

¶ 5 In July 2012, plaintiff, an inmate housed at Menard Correctional Center, sought the Department's Administrative Directives 01.12.101, 01.12.105, 01.12.120, 01.12.125, 02.42.103, 03.02.108, and 05.03.103A under the Act. Weitekamp, the Department's FOIA officer, provided the requested documents except for Administrative Directive 01.12.120 (directive), which details the Department's procedure for investigating unusual incidents. Weitekamp responded, in part, as follows:

"[The directive] is denied pursuant to [s]ection 7(1)(e) of the [Act] which states, 'Records that relate to or affect the security of correctional institutions and detention facilities.' This directive details how [the Department] handles internal investigations. Included, is the manner in which [the Department] proceeds with investigations, who is to be interviewed, what information is to be sought, and where the files are to be stored. Allowing inmates access to this information would give them unique insight into how [the Department] conducts investigations, and would provide them with a blueprint on how to subvert any investigation into wrongdoing. It also would provide inmates knowledge as to which staff to target if they were to seek information regarding an incident."

Thereafter, in August 2012, plaintiff requested review of the denial from the Illinois Attorney General's Public Access Counselor. Plaintiff contended the form was on the approval list in the Administrative Directive Review log pursuant to the Act (5 ILCS 140/9(b) (West 2012)).

¶ 6 In August 2012, Dushyanth Reddivari, an assistant attorney general in the Public Access Bureau, indicated to Weitekamp further inquiry into plaintiff's request was warranted. Reddivari requested the Department provide "an un-redacted copy of [the directive]" and "a detailed factual basis for the asserted exemption." Weitekamp responded, stating she is "not certain as to what log [plaintiff] is referring to, but this specific directive has been reviewed by [the Department's legal staff] for release and it has been determined that it relates to the security of a correctional facility." Weitekamp enclosed a copy of the directive and stated it "stands by its previous exertion [*sic*] that the record relates to the security of a correctional facility." Plaintiff attached to his complaint Exhibit F, an administrative directive review log. The log appears to list DOC administrative directives by number and title. Each directive is listed as approved, partially approved, or denied. Directive 1.12.120, "Investigation of Unusual Incidents," is marked as "partial approved." Apparently, plaintiff is contending this means approved for release pursuant to FOIA. The document does not reflect the significance of "approved," "partial approved," or "denied."

¶ 7 In January 2013, Reddivari issued a nonbinding decision, stating, in part, as follows:

"After reviewing the *** [d]irective in question, we conclude that the [d]irective contains general information regarding internal investigations, rather than specific information concerning procedures for enforcing policy which would create security risks if disclosed. The [d]irective merely sets forth general guidelines to ensure the integrity and thoroughness of investigations; this information does not reveal any investigative

techniques or procedures that could be exploited by inmates. [The Department] has not provided a clear explanation of how disclosing such general information would threaten the security of the correctional facility. Accordingly, we conclude that [the Department] has failed to sustain its burden of proof by clear and convincing evidence that the directive is exempt under section 7(1)(e) of FOIA."

¶ 8 In November 2013, plaintiff filed a *pro se* complaint in the circuit court, naming Director Godinez and Weitekamp as defendants. In his complaint, plaintiff sought a preliminary and final injunction, enjoining defendants from withholding the directive.

¶ 9 In February 2014, Godinez and Weitekamp filed a motion to dismiss, arguing the Department Director and the FOIA officer were not proper parties to the lawsuit filed pursuant to the Act. 5 ILCS 140/11 (West 2012). In July 2014, the circuit court granted the motion to dismiss and plaintiff filed an amended complaint naming only the Department as a defendant.

¶ 10 In January 2015, the Department provided plaintiff with a redacted version of the directive, which it claimed excluded material that was exempt from disclosure under section 7(1)(e) of the Act. 5 ILCS 140/7(1)(e) (West 2012). Thereafter, the Department filed a motion to dismiss plaintiff's amended complaint, arguing plaintiff was provided the directive with the appropriate redactions and his claim was moot. The Department attached the redacted version of the directive to its motion and provided an unredacted version to the court under seal. In May 2015, the court granted the Department's motion to dismiss.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Plaintiff argues on appeal the circuit court erred in granting the Department's motion to dismiss. We disagree for the most part.

¶ 14 As noted above, the Department filed a motion to dismiss plaintiff's amended complaint, arguing defendant was in possession of the redacted version of the directive and his claim was moot because he received all he was entitled to under FOIA. See 735 ILCS 5/2-619(a)(9) (West 2012). A section 2-619 motion to dismiss provides for the involuntary dismissal of a cause of action based on certain defects or defenses. 735 ILCS 5/2-619 (West 2012). Among the enumerated grounds for a section 2-619 dismissal is the "claim asserted *** is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2012). Such affirmative matters must be supported by affidavit, unless apparent on the face of the pleading attacked. 735 ILCS 5/2-619(a) (West 2012). In ruling on a motion to dismiss, the trial court "must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367-68, 799 N.E.2d 273, 278 (2003) (quoting *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 190, 680 N.E.2d 265, 270 (1997)). The standard of review on appeal is *de novo*. *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 383, 808 N.E.2d 957, 962 (2004).

¶ 15 Since the January 2013 decision by the Attorney General is nonbinding, it is not subject to administrative review. 5 ILCS 40/11.5 (West 2012). See also *Brown v. Grosskopf*, 2013 IL App (4th) 120402, ¶ 11, 984 N.E.2d 1167. Section 1 of the Act states it is "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." 5 ILCS 140/1 (West 2012). Our supreme court has stated "[t]he purpose of *** FOIA is to open governmental records to the light of public

scrutiny." *Bowie v. Evanston Community Consolidated School District No. 65*, 128 Ill. 2d 373, 378, 538 N.E.2d 557, 559 (1989). Thus, under FOIA, a presumption exists that public records be open and accessible. *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415-16, 844 N.E.2d 1, 15 (2006).

¶ 16 When a public body receives a FOIA request, it must comply unless one of the narrow exemptions set forth in section 7 of the Act applies. *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 463, 791 N.E.2d 522, 527 (2003); see also *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407, 680 N.E.2d 374, 377 (1997) (stating the exceptions to disclosure are to be read narrowly). If the public body does invoke one of the section 7 exemptions as grounds for refusing disclosure, it must give written notice to the requester, specifying the particular exemption it is claiming for the denial. *Id.* at 408, 680 N.E.2d at 377 (citing 5 ILCS 140/9(b) (West 1994)). Pursuant to section 1.2 of the Act, a public body that asserts an exemption has the burden of proving by clear and convincing evidence the requested document is exempt. 5 ILCS 140/1.2 (West 2012); see also 5 ILCS 140/11(f) (West 2012). To satisfy this burden, the public body must provide a detailed explanation for asserting the exemption in order for those reasons to be tested in an adversarial proceeding. *State Journal-Register v. University of Illinois Springfield*, 2013 IL App (4th) 120881, ¶ 22, 994 N.E.2d 705.

¶ 17 In the case at bar, the Department contends the directive requested by plaintiff, titled "Investigations of Unusual Incidents," is exempt under section (7)(1)(e) of the Act (5 ILCS 140/7(1)(e) (West 2012)), which deals with "[r]ecords that relate to or affect the security of correctional institutions and detention facilities." The Department claims the directive details investigative procedures for unusual incidents and specifies (1) who shall conduct the

investigation, (2) who shall be interviewed, (3) what information is sought, and (4) where files are to be stored. Further, the Department contends these investigations involve incidents that result in serious bodily harm, sensitive information surrounding the incident, and instructions on how to conduct the investigation, which all relate to prison security.

¶ 18 We find the Department presented clear and convincing evidence the form, for the most part, is exempt under the Act. The Department's basis for exemption is directly related to prison security. Disclosure of the unredacted form would create a security risk for the prison because the directive would provide inmates with insight on how to disrupt internal investigation procedures and knowledge of where these records are stored.

¶ 19 Plaintiff also argues the circuit court failed to conduct an *in camera* examination. Based on the record before us, we disagree.

¶ 20 Section 11(f) of the Act states, in relevant part, as follows:

"In any action considered by the court, the court shall consider the matter *de novo*, and shall conduct such *in camera* examination of the requested records as it finds appropriate to determine if such records or any part thereof may be withheld under any provision of this Act." (Emphasis added.) 5 ILCS 140/11(f) (West 2012).

¶ 21 In the present case, the record does not explicitly reflect the circuit court conducted an *in camera* examination of the directive. Rather, we are able to infer from the record the circuit court complied with the *in camera* examination requirement. Prior to the court's May 20, 2015, ruling, the Department submitted an unredacted version of the directive under seal when it filed its motion to dismiss on January 16, 2015. Additionally, the court's docket entry for May 20, 2015, states, in relevant part: "Court has reviewed and considered all

pleadings in this matter and *** defendant's motion to dismiss filed January 16, 2015, is allowed. Case dismissed." The Department's motion to dismiss included (1) Exhibit A, the redacted version of the directive that was provided to plaintiff; and (2) Exhibit B, the unredacted version submitted under seal. In making its decision to grant the Department's motion to dismiss, we presume the court reviewed and considered all of the exhibits attached thereto. As a result, we find sufficient evidence in the record the court conducted an *in camera* examination of the directive.

¶ 22 Moreover, this court, in conformance with its *de novo* review standard, has examined the sealed document. Following that review, we have determined the following provision should not have been redacted: "II. Procedure C. Internal Audit." That title, plus the one line below it should be unredacted and disclosed. Otherwise, we affirm the trial court's judgment.

¶ 23 Last, plaintiff claims the circuit court erred in granting the Department's motion to dismiss because the Department did not comply with section 9(a) of the Act when it denied his request. Section 9(a) requires a public body to "notify the requester in writing of the *** names and titles or positions of each person responsible for the denial." 5 ILCS 140/9(a) (West 2012). We disagree. The Department's response to plaintiff's FOIA request substantially complied with section 9(a). The bottom of the Department's response included Weitekamp's signature, printed name, and her title, FOIA officer.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the circuit court's judgment, but we remand with directions to unredact and disclose the following provision: "II. Procedure C. Internal Audit" and the one line below it.

¶ 26

Affirmed; cause remanded with directions.