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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FOR THE GOOD OF ILLINOIS, INC.,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 2013 CH 257
)	
THE STATE OF ILLINOIS, OFFICE OF)	
COMPTROLLER, and JUDY BAAR TOPINKA,)	The Honorable
in her official capacity as State of Illinois)	Diane J. Larsen,
Comptroller.)	Judge Presiding.
)	
Defendants-Appellees.)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* circuit court order dismissing plaintiff's complaint for declaratory judgment and injunctive relief pursuant to Illinois Freedom of Information Act affirmed where the defendant Comptroller established that compliance with plaintiff's record request would be unduly burdensome; circuit court order denying plaintiff's petition for fees affirmed where the plaintiff was not a prevailing party.

¶ 2 Plaintiff, For the Good of Illinois, Inc., ("FGI") a nonprofit corporation, initiated a request under the Illinois Freedom of Information Act (FOIA or Act) (5 ILCS 140/1 *et seq.*

(West 2010)) to obtain certain payment records from defendants, The State of Illinois Office of the Comptroller and Judy Baar Topinka, in her official capacity as Comptroller of the State of Illinois (collectively "Comptroller").¹ The Comptroller, however, found FGI's request to be "unduly burdensome" and denied its request. FGI, in turn, filed a complaint in the circuit court, alleging that defendants were withholding records in violation of the express mandates of FOIA. The Comptroller filed a motion to dismiss FGI's complaint, which the circuit court granted. FGI subsequently filed a petition to recover the attorneys' fees and costs it incurred during the circuit court proceedings, but the court denied FGI's request. FGI appeals both of the circuit court's orders. For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4

FGI is a nonprofit Illinois corporation. Its stated purpose is to educate, engage and empower citizens to demand a transparent, accountable and limited government. To effectuate that purpose, FGI operates a public searchable website, www.openthebooks.com, that contains records obtained from various governmental entities.

¶ 5

On April 17, 2012, FGI submitted a FOIA request to the Comptroller, seeking production of electronic copies of the State of Illinois's 2011 "checkbook" with information pertaining to payments issued by the State, including the names of the payees as well as the amounts and dates of those payments. FGI also sought information pertaining specifically to the State's 2011 vendor payments and requested records identifying each vendor that received payments from the State of Illinois as well as the annual payment amounts that each vendor received. FGI explained the basis for its FOIA request as follows: "The purpose of this [request] is to make this information more accessible to the public and to access and disseminate information regarding

¹ After plaintiff initiated this legal action, Leslie Geissler Munger replaced Judy Baar Topinka as the Illinois Comptroller.

the health, safety and welfare or the legal rights of the general public, and not principally for personal or commercial benefit."

¶ 6 On April 23, 2012, the Comptroller sought "clarification" regarding FGI's request via email and inquired whether FGI was seeking information pertaining to payments made to "commercial vendors only" or "all payments." FGI responded that it was seeking information pertaining to "all payments" made by the State of Illinois in 2011. The following day, the Comptroller sent another email to FGI inquiring whether it could narrow the scope of its request. FGI simply responded that it would "take a complete data dump with a file layout."

¶ 7 Thereafter, on April 25, 2012, the Comptroller denied FGI's FOIA request. In its written denial, the Comptroller stated: "Our office is denying your FOIA request *** pursuant to 5 ILCS 140/3(g) as compliance with your request would be unduly burdensome. In order for our office to comply with your request, it will require extremely time-consuming efforts from our staff. The requested records would number in the millions. The review, redaction, and arrangement of all 2011 vendor payments would take multiple staff members, dedicated solely to this request, more than three days to complete."

¶ 8 Thereafter, FGI sought review of the Comptroller's denial from the Attorney General's Public Access Counselor (PAC). After reviewing FGI's request, PAC determined that "further inquiry [wa]s warranted," and issued a letter requesting the Comptroller to explain how it "maintain[ed] the data that [FGI] was seeking." Specifically, PAC instructed the Comptroller to "clarify the format in which the data [wa]s maintained and discuss whether the data could be produced in an alternative format via use of a computer program or some other means."

¶ 9 In response to PAC's request, the Comptroller issued a letter containing the following explanations:

"[T]he system used by the office to process payments known as the Statewide Accounting Management System (or SAMS for short) has been in place since 1996. This mainframe based system contains voluminous data which presents difficulty in extracting. As a result of Comptroller Topinka's commitment to openness and transparency in state government finances, her staff developed the "Ledger" system hosted on the Comptroller's website. Phase 1 was completed on April 17th, the same day [FGI's] FOIA request was received.

Prior to the announcement of completion of [P]hase 1 of the Ledger, an outline was created for the second phase which is projected to be completed in June and will include annual vendor names and payments in one central location. This will occur, however, only after extensive planning and hundreds of hours by IOC staff. Additionally, [FGI] and the public in general currently have the ability to examine expenditures by individual vendor on the current website and thus access the data requested. The new Ledger site will make this information more user friendly.

In addition to the tremendous amount of labor required to obtain the information, considerable staff time would also be required to examine the data to ensure that confidential information was not included pursuant to various state statutes."

¶ 10 It does not appear that PAC took any further action after receiving the Comptroller's written response. Accordingly, on January 4, 2013, FGI filed a complaint in the circuit court seeking injunctive and declaratory relief pursuant to section 11(a) of FOIA (5 ILCS 140/11(a) (West 2012)). In its complaint, FGI alleged, in pertinent part, that the records it sought from the Comptroller were "not subject to any exemption recognized by the Act." FGI further alleged that "the Comptroller failed to show by clear and convincing evidence that the FOIA request is

unduly burdensome" or that "any burden from responding to the FOIA request outweigh[ed] the public interest in disclosing th[o]se records." As such, FGI requested the circuit court to enjoin the Comptroller from withholding the requested records and to compel production of its record request.

¶ 11 The Comptroller, in turn, filed a motion to dismiss FGI's complaint pursuant to section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619 (2012)). In its motion, the Comptroller contended that it had not acted in contravention of FOIA. In pertinent part, the Comptroller argued that it did not maintain a "2011 checkbook." It further argued that producing the records of all vendor payments issued by the State of Illinois during the 2011 fiscal year would be unduly burdensome. Attached to its petition to dismiss was an affidavit completed by Markus Veile, the Assistant Comptroller, whose responsibilities included managing funds, conducting fiscal research, and overseeing the Comptroller's Information Technology (IT) division. In his affidavit, Veile averred that the "State of Illinois processes approximately 16 million transactions per year" and that "records involving approximately 60% of all payments made by the State of Illinois in a given year contain confidential information." In support of the Comptroller's argument that FGI's record request was unduly burdensome, Veile stated: "there is no centralized database for each type of transaction that the State of Illinois makes. For example, there are separate data bases for the payroll system, retirement system, income tax system, etc. The State of Illinois maintains approximately 263 separate systems, many of which are incompatible. *** The electronic databases maintained by the Comptroller's Office are not designed in a way that allows you to sort vendor payments by those that are confidential and not confidential. In order to determine the confidentiality of vendor payments, someone would have to sort through them individually. *** In order to determine the confidentiality of all payments,

the Comptroller's Office would have to look through each payment in each individual system and redact confidential information."

¶ 12 FGI, in turn, requested the circuit court to permit some preliminary discovery prior to ruling on the Comptroller's motion to dismiss. The circuit court granted FGI's request. Thereafter, on August 1, 2013, the Comptroller provided FGI with a disc of files that had been uploaded onto its Ledger website. The Comptroller indicated that the disc had been completed after approximately 340 work hours had been expended by its staff. Although the disc is not contained in the record on appeal, based on the representations made by the Comptroller, it appears that the disc contained a list of vendor expenses and individual transactions with information pertaining to the dates and the payment amounts.

¶ 13 After receiving the disc, FGI noted that the information contained thereon was for the 2012 fiscal year rather than the 2011 fiscal year, which was the subject of its FOIA request. Accordingly, FGI requested the Comptroller to provide it with a disc containing payments issued by the State of Illinois in 2011. FGI specified that the Comptroller should provide "the check numbers, or equivalent identifying numbers for other forms of payment, for each of the transactions" and "a vendor address or zip code for each transaction."

¶ 14 On August 28, 2013, the Comptroller furnished another disc to FGI. Like the first disc, the second disc does not appear in the record on appeal; however, the Comptroller's letter accompanying the disc is included in the record. In that letter, the Comptroller indicated that the disc contained the 2011 records requested by FGI as well as "the identifying numbers and a vendor address or zip code" for each transaction.²

² Based on the communication between the parties, it appears that FGI was given records pertaining to vendor payments issued by the State of Illinois in 2011 and 2012. We note that when FGI corresponded with the Comptroller after submitting its FOIA request, FGI appeared to indicate that it was seeking "all payments" issued by the State of Illinois in 2011.

¶ 15 After providing FGI with the aforementioned records, the Comptroller sought, and obtained, leave of the court to file an amended motion to dismiss FGI's complaint. In its amended filing, the Comptroller argued that FGI's complaint was now moot since it had tendered to the plaintiff all of the documents that it had requested. Alternatively, the Comptroller reiterated its argument that FGI's request was unduly burdensome at the time that it was submitted and, accordingly, it did not violate its FOIA obligations when it denied FGI's record request.

¶ 16 The circuit court presided over a hearing on the Comptroller's motion. After considering the arguments of the parties, the circuit court granted the Comptroller's motion to dismiss FGI's complaint. In doing so, the court reasoned: "the request was unduly burdensome, [and] the response by the [C]omptroller's office clearly set forth the reasons and complied with the statute in that regard." The court noted that FGI's request was "really vast" and reasoned that the burden that would be imposed on the Comptroller to satisfy FGI's request "outweigh[ed] the public interest" in obtaining the documents. Although the court noted that FGI was provided with documents during the discovery process, it nonetheless found that the Comptroller's initial denial of FGI's request was appropriate given that "the computerized version [of the records provided to FGI] was not completely in existence at the time" of FGI's request. At the conclusion of the hearing, the circuit court granted FGI leave to file a petition to recoup the fees and costs that it incurred during the lawsuit.

¶ 17 FGI submitted its petition for fees in accordance with section 11(i) of the Act on July 14, 2014. 5 ILCS 140/11(i) (West 2012). Following a hearing on the petition, the circuit court denied FGI's request for fees. In doing so, the court noted that it had "found in favor of defendant on the merits of the claim" and granted the Comptroller's motion to dismiss FGI's

complaint. As such, the circuit court concluded that FGI was not a "prevailing party" under FOIA and was thus not entitled to fees.

¶ 18 This appeal followed.

¶ 19 ANALYSIS

¶ 20 Dismissal of FGI's Complaint

¶ 21 On appeal, FGI first argues that the circuit court erred in dismissing its complaint. Specifically, FGI argues that the circuit court erred in finding that its FOIA request was unduly burdensome.

¶ 22 The Comptroller responds that the circuit court's dismissal of FGI's complaint was proper. Initially, the Comptroller argues that this appeal is moot because it turned over the records requested by FGI. Alternatively, the Comptroller argues that the circuit court properly dismissed FGI's complaint because its FOIA request was unduly burdensome.

¶ 23 The purpose of a motion to dismiss pursuant to section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)) is to provide litigants with the means to dispose of issues of law and easily proven issues of fact. *Zedella v. Gibson*, 165 Ill. 2d 181, 185 (1995); *Caywood v. Gossett*, 382 Ill. App. 3d 124, 128-29 (2008). The proponent of a 2-619 motion to dismiss admits the legal sufficiency of the factual allegations contained in the complaint, but asserts that the complaint is barred by an affirmative matter that defeats the claim. *Kedzie and 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 115 (1993); *Caywood*, 382 Ill. App. 3d at 129. When ruling on a 2-619 motion to dismiss, a court will construe all pleadings and supporting documents in the light most favorable to the nonmoving party. *In re Parentage of M.J.*, 203 Ill. 2d 526, 533 (2003); *Caywood*, 382 Ill. App. 3d at 128. The circuit court's dismissal of a complaint pursuant to section 2-619 of the Code of Civil Procedure is subject to *de novo*

review. *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 115 (2008); *Amalgated Transit Union, Local 308 v. Chicago Transit Authority*, 2012 IL App (1st) 112517, ¶ 12.

¶ 24 We will first address the Comptroller's mootness argument. Because the existence of an actual controversy is a prerequisite for appellate jurisdiction, reviewing courts will generally not decide matters that are abstract, hypothetical or moot. *In re Andrea F.*, 208 Ill. 2d 148, 156 (2003). An issue is moot where an actual controversy no longer exists between the parties or where events have occurred that make it impossible for the court to grant effective relief. *In re Andrea F.*, 304 Ill. 2d at 156; *People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 198 (1997). In the context of FOIA actions, "[o]nce an agency produces all the records related to a plaintiff's request, the merits of a plaintiff's claim for relief, in the form of production of information, becomes moot." *Duncan Publishing, Inc. v. City of Chicago*, 304 Ill. App. 3d 778, 782 (1999); see also *Roxana Community Unit School District No. 1 v. Environmental Protection Agency*, 2013 IL App (4th) 120825, ¶ 42 (finding that the plaintiff's complaint for injunctive relief and declaratory judgment was moot where the defendant agency "eventually provided plaintiff those documents, albeit after a delay in violation of the [FOIA] Act").

¶ 25 Here, there is no dispute that the Comptroller provided documents to FGI; however, it is unclear whether it provided FGI *all* of the documents that it requested. During the hearing on the Comptroller's motion to dismiss, FGI's attorney agreed that FGI's complaint for injunctive relief and declaratory judgment would be moot if the Comptroller had, in fact, fully complied with its FOIA request and provided all of the documents that FGI sought. FGI's attorney argued however, that the Comptroller had not provided FGI with an affidavit confirming that it had completely satisfied FGI's FOIA request. The circuit court agreed that there was still "an issue of fact" as to the "mootness issue" and whether FGI's FOIA request was completely satisfied.

Based on our review of the record, we agree with the circuit court that it is unclear from the record whether the Comptroller furnished all of the documents pertaining to FGI's FOIA request. Therefore, we are unable to find this matter moot. We will thus evaluate FGI's argument that the circuit court erred in dismissing its complaint on the basis that its FOIA request imposed an undue burden on the Comptroller.

¶ 26 Patterned after the federal FOIA (5 U.S.C. § 552 (2000)), the Illinois FOIA is designed to give "all persons" access 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." 5 ILCS 140/1 (West 2012); *Uptown People's Law Center v. Department of Corrections*, 2014 IL App (1st) 130161, ¶ 10. Its stated purpose is to "promote[] the transparency and accountability of public bodies at all levels of government" and "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 2012). In that vein, governmental bodies are required to "operate openly and provide public records as expediently and effectively as possible." 5 ILCS 140/1 (West 2012); *Nelson v. Kendall County*, 2014 IL 116303, ¶ 24 (2014). "The basic disclosure obligations governing governmental bodies are set forth in section 3 of the Act, which provides that '[e]ach public body shall make available to any person for inspection or copying all public records ***.'" *Nelson v. Kendall County*, 2014 IL 116303, ¶ 25 (quoting 5 ILCS 140/3(a) (West 2012)). A governing body must comply with or deny a FOIA request within 5 business days unless it seeks an additional 5 business day extension. 5 ILCS 140/3(d), (e) (West 2012)). Section 3(g), of the Act, however, provides a limited exemption to the aforementioned disclosure obligations and permits a government body to deny a FOIA request if complying with the

request would constitute an undue burden. 5 ILCS 140/3(g) (West 2012). That provision, in pertinent part, provides as follows:

"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. Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If any public body responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in writing, specifying why it would be unduly burdensome and the extent to which compliance will so burden the operations of the public body. Such a response shall be treated as a denial of the request for information." (Emphasis added.) 5 ILCS 140/3(g) (West 2012).

¶ 27 In order to find that compliance with a FOIA request would be unduly burdensome, "three elements must be present: (1) compliance with the request as stated must be unduly burdensome, (2) there must be no way to narrow the request, and (3) the burden on the public body must outweigh the public interest in the information." *Heinrich v. White*, 2012 IL App (2d) 110564, ¶ 22. Courts have repeatedly held that " 'a request that is overly broad and requires the public body to locate, review, redact and arrange for inspection a vast quantity of material that is largely unnecessary to the [requestor's] purpose constitutes an undue burden.' " *Shehadeh v. Madigan*, 2013 IL App (4th) 120742, ¶ 25 (quoting *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App 3d 1, 17 (2010)).

¶ 28 In the instant case, FGI argues that the Comptroller failed to establish the third element of the undue burden exemption and show that the burden that FGI's request imposed upon it outweighed the public interest in obtaining the information. We disagree. After receiving FGI's FOIA request seeking the State of Illinois's 2011 checkbook and all vendor payments, the Comptroller contacted FGI. After it determined that FGI could not narrow the scope of its record request, the Comptroller denied FGI's FOIA request on the grounds that it was unduly burdensome. In its written denial, the Comptroller indicated that FGI's "requested records would number in the millions," and that it would "require extremely time consuming efforts" from "multiple staff members, dedicated solely to [FGI's] request" to review, redact and arrange the requested records.

¶ 29 The Comptroller provided additional detail about the manner in which its records were kept and the burdensome nature of FGI's request in subsequent filings. The affidavit submitted by Assistant Comptroller Markus Veile established that the State of Illinois processed "approximately 16 million transactions per year" and that "60% of all payments made by the State of Illinois in a given year contain[ed] confidential information." Veile further averred that the State of Illinois utilized 263 different databases to process different types of payments and that those databases did not provide a mechanism to sort through the payments that contained confidential information versus those that did not contain confidential information. As such, Veile stated that Comptroller employees "would have to look through each payment in each individual system and redact confidential information." He further stated that vendor payments to approximately 57,491 different vendors that did not contain confidential information had been uploaded to the Comptroller's new Ledger website.

¶ 30 FGI, however, argues that Veile's affidavit should not be considered because it does not establish that his statements are based on his "personal knowledge" as required by Illinois Supreme Court Rule 191(a) (eff. July 1, 2002). FGI, however, fails to explain why it believes Veile's statements are not based on his personal knowledge. Moreover given that Veile's professional responsibilities as Assistant Comptroller included managing funds, conducting fiscal research and overseeing the IT division, it appears he would have personal knowledge of the nature in which the State of Illinois processes payments, the databases utilized to keep record of those payments, the number of annual transactions processed by the State, and the percentage of annual payments that contain confidential information.

¶ 31 Even if Veile's affidavit was deficient, we note that FOIA does not require a public body that denies a FOIA record request to submit affidavits in order to substantiate its claim that producing the requested documents would be unduly burdensome; rather, "section 3(g) of FOIA requires only that a public body specify in writing the reasons that compliance would be unduly burdensome and the extent to which compliance would burden the operations of the public body." *Shehadeh*, 2013 IL App (4th) 120742, ¶ 34 (citing 5 ILCS 140/3(g) (West 2012)). The Comptroller complied with section 3(g)'s requirements and sufficiently explained the nature of the undue burden of complying with FGI's FOIA request in its written denial. It is apparent from the face of its FOIA request that FGI sought a vast number of documents. The Comptroller estimated that the requested documents numbered in the millions and would require extremely time consuming efforts of multiple staff members to fulfill FGI's request. In granting the Comptroller's motion to dismiss, the circuit court specifically found that that the "vastness of the records" and burden the request imposed on the Comptroller "outweigh[ed] the public interest" in obtaining the documents. We find no error. See, *e.g.*, *Shehadeh*, 2013 IL App (4th) 120742,

¶¶ 34-35 (finding that the burden imposed on the defendant Attorney General to comply with the plaintiff's request for over 9,000 documents outweighed the public interest in compliance reasoning: "requiring the Attorney General's staff to review 9,200 records would impede the staff's ability to respond to other FOIA requests and perform its other duties in a timely fashion").

¶ 32 The fact that the Comptroller did produce documents during the litigation process does not alter our conclusion. As set forth above, FOIA requires a government agency to deny or fulfill a request within 5 business days unless it seeks an additional 5-day extension. 5 ILCS 140/3(d), (e) (West 2012)). FGI submitted its FOIA request on April 17, 2012. Given the large number of records requested and the man hours that it would take to fulfill, the Comptroller indicated that timely compliance would be unduly burdensome. Although the Comptroller was working on the Ledger system at the time of FGI's request, its work was not complete and the information FGI requested was not, at the time, readily accessible. It later provided FGI with two discs of documents in August 2013. The fact that the Comptroller tendered requested records months after FGI's request did not alter the fact that compliance at the time of FGI's initial request was unduly burdensome.

¶ 33 Dismissal of FGI's Petition for Attorneys' Fees and Costs

¶ 34 FGI next argues that the circuit court improperly denied its request for fees and costs. It emphasizes that the Comptroller provided it with two discs of records during the discovery process and argues the Comptroller's record production "alone is enough to establish that FGI prevailed in its push to obtain the requested records."

¶ 35 The Comptroller responds that the circuit court properly denied FGI's petition for attorneys' fees and costs because it was not a "prevailing party." The Comptroller observes that

the circuit court found that FGI's FOIA claim lacked merit and dismissed FGI's complaint. Based on these facts, the Comptroller argues that FGI cannot be considered a prevailing party, and as such, is not entitled to recoup the fees and costs that it incurred during the lower court proceedings.

¶ 36 As a general rule of law, parties to litigation are responsible for their own attorneys' fees and costs. *Uptown*, 2014 IL App (1st) 130161, ¶ 10 (citing *In re Marriage of Murphy*, 203 Ill. 2d 212, 222 (2003)); see also *City of Champaign v. Madigan*, 2013 IL App (4th) 120662, ¶ 55 (recognizing that under the "American Rule," each party is required to pay its own fees and that the winner is not entitled to recoup its fees from the losing party absent a statute containing specific fee-shifting language). Section 11(i) of FOIA, however, is an exception to this general rule. 5 ILCS 140/11(i) (West 2012); *Uptown*, 2014 IL App (1st) 130161, ¶ 10. That provision, in its current form, states: "If a person seeking the right to inspect or receive a copy of public record *prevails* in a proceeding under this Section, the court *shall* award such person reasonable attorneys' fees and costs. In determining what amount of attorney's fees is reasonable, the court shall consider the degree to which the relief obtained relates to the relief sought." (Emphasis added.) 5 ILCS 140/11(i) (West 2012). This fee provision is neither intended to reward successful plaintiffs nor to punish governmental entities. *Hamer v. Lentz*, 132 Ill. 2d 49, 62 (1989); *Duncan Publishing, Inc. v. City of Chicago*, 304 Ill. App. 3d 778, 786 (1999). Instead, the primary purpose of this provision " ' is to prevent the sometimes insurmountable barriers presented by attorney's fees from hindering an individual's request for information and from enabling the government to escape compliance with the law.' " *Callinan v. Prisoner Review Board*, 371 Ill. App. 3d 272, (2007) (quoting *Duncan Publishing, Inc. v. City of Chicago*, 304 Ill. App. 3d 778, 786 (1999)).

¶ 37 Prior to 2010, FOIA's fee-shifting provision permitted, rather than required, the circuit court to award a plaintiff attorneys' fees when the plaintiff "substantially prevailed" in its lawsuit. 5 ILCS 140/11(i) (West 2008). Specifically, section 11(i) provided, in pertinent part, as follows: "If a person seeking the right to inspect or receive a copy of a public record *substantially prevails* in a proceeding under this Section, the court *may* award such person reasonable attorneys' fees and costs." (Emphasis added.) 5 ILCS 140/11(i) (Emphasis added.) (West 2008). Under the prior version of the statute, "[a] court order compelling disclosure [wa]s not necessarily a prerequisite to an award of fees." *Duncan*, 304 Ill. App. 3d at 786; see also *Uptown*, 2014 Ill App (1st) 130161, ¶ 15 ("[B]efore the 2010 amendment, it was well-settled that court-ordered relief was not a prerequisite to an award of attorney fees under FOIA").

¶ 38 In *Uptown People's Law Center v. Department of Corrections*, 2014 IL App (1st) 130161, this court addressed the effect of the 2010 amendment to section 11 (i) and found that the legislature's use of the word "prevail" in lieu of "substantially prevail" was not an "indication that the legislature intended to abandon Illinois' policy of awarding fees under FOIA despite the absence of a court order." *Id.* ¶ 20; but see *Rock River Times v. Rockford Public School District 205*, 2012 IL App (2d) 110879, ¶ 40 (interpreting the word "prevail" to require "court-ordered relief"). Rather, after reviewing relevant legislative history, we found that "the modification was intended to ensure that successful plaintiffs could obtain attorney fees regardless of the extent to which they had prevailed, no matter how slight" and thus "the removal of the word 'substantially' was intended to increase the instances in which a plaintiff obtains attorney fees after receiving a requested document." *Id.*

¶ 39 FGI relies on *Uptown* to support its argument that it is a prevailing party. FGI emphasizes that the Comptroller provided it with documents after it filed its lawsuit. Although

the circuit court subsequently found that the Comptroller properly invoked FOIA's undue burdensome exemption and dismissed its complaint, FGI argues that the circuit court's dismissal order is immaterial in light of our decision in *Uptown* that a court order compelling the production of documents is not required for a FOIA plaintiff to be considered a prevailing party. *Uptown*, however, did not involve adverse ruling on the merits of the plaintiff's FOIA claim; rather, the plaintiff's FOIA claim became moot when the defendant agency fully complied with the plaintiff's request after the lawsuit was filed. In this case, FGI disputed the Comptroller's claim that it had tendered all of the requested records and denied that the matter was moot. The circuit court then dismissed its claim. FGI fails to cite any cases in which a party is considered to have prevailed when the circuit court enters an adverse order on the merits of its claim. In this instance, the circuit court concluded, and we agree, that Comptroller did not wrongfully withhold records in contravention of its FOIA obligations. Although FGI did receive some records, its lawsuit was found to lack merit. Based on these facts, we do find that FGI was a prevailing party under section 11(i) of the Act. As such, the circuit court did not err in denying FGI's petition to recoup the fees and costs that is expended during its lawsuit.

¶ 40

CONCLUSION

¶ 41

The judgment of the circuit court is affirmed.

¶ 42

Affirmed.