

NOTICE  
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2012 IL App (4th) 120204-U  
NO. 4-12-0204  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
October 11, 2012  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

JAMAL SHEHADEH,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
JESSE WHITE, in His Official Capacity as	)	No. 11MR517
Secretary of State,	)	
Defendant-Appellee.	)	Honorable
	)	John Schmidt,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.  
Justices Cook and Knecht concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not err by (1) granting defendant's motion to dismiss, (2) refusing to order defendant to produce an index of withheld records, and (3) declining to grant plaintiff's motion for declaratory judgment.
- ¶ 2 Following a February 2012 telephonic hearing, the trial court granted defendant Jesse White's motion to dismiss, dismissing and striking plaintiff Jamal Shehadeh's case.
- ¶ 3 Plaintiff appeals, arguing the trial court erred by (1) dismissing his complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619(a)(9) (West 2010)), (2) declining to order defendant to file an index pursuant to section 11(e) of the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/11(e) (West 2010)), and (3) failing to declare the circuit court clerk violated section 11(h) of the FOIA (5 ILCS 140/11(h) (West 2010)) by taking too long to issue summonses. We affirm.

¶ 4

## I. BACKGROUND

¶ 5 On May 7, 2011, plaintiff, an inmate at Logan Correctional Center, wrote to defendant, Jesse White, in his official capacity as the Secretary of State of Illinois. Plaintiff stated he had not received a response to the FOIA request he sent three weeks earlier, in which he asked for, among other things, "all information related to the registration of vehicles and issuance of license plates to law enforcement." On May 18, 2011, defendant's executive counsel responded by letter to plaintiff, (1) stating she could not locate any previous request from plaintiff, (2) enclosing documents from the Secretary of State police that "appear[ed] to address a portion of" plaintiff's request, and (3) denying the portion of plaintiff's request for license plate information pursuant to section 7(1)(a) of the FOIA (5 ILCS 140/7(1)(a) (West 2010)) and section 3-422(b)(4) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/3-422(b)(4) (West 2010)).

¶ 6 Plaintiff appealed the denial to the Illinois Attorney General's Public Access Counselor (5 ILCS 140/9.5 (West 2010)), who in July 2011 determined defendant properly withheld the requested information.

¶ 7 In August 2011, plaintiff filed a complaint in circuit court, asserting defendant improperly withheld records under the FOIA. Plaintiff asserted section 7(1)(a) did not apply to the information he was seeking: "the Secretary of State's administrative or internal rules and policies governing the issuance, maintenance, and termination of confidential registrations as well as all other related records."

¶ 8 Plaintiff also filed an application to sue as a poor person, which the trial court granted in September 2011. An October 3, 2011, docket entry indicates the circuit clerk sent

blank summons to plaintiff, who was "to complete the summons with an address for each Defendant where they [were] to be served" and "mail the summons back to the Sangamon County Circuit Clerk's office to be issued." The record does not indicate when plaintiff mailed the summons back to the clerk's office.

¶ 9 On November 29, 2011, the Sangamon County circuit clerk issued summons to the "Office of the Secretary of the State of Illinois" and "Jesse White." The Sangamon County sheriff's office received the summonses on December 5, served them on December 7, and filed them in the circuit court on December 9, 2011.

¶ 10 On January 3, 2012, plaintiff filed a motion for change of venue to Christian County, where he had other FOIA actions pending, asserting (1) Sangamon County had delayed filing his complaint, and (2) he expected delays to continue, resulting in prejudice to him. See 735 ILCS 5/2-1001.5 (West 2010). In support of his motion, plaintiff attached a December 2011 letter he wrote to the circuit clerk, wherein he expressed his concern about the delay between the docketing of his complaint and the issuing of the summonses. Defendant's letter asked the clerk to assure him "these mistakes [would] not happen again."

¶ 11 On January 6, 2012, defendant filed a motion to dismiss plaintiff's complaint pursuant to section 2-619(a)(9) of the Procedure Code (735 ILCS 5/2-619(a)(9) (West 2010)), contending because the Vehicle Code barred disclosure of the information plaintiff was seeking, section 7(1)(a) of the FOIA exempted the information's release.

¶ 12 Later that month, plaintiff filed a motion for index of withheld records pursuant to section 11(e) of the FOIA (5 ILCS 140/11(e) (West 2010)). Plaintiff also filed a motion for declaration that the clerk had violated section 11(h) of the FOIA (5 ILCS 140/11(h) (West 2010))

because the clerk did not issue plaintiff's summonses until four months after docketing the matter.

¶ 13 Following a February 2012 telephonic hearing, the trial court granted defendant's motion, dismissing plaintiff's complaint and striking the matter. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, plaintiff argues the trial court erred by (1) dismissing his action pursuant to section 2-619(a)(9) of the Procedure Code (735 ILCS 5/2-619(a)(9) (West 2010)), (2) declining to order defendant to file an index pursuant to section 11(e) of the FOIA (5 ILCS 140/11(e) (West 2010)), and (3) failing to declare the circuit court violated section 11(h) of the FOIA (5 ILCS 140/11(h) (West 2010)) by taking too long to issue summonses. We address plaintiff's contentions in turn.

¶ 16 A. The Trial Court Did Not Err By Granting Defendant's Motion To Dismiss

¶ 17 Plaintiff first asserts the trial court erred by granting defendant's section 2-619(a)(9) motion to dismiss. We disagree.

¶ 18 Section 2-619(a)(9) of the Procedure Code allows a trial court to dismiss a claim where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2010). On appeal from a section 2-619 motion, we must determine whether a genuine issue of material fact exists and whether the defendant is entitled to judgment as a matter of law. *Stark Excavating, Inc. v. Carter Construction Services, Inc.*, 2012 IL App (4th) 110357, ¶ 36, 967 N.E.2d 465, 473-74. Our review of a section 2-619 dismissal is *de novo*. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352, 882 N.E.2d 583, 588 (2008).

¶ 19 While public records are generally "presumed to be open and accessible" under the FOIA, section 7 of the FOIA outlines certain public disclosure exemptions. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407-08, 680 N.E.2d 374, 377 (1997). Relevant to this case, section 7(1)(a) creates an exemption for "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." 5 ILCS 140/7(1)(a) (West 2010).

¶ 20 Here, defendant asserts section 3-422(b)(4) of the Vehicle Code (625 ILCS 5/3-422(b)(4) (West 2010)), prohibits disclosure of the information plaintiff requested. Section 3-422(b)(4) of the Vehicle Code provides as follows:

"Registration information maintained by the Secretary of State Police Department for confidential license plates and registrations must show the fictitious names and addresses on all records subject to public disclosure. All other information concerning these confidential license plates and registrations are exempt from public disclosure unless the disclosure is ordered by a court of competent jurisdiction." 625 ILCS 5/3-422(b)(4) (West 2010).

¶ 21 Based on the statutory language of section 3-422(b)(4) of the Vehicle Code, we agree with defendant the information plaintiff requested—"the Secretary of State's administrative or internal rules and policies governing the issuance, maintenance, and termination of confidential registrations as well as all other related records"—is prohibited from disclosure and therefore exempt under section 7(1)(a) of the FOIA.

¶ 22 Plaintiff contends the "all other information" language in section 3-422(b) cannot include "every conceivable record pertaining to law enforcement vehicle registrations, such as administrative policies and procedures." In support of his contention, plaintiff urges this court to apply the last antecedent doctrine and to consider the legislative history behind section 3-422(b)(4). We decline to do so, however, because we find the plain language of section 3-422(b) to be clear. See *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 180, 950 N.E.2d 1136, 1146 (2011) ("Where the meaning of a statute is plain on its face, no resort to other tools of statutory construction is necessary."). Section 3-422(b) is broadly worded, explicitly stating "[a]ll other information concerning these confidential license plates and registrations are exempt from disclosure." (Emphasis added.) 625 ILCS 5/3-422(b)(4) (West 2010). Thus, we conclude section 3-422(b)(4) clearly bars disclosure of the information plaintiff requested, making the information exempt under section 7(1)(a) of the FOIA.

¶ 23 Based on the foregoing, the trial court did not err by granting defendant's section 2-619 motion to dismiss.

¶ 24 **B. The Trial Court Did Not Err By Declining  
To Order Defendant To Produce An Index**

¶ 25 Plaintiff next argues the trial court erred by refusing to order defendant to produce an index of withheld records pursuant to section 11(e) of the FOIA (5 ILCS 140/11(e) (West 2010)). We disagree.

¶ 26 Section 11(e) states, "On motion of the plaintiff, prior to or after in camera inspection, the court shall order the public body to provide an index of the records to which access has been denied." 5 ILCS 140/11(e) (West 2010). However, when a public body is able

to prove that a requested document falls within one of the specifically enumerated exemption categories set forth in section 7 of the FOIA, "no further inquiry by the court is necessary."

*Lieber*, 176 Ill. 2d at 408, 680 N.E.2d at 377.

¶ 27 Here, the information plaintiff requested was clearly exempted from disclosure by section 7(1)(a) of the FOIA based on the plain language of section 3-422(b)(4) of the Vehicle Code, which prohibits the release of "[a]ll other information concerning these confidential license plates and registrations." (Emphasis added.) 625 ILCS 5/3-422(b)(4) (West 2010). By creating an index and articulating the specific documents that were withheld, defendant would have revealed the types of documents and procedures used in issuing and registering confidential license plates and registrations—information section 3-422(b)(4) was intended to protect. Accordingly, we conclude the trial court did not err by declining to require defendant to produce an index of withheld records under section 11(e) of the FOIA.

¶ 28 C. The Trial Court Did Not Err By Failing To Grant Declaratory Relief

¶ 29 Finally, plaintiff contends the trial court erred by denying his motion for declaration that the circuit clerk violated section 11(h) of the FOIA. We disagree.

¶ 30 "The essential requirements of a declaratory judgment action are: (1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests." *Beahringer v. Page*, 204 Ill. 2d 363, 372, 789 N.E.2d 1216, 1223 (2003). To meet the "actual controversy" requirement, a party must show the underlying facts and issues of the case are not either moot or premature "so as to require the court to pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events." (Internal quotation marks omitted.) *Beahringer*, 204 Ill.

2d at 374-75, 789 N.E.2d at 1224.

¶ 31 Section 11(h) of the FOIA states as follows:

"Except as to causes the court considers to be of greater importance, proceedings arising under this Section shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way." 5 ILCS 140/11(h) (West 2010).

¶ 32 On October 3, 2011, the Sangamon County circuit clerk mailed plaintiff copies of his complaint and blank summonses. According to plaintiff, he "immediately returned the completed summonses." (The record does not indicate when plaintiff returned the summonses.) On November 29, 2011, the circuit clerk issued the summonses and sent them to the sheriff's office, who served and filed them approximately two weeks later.

¶ 33 In January 2012, plaintiff filed a motion for declaration that the circuit clerk violated section 11(h), claiming the Sangamon County clerk's office failed to perform its official duties in "several instances" which resulted in a four-month delay between the docketing of plaintiff's matter and the issuance of summonses. In February 2012, the trial court dismissed and struck plaintiff's case.

¶ 34 Here, plaintiff failed to show an "actual controversy" entitling him to declaratory relief. The circuit court clerk issued plaintiff's summonses on November 29, 2011. Thus, when the trial court addressed plaintiff's motion in February 2012, the clerk had already issued the summonses, such that any decision the court made with respect to defendant's motion for declaration that the clerk had violated section 11(h) of FOIA would not have had any legal effect.

Accordingly, we conclude the trial court did not err by declining to issue declaratory relief to plaintiff.

¶ 35

### III. CONCLUSION

¶ 36

For the reasons stated, we affirm the trial court's judgment.

¶ 37

Affirmed.