 Ill. App. 3d 444, 448-49 (1990).

[2] Further, we subsequently granted the Illinois Press Association, the Illinois Broadcasters Association, and the Better Government Association's request to file an *amicus curiae* brief in support of plaintiff.

judicial notice, and judicial admissions in the record may be considered in ruling on such a motion. *Pooh-Bah Enterprises, Inc.*, 232 Ill. 2d at 473. For purposes of a section 2-615 motion, a court may not consider "affidavits, affirmative factual defenses or other supporting materials," except exhibits attached to and part of the complaint. *Oravek v. Community School District 146*, 264 Ill. App. 3d 895, 898 (1994); see also *Kirchner v. Green*, 294 Ill. App. 3d 672, 676-77 (1998). "Unlike a section 2-619 motion or a section 2-1005 summary judgment motion (735 ILCS 5/2-619, 2-1005 (West 2014)), a section 2-615 motion relies solely on the pleadings rather than on the underlying facts." *Simpkins v. CSX Corp.*, 401 Ill. App. 3d 1109, 1110 (2010). Thus, the plaintiff must prevail if sufficient facts are pleaded which, if proved, would entitle him or her to relief. *Id.* A cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006).

¶ 14 We review *de novo* a section 2-615 dismissal. *Carr v. Koch*, 2012 IL 113414, ¶ 27. Similarly, we review *de novo* statutory construction issues. *Stern v. Wheaton-Warrenville Community Unit School District 200*, 233 Ill. 2d 396, 404 (2009). In construing a statute, our primary objective is to determine and effectuate the legislative intent. *Larson v. Wexford Health Sources, Inc.*, 2012 IL App (1st) 112065, ¶ 18. The statutory language is the most reliable indicator of the legislature's intent, and the language should be given its plain and ordinary meaning. *Id.*

¶ 15 A. Statutory Framework

¶ 16 The Act's purpose is "to open governmental records to the light of public scrutiny." (Internal quotation marks omitted.) *Watkins v. McCarthy*, 2012 IL App (1st) 100632, ¶ 13. It provides generally that "persons are entitled to full and complete information regarding the

affairs of government." 5 ILCS 140/1 (West 2014). Under the Act, public records are presumed to be open and accessible (*Heinrich v. White*, 2012 IL App (2d) 110564, ¶ 8), and courts liberally construe the Act to achieve the goal of "provid[ing] the public with easy access to government information" (*Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 416 (2006)).

¶ 17 The statute defines "public record" as follows:

> "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, regardless of physical form or characteristics, 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 2014).

See, *e.g.*, *American Federation of State, County & Municipal Employees (AFSCME), AFL-CIO v. County of Cook*, 136 Ill. 2d 334, 341 (1990) (a computer tape is a public record).

¶ 18 While the Act may not be used to violate individual privacy rights, allow requests of commercial enterprises to unduly burden public resources, or disrupt the proper work of a governmental body beyond its responsibilities under the Act, a public body "must comply with a valid request for information unless one of the narrow statutory exemptions set forth in section 7 of the [Act] applies." *Watkins*, 2012 IL App (1st) 100632, ¶ 13; 5 ILCS 140/3(a) (West 2014) ("[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7"); see also 5 ILCS 140/7 (West 2014) (exemptions include, in part, certain private information, law enforcement and correctional

institution data, trade secrets and certain financial information, educational information, certain public employee grievance and disciplinary information, etc.) Further, section 3(a) imposes a duty to make public records available for inspection and copying, but in subsection (f) it contains an additional exception, providing that the public body may avoid compliance if it would prove to be unduly burdensome and the burden cannot be avoided. 5 ILCS 140/3(g) (West 2014). Specifically, section 3(g) provides, in relevant parts:

> "(g) Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information. ***
>
> Repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act shall be deemed unduly burdensome under this provision." 5 ILCS 140/3(g) (West 2014).

Further, so long as an exemption does not apply, the requestor's purpose in making his or her request is irrelevant. *People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 204 (1997).

¶ 19 Section 6(a) of the Act addresses electronic records and provides:

> "When a person requests a copy of a record maintained in an electronic format, the public body *shall furnish it in the electronic format specified by the requester, if feasible*. If it is not feasible to furnish the public records in the specified electronic format, then the public body *shall furnish it in the format in which it is maintained by the public body*, or in paper format at the option of the requester." (Emphases added.) 5 ILCS 140/6(a) (West 2012).

See *AFSCME*, 136 Ill. 2d at 345-46 (the Act "is not solely concerned with content, it also requires that information be made available in the form in which it is normally kept"); see also *Fagel v. Department of Transportation*, 2013 IL App (1st) 121841, ¶¶ 31, 34 (public agency did not comply with Act where it provided requester with a *locked* Excel spreadsheet, instead of the format—unlocked—in which it normally maintained the data).

¶ 20 Here, the township did not assert an exemption under section 7 of the Act, but, rather, that it complied with the statute pursuant to the recently-enacted section 8.5, which addresses online records. See P.A. 98-1129, § 5, eff. Dec. 3, 2014. Section 8.5 of the Act provides:

> "(a) *Notwithstanding any provision of this Act to the contrary*, a public body is not required to copy a public record that is *published on the public body's website*. The public body shall notify the requester that the public record is available online and direct the requester to the website *where the record can be reasonably accessed*.
>
> (b) If the person requesting the public record is unable to reasonably access the record online after being directed to the website pursuant to subsection (a) of this Section, the requester may re-submit his or her request for the record stating his or her inability to reasonably access the record online, and the public body shall make the requested record available for inspection or copying as provided in Section 3 of this Act." (Emphases added.) 5 ILCS 140/8.5 (West 2014).

¶ 21 B. Whether the Trial Court Erred in Dismissing Plaintiff's Complaint

¶ 22 Plaintiff argues that he stated a cause of action for violation of section 8.5 of the Act. He contends that he properly pleaded that the township's website does not contain the record of

which he seeks a copy—property tax parcel records for all township parcels—and that it is not reasonably accessible. [3]

¶ 23 Section 8.5 absolves a public body of its obligation to copy a public record where: (1) that record is published online; (2) the requester is notified of that fact and directed to the proper website; and (3) "the record can be reasonably accessed" on the website. 5 ILCS 140/8.5(a) (West 2014). Although plaintiff frames it otherwise, the central question here is whether plaintiff properly pleaded that the township did not comply with the third element.

¶ 24 Plaintiff argues that the township's online publication of certain property parcel information does not reach the threshold of being a database file/public record for purposes of publication under section 8.5. In plaintiff's view, although the township maintains a database, what it publishes online are only *snapshots* of data field elements for the individual data row items within that database. This argument essentially addresses the third requirement—whether

[3] A request for a county's property assessment records, in their entirety, is not unheard of. For example, in *Sage Information Services v. Suhr*, 2014 IL App (2d) 130708, ¶ 2, which involved a different issue than the one in this case, the plaintiffs, pursuant to the Act, requested electronic records (" 'a copy, on CD or similar electronic media' ") of the county assessor's real property assessment record file for the entire county, along with an electronic copy of the sales file. Relying on a provision in the Property Tax Code that allowed a county to charge a reasonable fee to copy or print out a property record card, the county notified the plaintiffs that they would have to pay over $6,000 (five cents *per parcel*) to obtain the records. 35 ILCS 200/9-20 (West 2012). The plaintiffs, in turn, invoked the Act. This court held that section 6(a) of the Act, not a provision in the Property Tax Code, applied and that the assessor could charge only the cost of the electronic medium, not a higher fee. *Id.* at ¶ 15.

the data is reasonably accessible. He argues that the data he seeks is all available on the website, but only after a user conducts 32,000 queries.

¶ 25 As to the third requirement, reasonably accessible, plaintiff argues that the township's form of publication does not meet this standard because a user would have to perform over 32,000 searches and expend over 2,600 hours[4] of effort to recreate the database himself, whereas producing the database should require little human effort by the township. The trial court erred, he argues, in construing section 8.5 by failing to construe it *in pari materia*. Plaintiff also notes that, when the General Assembly enacted section 8.5, it did not significantly change section 6(a), which provides that a public body shall furnish a record in electronic format if feasible. He contends that he did not request a new record, but one that the township has already created and of which he requests only a copy. Finally, plaintiff argues that, if this court concludes that the statute is ambiguous, public policy supports transparency and the efficient production of public records in the format he requested.

¶ 26 The township responds that section 8.5 is unambiguous: the township is not required to copy the requested records because they are available online. It asserts that plaintiff's complaint essentially argues that taxpayers, not plaintiff, should bear the (unspecified by the township) costs needed to make the records best suited for his intended use. It further contends that the

[4] Plaintiff suggests that, to create a Microsoft Excel spreadsheet that reconstructs the township's database, a user would have to copy and paste the data from the township's website to the spreadsheet 56 times for each of the 56 data fields for each property parcel. Extrapolated to over 32,000 parcels, plaintiff estimates that the project would entail over 2,600 hours of work. In contrast, he further suggests that the township would need to only plug a flash drive into its computer and make a copy of the database file, a process that would take, perhaps, five minutes.

Act's purpose in providing the public with access to public records is not unfettered. Commercial enterprises are not permitted to unduly burden public resources or disrupt the work of any public body. Accordingly, the township notes, the General Assembly included a list of specific exemptions in the statute. Had the General Assembly, the township contends, desired to limit the records that a public body could make available online, it could have done so; however, it did not. The township also points to the legislative history of section 8.5, asserting that it supports its reading. See 98th Ill. Gen. Assem., House Proceedings, May 27, 2014, at 53-54 (Representative Bellock, stating: "I've had several groups come to me *** discussing this issue and how we did this in good faith, but it's really caused some concerns and problems, especially in groups that request lists that are for-profit groups and do cold-calling and selling off of them").

¶ 27 We cannot conclude as a matter of law that plaintiff has failed to properly plead a violation of section 8.5 of the Act. He alleged that he sought a copy of the entire database maintained by the township, but was instead directed to a website that provided only portions of the data at a time, a point the township does not dispute. (Plaintiff also noted that the township's denial letter noted that the entire database could not be retrieved from its website.) Plaintiff also alleged that the database he sought can be assembled from website data only after he conducts over 32,000 queries on the site. At five minutes per property record, he alleged, this would require over 2,600 hours of his time, a point the township did not dispute in its motion to dismiss. Viewed in the light most favorable to plaintiff, he sufficiently pleaded that this does not constitute reasonable access. The question of reasonable access, which the township disputes on the basis of its argument that website access constitutes reasonable access to its database, presents a factual issue that is appropriately contested in a summary judgment motion or at a

trial. See *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 51-53 (section 2-615 motions are not proper vehicles to contest factual allegations in a complaint; "[w]here the defendant uses the material to support its version of the facts, point out the factual deficiencies in [the] plaintiff's case, or allege [the] plaintiff cannot prove his case, it is apparent the defendant is merely challenging the truthfulness of the plaintiff's factual allegations and a fact-based motion such as a section 2-1005 [*i.e.*, summary judgment,] motion should be used"); *cf. Bajwa v. Metropolitan Life Insurance Co.*, 208 Ill. 2d 414, 422 (2004) (question of breach of a duty of care is a factual matter for jury to decide).

¶ 28 Accordingly, the trial court erred in dismissing plaintiff's complaint.

¶ 29 III. CONCLUSION

¶ 30 The judgment of the circuit court of Du Page County is reversed, and the cause is remanded.

¶ 31 Reversed and remanded.