

I. BACKGROUND

On January 26, 2006, Stern submitted a request to the District under the FOIA, seeking a copy of the District's employment contract with Gary Catalani, its superintendent. The District denied the request, stating that the contract was contained in Catalani's personnel file and that it was therefore per se exempt from disclosure under the FOIA.

Stern obtained a nonbinding Attorney General opinion that the employment contract was not exempt and sent a new request for the contract. See Long v. Long, 15 Ill. App. 2d 276, 284 (1957) (opinion of the Attorney General may not be binding, but is persuasive). The District again denied the request. Stern appealed to the president of the school board, who upheld the District's determination.

Stern obtained a second Attorney General opinion stating that the contract was not exempt from disclosure and that disclosure was also required under article VIII, section 1, of the Illinois Constitution (Ill. Const. 1970, art. VIII, §1)--a section pertaining to public funds. He then filed a complaint seeking to enjoin the District from refusing to comply with the FOIA. In the complaint, Stern alleged that the District refused to provide the contract to him but that it provided the contract to other parties who requested it. Stern also cited the Illinois Constitution as a reason why the contract was a public record that was not exempt from disclosure under the FOIA, but he did not include a separate constitutional claim. After a period of discovery, the District moved for summary judgment.

A hearing was held and the parties disagreed about the effect of previous disclosures of Catalani's contract. Stern submitted copies of FOIA requests from others who sought and received copies of the contract. For example, on May 2, 2006, after Stern's requests were denied, a

No. 2--07--0424

representative of the Daily Herald newspaper submitted a FOIA request to the District, and Catalani faxed from his office a copy of the contract with a letter stating that it was "per your request."

Next, on October 11, 2006, a representative of the Chicago Tribune newspaper also requested the employment contract, citing the FOIA. In that instance, the District's records manager responded that it had previously given a copy of the contract to the Daily Herald before it was aware of a Third District case holding that items found in personnel files were per se exempt from disclosure. See Copley Press, Inc. v. Board of Education for Peoria School District No. 150, 359 Ill. App. 3d 321, 324-25 (2005). The records manager then wrote: "Since there is nothing unusual in Dr. Catalani's contract, he will make it available to you for review should you wish to come into the School Services Center to inspect it."

At his deposition, Catalani testified that copies of his employment contract were located in his personnel file, home, and office, and that various District board members and the director of business operations also had copies. He testified that he viewed the employment contract as private information and stated that, although the Daily Herald and the Chicago Tribune made FOIA requests for the contract, he personally decided to supply them with copies outside the FOIA process. He testified that he faxed the Daily Herald a personal copy from his office. Catalani stated that he also personally decided to allow the representative of the Chicago Tribune to see a personal copy at his office. The deposition testimony indicates that Catalani did not put any particular restrictions on the use of the information by the newspapers, but that he trusted them not to publish the entire contract.

The trial court granted the District's motion for summary judgment, holding that the employment contract was per se exempt under the FOIA because it was part of Catalani's personnel file. In reaching this decision, the trial court relied on Copley (at that time the most recent case to

address the issue) and did not have the benefit of the Fourth District opinion in Reppert v. Southern Illinois University, 375 Ill. App. 3d 502 (2007), which was issued after the trial court's decision. The trial court did not address Catalani's previous disclosures of the contract to third parties. Stern appeals.

II. ANALYSIS

On appeal, Stern cites Reppert and contends that, although located in a personnel file, the employment contract is not exempt from disclosure under the FOIA and must be disclosed because it bears on the public duties of a public official. Stern also argues that, even if the contract falls within an exemption, the District waived the exemption when Catalani provided the contract to the two newspapers. We address first whether the requested material is exempt and then whether the District waived that exemption.

A. General Principles

We review the summary judgment order de novo. Reppert, 375 Ill. App. 3d at 504. In addition, we review de novo issues of statutory interpretation. Reppert, 375 Ill. App. 3d at 504.

"Summary judgment is proper if, 'when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" Reppert, 375 Ill. App. 3d at 504, quoting Illinois State Chamber of Commerce v. Filan, 216 Ill. 2d 653, 661 (2005).

A " 'review of the FOIA *** is guided by several well-established principles of statutory construction. It is well settled that the primary objective of [a] court when construing the meaning of a statute is to ascertain and give effect to the intent of the General Assembly.' " Reppert, 375 Ill.

App. 3d at 504-05, quoting Southern Illinoisan v. Illinois Department of Public Health, 218 Ill. 2d 390, 415 (2006). In determining legislative intent, the inquiry begins with the plain language of the statute. Reppert, 375 Ill. App. 3d at 505. All provisions of the statute are viewed as a whole. Accordingly, words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute, and we presume that the legislature did not intend absurdity, inconvenience, or injustice. Reppert, 375 Ill. App. 3d at 505.

"The purpose of the FOIA is to open governmental records to the light of public scrutiny. Thus, under the FOIA, a presumption exists that public records be open and accessible." Reppert, 375 Ill. App. 3d at 505. The legislative intent is set forth in section 1 of the FOIA and provides in part:

"Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to 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 consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest." 5 ILCS 140/1 (West 2004).

"Public records" are defined as follows:

"(c) *** 'Public records' includes, but is expressly not limited to: *** (vii) all information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds of public bodies; (viii) the names, salaries, titles, and dates of

employment of all employees and officers of public bodies *** " 5 ILCS 140/2(c) (West 2004).

"The [FOIA] does create exceptions to disclosure, but those exceptions are to be read narrowly." Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401, 407 (1997).

Section 7 of the FOIA contains the exceptions to disclosure, providing in part:

"(1) The following shall be exempt from inspection and copying:

(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:

(ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body[,] or applicants

for those positions[.]" (Emphasis added.) 5 ILCS 140/7(1)(b)(ii) (West 2004).

In addition, section 8 of the FOIA provides as follows:

"If any public record that is exempt from disclosure under [s]ection 7 of this Act contains any material which is not exempt, the public body shall delete the information

which is exempt and make the remaining information available for inspection and copying."
5 ILCS 140/8 (West 2004).

"When a public body receives a proper request for information, it must comply with that request unless one of the narrow statutory exemptions applies." Lieber, 176 Ill. 2d at 407. "If the public body seeks to invoke one of the exemptions in section 7 as grounds for refusing disclosure, it is required to give written notice specifying the particular exemption claimed to authorize the denial." Lieber, 176 Ill. 2d at 408. If the requesting party later challenges the denial in court, the public body has the burden of proving that the records fall within the exemption it has claimed. Lieber, 176 Ill. 2d at 408. "Section 11(f) of the FOIA *** requires the trial court to conduct whatever in camera inspection of the requested records it finds appropriate to determine whether the records or any part of them may be withheld under the Act." BlueStar Energy Services, Inc. v. Illinois Commerce Comm'n, 374 Ill. App. 3d 990, 995 (2007).

B. Employment Contracts Under the FOIA

The District's argument that the employment contract is per se exempt from disclosure stems from two cases. Lieber, 176 Ill. 2d at 408-09; Copley, 359 Ill. App. 3d at 324-25. In Lieber, the Illinois Supreme Court determined that the names and addresses of people who had been accepted to Southern Illinois University, but had not yet enrolled, were not exempt information under the FOIA. In reaching that determination, the court discussed the construction of exemptions under section 7:

"Most of the exemptions set forth in section 7 of the Act [citation] are specific, identifying the particular public records that are not subject to disclosure. Where the public body claims that a requested document falls within one of these specifically enumerated

