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2018 IL App (3d) 170667-U

Order filed September 10, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

DERIAN BLANCO,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois.
	)	
v.	)	Appeal No. 3-17-0667
	)	Circuit No. 17-SC-1207
JOLIET POLICE DEPARTMENT,	)	
	)	The Honorable
Defendant-Appellee.	)	Arkadiusz Z. Smigielski,
	)	Judge, presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Due to an inadequate record, the circuit court’s dismissal of the plaintiff’s civil complaint, which challenged the denial of a Freedom of Information Act (FOIA) request, is affirmed.

¶ 2 The plaintiff, Derian Blanco, filed a civil complaint against the defendant, the Joliet Police Department (JPD), after the JPD denied his Freedom of Information Act (FOIA) request for the release of documents related to his arrest. The JPD filed a motion to dismiss, which the circuit court granted. On appeal, Blanco argues that: (1) the JPD failed to comply with FOIA’s

requirement that a denial letter include the specific exemption claimed and a detailed factual basis plus citation to supporting legal authority; (2) the JPD should have been assessed a civil penalty for failing to disclose the requested documents; and (3) the Juvenile Court Act of 1987 does not prohibit the disclosure of the documents he requested. We affirm.

¶ 3

### FACTS

¶ 4

On July 26, 2016, Blanco was arrested by the JPD. On August 21, 2016, Blanco mailed a FOIA request to the JPD in which he sought the release of any documents and recordings relating to his arrest. On August 29, 2016, the JPD informed Blanco by letter that it was denying his request in full because “[t]he Juvenile Court Act mandates that reports in which a minor was arrested, charged or investigated *must* be withheld in full.” (Emphasis in original). The letter then cited to two documents issued by the public access counselor of the Attorney General’s office: “2010 PAC 8941 (Ill. Att’y Gen. PAC Req. Rev. Ltr. 8941, issued October 22, 2010, at 2) and 2010 PAC 9077 (Ill. Att’y Gen. PAC Rev. Ltr. 9077, issued February 9, 2011, at 2).”

¶ 5

On February 23, 2017, Blanco filed a civil complaint requesting the release of the records and a civil penalty of up to \$5,000. The complaint stated that the JPD failed to state a FOIA exemption and did not prove by clear and convincing evidence that the records were exempt.

¶ 6

In its answer, the JPD expounded on its denial of Blanco’s FOIA request. The JPD stated that Blanco was with two juveniles at the time he was arrested and that the juveniles were both arrested, charged, and/or investigated. The JPD then insinuated that under the Juvenile Court Act of 1987, Blanco was not an individual entitled to review the documents he requested.<sup>1</sup> In

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<sup>1</sup> We say “insinuated” because after the JPD stated that Blanco was with two juveniles at the time of his arrest, it merely concluded the following: “Therefore, the exceptions set forth in 705 ILCS 405/107 [sic],

addition, the JPD stated that the records contained personal information that was not authorized for release under sections 7(1)(c) and 7(1)(d)(iv) of FOIA (5 ILCS 140/7(1)(c), 7(1)(d)(iv) (West 2016)). The JPD also cited to section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2016)), which prevented the disclosure of information specifically prohibited by Illinois law, and section 7.5(bb) of FOIA (5 ILCS 140/7.5(bb) (West 2016)), which prevented the disclosure of information specifically prohibited by the Juvenile Court Act.

¶ 7 The JPD also filed a motion to dismiss the complaint. In his response, Blanco reiterated that the JPD’s denial letter did not include any exemption to a FOIA release or a detailed factual basis for the denial, which was required by section 9 of FOIA (5 ILCS 140/9 (West 2016)). He also reiterated that a willful and intentional failure to comply with FOIA was subject to a civil penalty of \$2,500 to \$5,000 under section 11(j) of FOIA (5 ILCS 140/11(j) (West 2016)).

¶ 8 On September 28, 2017, the circuit court granted the JPD’s motion and dismissed Blanco’s complaint with prejudice. Blanco appealed.

¶ 9 In preparation for this appeal, the record reflects that Blanco requested transcripts be prepared for the three dates on which the parties appeared in court. The circuit court responded with a letter that stated the transcripts cost \$4 per page, for a total of \$16, \$16, and \$68, respectively, for the three dates. However, no transcripts of the in-court hearings, bystander’s reports, or agreed statements of facts have been included with the record on appeal.

¶ 10 ANALYSIS

¶ 11 Blanco raises three arguments on appeal: (1) the JPD failed to comply with FOIA’s requirement that a denial letter include the specific exemption claimed and a detailed factual

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Confidentiality Of Law Enforcement Records, and 705 ILCs [sic] 405/5-905, Law Enforcement Records, do not apply to the release of said records to the plaintiff.”

basis plus citation to supporting legal authority; (2) the JPD should have been assessed a civil penalty for failing to disclose the requested documents; and (3) the Juvenile Court Act of 1987 does not prohibit the disclosure of the documents he requested. For the following reasons, we decline to address the merits of these arguments.

¶ 12           When a FOIA request is made of a public body, the public body must comply unless it believes the information is exempted from disclosure. 5 ILCS 140/1.2 (West 2014); *Illinois Education Association v. Illinois State Board of Education*, 204 Ill. 2d 456, 463 (2003). In relevant part, section 7 of FOIA provides that information is exempt from inspection and copying if “specifically prohibited from disclosure by federal or State law[.]” 5 ILCS 140/7(1)(a) (West 2016). FOIA exemptions must be construed narrowly. *McGee v. Kelley*, 2017 IL App (3d) 160324, ¶ 12.

¶ 13           Section 9(b) of FOIA states, in relevant part, that:

“When a request for public records is denied on the grounds that the records are exempt under Section 7 of this Act, the notice of denial shall specify the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority.” 5 ILCS 140/9(b) (West 2016).

¶ 14           In this case, the JPD’s denial letter only generally cited the Juvenile Court Act of 1987 and stated merely that “[t]he Juvenile Court Act mandates that reports in which a minor was arrested, charged or investigated *must* be withheld in full.” (Emphasis in original). The denial letter then cited to two letters of the public access counselor of the Attorney General’s office, neither of which appear in the record on appeal.

¶ 15 The JPD’s response appears to be quoted from a document appearing on the Attorney General’s website entitled “FOIA Guide for Law Enforcement” ([https://foia.ilattorneygeneral.net/pdf/FOIA\\_Guide\\_for\\_Law\\_Enforcement.pdf](https://foia.ilattorneygeneral.net/pdf/FOIA_Guide_for_Law_Enforcement.pdf) (accessed Aug. 29, 2018)). In part, this document includes the following proviso:

“This guide is intended to assist law enforcement agencies in responding to Freedom of Information Act (FOIA) requests by outlining issues common to law enforcement and by providing references to statutes and determinations issued by the Attorney General’s Public Access Counselor on those subjects. Please note that these are general guidelines only, and each request for review is evaluated on its own facts. You are strongly encouraged to discuss the application of a particular guideline with your unit of local government’s legal counsel.” *Id.*

¶ 16 We agree in part with Blanco that the JPD’s denial letter raised questions of whether it complied with section 9(b) of FOIA. However, even assuming that the JPD’s denial letter was noncompliant, it does not follow that Blanco would be automatically entitled to have the documents released to him. Rather, if a FOIA request is denied, one potential avenue of recourse for the requester is to bring an action in the civil court to challenge the public body’s decision. 5 ILCS 140/11 (West 2016). “Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.” 5 ILCS 140/1.2, 11(f) (West 2014).

¶ 17 Here, Blanco filed such an action in the circuit court, and the parties appeared in court on three separate dates. The record reflects that Blanco requested the preparation of the reports of

proceedings for these dates. The circuit court mailed a letter to Blanco stating that there was a \$4-per-page charge to prepare the reports of proceedings, totaling \$16, \$16, and \$68, respectively, for each of the three dates on which hearings were held in court. The record does not reflect that those reports of proceedings were ever prepared; again, no transcripts of the in-court hearings, bystander’s reports, or agreed statements of facts have been included with the record on appeal. See Ill. S. Ct. Rs. 323(b) to (d) (eff. Dec. 13, 2005).

¶ 18 It is well settled that:

“[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. [Citations.]” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984).

In this case, we do not know what transpired in the circuit court regarding the dismissal of Blanco’s complaint; therefore, there is no basis for this court to hold that the court erred when it dismissed the complaint. We must presume that the court’s order was legally sound and contained a sufficient factual basis. *Id.* Accordingly, we affirm the dismissal of Blanco’s complaint.

¶ 19 CONCLUSION

¶ 20 The judgment of the circuit court of Will County is affirmed.

¶ 21 Affirmed.