2017 IL App (1st) 162141
Order filed: April 14, 2017

SIXTH DIVISION

Nos. 1-16-2141 and 1-16-2294 cons.

INSTITUTE FOR JUSTICE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 19381
	)	
THE DEPARTMENT OF FINANCIAL	)	
AND PROFESSIONAL REGULATION,	)	Honorable
	)	Rodolfo Garcia,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justice Cunningham concurred in the judgment.
Justice Delort dissented.

ORDER

¶ 1 *Held*: We reversed the grant of summary judgment in favor of plaintiff on its FOIA request where the applicable law in effect at the time of the court's ruling exempted the disclosure of the requested information.

¶ 2 On September 12, 2013, plaintiff Institute for Justice (Institute) filed a request pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2012)) (FOIA) with the defendant Department of Financial and Professional Regulation (Department). The request sought disclosure of "[a]ll complaints regarding licensed cosmetologists and hair braiders received by the [Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Board] from 2011 to the present." On September 30, 2013, the Department denied the request, claiming that the responsive records were exempt from disclosure under the FOIA pursuant to six separate

statutory exceptions. On November 22, 2013, the Institute filed a request for review of that denial with the Public Access Counselor of the Illinois Attorney General's office. See 5 ILCS 140/9.5 (West 2012). The Institute's request remained pending with the Public Access Counselor for over a year without resolution. Having received no relief through any other mechanism, the Institute filed a complaint in the circuit court pursuant to the FOIA, seeking to compel the Department to release the requested records, and asking for certain other relief. See 5 ILCS 140/11 (West 2012).

¶ 3 On January 1, 2015, while this lawsuit was pending in the circuit court, Public Act 98-911 became effective. The law comprehensively amended the Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Act of 1985 (225 ILCS 410/1-1 *et seq*. (West Supp. 2015)) (Barber Act). As is relevant here, the law added a new section to the Barber Act. The new section provides that complaints against licensees on file with the Department are "for the confidential use of the Department and shall not be disclosed" except to law enforcement officials, other regulatory agencies, or pursuant to subpoena. Pub. Act. 98-911 (eff. Jan. 1, 2015) (amending 225 ILCS 410/4-24). However, formal complaints filed against licensees by the Department itself were to be public records. *Id*.

¶ 4 On March 23, 2015, the Department answered the Institute's complaint. The answer generally tracked the reasons asserted by the Department in its 2013 denial of the Institute's FOIA request, but also included an affirmative defense claiming that the recent enactment of section 4-24 of the Barber Act rendered the requested documents exempt from disclosure under FOIA.

¶ 5 The Institute and the Department filed cross motions for summary judgment. On November 12, 2015, the circuit court granted the Institute's motion for summary judgment,

denied the Department's cross motion for summary judgment, and continued the matter for presentation of a formal order and to resolve miscellaneous issues. On December 16, 2015, the court issued an opinion explaining its rationale for granting summary judgment to the Institute. The court reviewed each of the six FOIA exemptions claimed by the Department and found that none of them applied to the subject records. The court also held that section 4-24 did not apply to the Institute's request because it was enacted after the Institute made its FOIA request and was not retroactive so as to affect FOIA requests made before its enactment. On June 30, 2016, the court ordered the Department to produce the subject records by December 23, 2016 and awarded the Institute $35,000 in attorney fees pursuant to section 11(i) of the FOIA. Section 11(i) provides that "[i]f a person seeking the right to inspect or receive a copy of a public record prevails in a proceeding under this Section, the court shall award such person reasonable attorney's fees and costs." 5 ILCS 140/11(i) (West 2012). In a separate order entered the same day, the court denied the Department's motion for a stay of the production order. The Department filed timely, but separate, appeals from the various orders. This court consolidated the appeals and granted the Department's motion for a stay of the production order pending appeal.

¶ 6 On appeal, the Department has abandoned its claim that the requested documents were exempt from disclosure pursuant to the six enumerated FOIA exemptions upon which it originally relied. Instead, it raises a single issue—whether section 4-24 of the Barber Act applies retroactively to requests made before its enactment but which were not fulfilled. This raises an issue of statutory construction that we review *de novo*. *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 16.

¶ 7 Both parties cite the test set forth in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), for determining whether an amended statute may be applied retroactively. Under the *Landgraf* test, "if the legislature has clearly indicated the temporal reach of the amended statute, that expression of legislative intent must be given effect, absent a constitutional prohibition. If, however, the amended statute contains no express provision regarding its temporal reach, the court must go on to determine whether applying the statute would have a retroactive impact, 'keeping in mind the general principle that prospectivity is the appropriate default rule.'" *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 29 (quoting *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318, 330-31 (2006)).

¶ 8 Under *Landgraf*, "[a]n amended statute will be deemed to have retroactive impact if application of the new statute would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. [Citations.] If the court finds that retrospective application of the new law would have a retroactive impact or result in inequitable consequences, 'the court must presume that the legislature did not intend that it be so applied.' " *Id*. ¶ 30 (quoting *Caveney v. Bower*, 207 Ill. 2d 82, 91 (2003)).

¶ 9 However, Illinois courts rarely look beyond the first step of the *Landgraf* analysis. *Bower*, 207 Ill. 2d at 94. "This is because an amendatory act which does not, itself, contain a clear indication of legislative intent regarding its temporal reach, will be presumed to have been framed in view of the provisions of section 4 of our Statute on Statutes (5 ILCS 70/4 (West 2000)." *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 31. Section 4 is a general savings clause which the supreme court has interpreted as meaning that "procedural changes to statutes will be applied

retroactively, while substantive changes are prospective only." *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 20.

¶ 10 In the present case, the Institute argues that section 4-24 of the Barber Act (which contains no express provision regarding its temporal reach) is a substantive amendment that "re-defines confidentiality protections and information availability" and would have a retroactive impact on the Institute by impairing its vested right to view the requested complaints and to recover attorney fees as a prevailing requestor.

¶ 11 We disagree with the Institute's argument, finding *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, *Center For Biological Diversity v. United States Department of Agriculture*, 626 F. 3d 1113 (9th Cir. 2010), and *Wisniewski v. Kownacki*, 221 Ill. 2d 453 (2006), to be controlling.

¶ 12 In *Kalven*, the plaintiff submitted FOIA requests to the Chicago police department (CPD), seeking disclosure of two types of documents related to complaints of police misconduct. CPD denied the requests, and the plaintiff filed suit seeking an injunction requiring CPD to produce the documents. *Kalven*, 2014 IL App (1st) 121846, ¶ 2.

¶ 13 The parties filed cross-motions for summary judgment. *Id.* ¶ 7. The circuit court found that one type of documents was exempt from disclosure under the FOIA, but that the other type was not exempt. *Id.* Both parties appealed. *Id.*

¶ 14 The appellate court noted that the threshold question to be resolved is which version of the FOIA applies to this case. *Id.* ¶ 8. The plaintiff requested the documents from the CPD in November 2009 and after CPD denied the request, the plaintiff filed suit on December 22, 2009. *Id.* While the case was pending in the circuit court, an amended version of the FOIA went into effect on January 1, 2010. *Id.* The plaintiff argued on appeal that the appellate court should

apply the 2009 version of the FOIA because it was in effect when the FOIA request was denied by the CPD; however, defendants argued that the 2010 version of the statute should be applied. *Id*.

¶ 15 The appellate court held:

> "Injunctive and declaratory relief are prospective forms of relief because they are concerned with restraining or requiring future actions rather than remedying past harms. See, *e.g.*, *PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill. 2d 250, 267-68 (2005) (discussing the difference between an injunction and present claims for damages in the context of sovereign immunity). When claims are prospective, a court must apply the law that is in effect at the time of its decision. See, *e.g.*, *Bartlow v. Costigan*, 2014 IL 115152, ¶¶ 30-31 (in the context of a suit seeking a declaration that a statute is unconstitutional and an injunction prohibiting its enforcement, amended version of the statute must be examined in order to determine whether the plaintiff is entitled to relief); see also *Forest Preserve District of Kane County v. City of Aurora*, 151 Ill. 2d 90, 94-95 (1992) (same). In this case, although the 2009 FOIA statute was in effect when plaintiff filed suit, the statute has since been amended. In order to determine whether plaintiff is entitled to production of the documents, we must therefore apply the version of the statute that is currently in effect." *Kalven*, 2014 IL App (1st) 121846, ¶ 10.

¶ 16 In *Center for Biological Diversity*, the Center for Biological Diversity submitted a FOIA request to the Animal and Plant Health Inspection Service (APHIS) for the specific GPS coordinates of certain wolf attacks. *Center for Biological Diversity*, 626 F. 3d at 1115. APHIS refused to provide the GPS coordinates, and the Center brought suit against APHIS and the United States Department of Agriculture (collectively, the USDA). *Id.*

¶ 17 The district court granted the Center's motion for summary judgment and denied that of the USDA, finding that the GPS coordinates must be disclosed. *Id*. The district court held that section 8791 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. §8791 (Supp. II 2009)), which exempted the disclosure of the GPS coordinates, did not apply because it was enacted after the USDA withheld the GPS coordinates. *Center for Biological Diversity*, 626 F. 3d at 1115. The USDA appealed. *Id*. at 1116.

¶ 18 The Ninth Circuit Court of Appeals (Ninth Circuit) reversed. *Id*. at 1118-19. The Ninth Circuit noted the two-step test set forth in *Landgraf* for determining the applicability of legislation enacted after the acts that gave rise to the suit, and found under the first step that Congress had not expressly prescribed section 8791's temporal reach. *Id*. at 1117. As to the second step, whether section 8791 would have retroactive effect, the Ninth Circuit cited an earlier case in which a conservation group brought a FOIA action to compel the Forest Service to release location data about an endangered bird. *Southwest Center for Biological Diversity v. United States Department of Agriculture*, 314 F.3d 1060, 1061 (9th Cir. 2002). While the action was pending in the district court, Congress passed new legislation permitting the withholding of such information from the public. *Id*. In determining whether the new legislation applied in that case, the appellate court concluded there was no impermissible retroactive effect because "the 'action' of the [conservation group] was merely to request or sue for information; it was not to take a position in reliance upon existing law that would prejudice the [conservation group] when that law was changed." *Id*. at 1062. As a result, the new legislation applied. *Id*.

¶ 19 The Ninth Circuit held that "*Southwest* requires the conclusion that there is no impermissible retroactive effect in applying Section 8791 to the Center's pending FOIA action. As in *Southwest*, the only action the Center took was to request information and file suit. It

engaged in no other action in reliance on then-existing law. We have already explicitly rejected the theory that there is an impermissible retroactive effect just because 'the Center had a right to the information when it filed its suit *** and it loses that right by application of the new exemption.' [Citation.] *** [W]hen the intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive.' [Citation.] Here, the Center seeks the prospective relief of an injunction directing the USDA to provide it with certain information. Section 8791 merely affects the propriety of this prospective relief and is therefore not impermissibly retroactive when applied in this case." *Center for Biological Diversity*, 626 F. 3d at 1118.

¶ 20 In *Wisniewski*, the plaintiff filed a lawsuit alleging that defendant Kownacki, a priest, had sexually abused him. *Wisniewski*, 221 Ill. 2d at 455. The plaintiff sought discovery of the records of Kownacki's mental health treatment and alcohol-abuse counseling. *Id*. The defendants objected to the disclosure of the records, asserting that the records were privileged under the Mental Health and Developmental Disabilities Confidentiality Act (Confidentiality Act) (740 ILCS 110/1 *et seq*. (West 2002)), and the Alcoholism and Other Drug Abuse and Dependency Act (Dependency Act) (20 ILCS 301/30-5 *et seq*. (West 2002)). *Wisniewski*, 221 Ill. 2d at 455-56. The circuit court concluded that neither statute applied to records created prior to the effective dates of the statutes and ordered that the records be turned over. *Id*. at 456. Defendants refused to turn over the records, and the circuit court held defendants in contempt. *Id*. Defendants ultimately appealed to the supreme court. *Id*.

¶ 21 In pertinent part, our supreme court stated:

> "Plaintiff argues that applying the nondisclosure provisions of the Confidentiality Act and the Dependency Act to Kownacki's preenactment treatment records would have

> a retroactive impact because it would impose new duties with respect to documents and transactions completed years before the statutes' enactment. We reject this argument and conclude that the applicability of the Confidentiality Act and the Dependency Act to Kownacki's treatment records does not hinge upon a retroactivity analysis. Disclosure, which is the act regulated by both statutes, takes place only in the present or the future. Thus, any new duties regarding disclosure or nondisclosure would likewise be imposed only in the present or the future, not in the past. In other words, applying the nondisclosure provisions of the Confidentiality Act and the Dependency Act to preenactment treatment records and communications would not impair anyone's rights with respect to past transactions. Neither statute impacts any actions that may have taken place in the past with regard to Kownacki's records. For these reasons, we conclude that the Confidentiality Act and the Dependency Act are applicable to treatment records and communications that were created pursuant to treatment given prior to the effective dates of those statutes." *Id*. at 462-63.

¶ 22 *Kalven*, *Center for Biological Diversity*, and *Wisniewski* compel the conclusion that when, as here, a statutory amendment only affects the present or future disclosure of information (either by allowing for its disclosure or exempting it from disclosure), and does not otherwise impair anyone's rights with respect to completed transactions made in reliance on the prior law, the application of the amendment has no impermissible retroactive effect and therefore the amendment must be applied by the court if it is in effect at the time of the court's decision.

¶ 23 In the present case, as section 4-24 of the Barber Act only exempts the requested records from disclosure, and does not otherwise impair the Institute's rights with respect to any completed transaction made in reliance on any prior law, its application has no impermissible

retroactive effect. Therefore, the circuit court should have applied section 4-24, which was in effect at the time of its ruling, and exempted the requested records from disclosure. Accordingly, we reverse the November 12, 2015, order granting the Institute's motion for summary judgment, and the June 30, 2016, order requiring the Department to produce the subject records and awarding the Institute $35,000 in attorney fees as a prevailing requestor.

¶ 24 Our holding is further bolstered because the Institute sought injunctive relief, which is a prospective form of relief for which the circuit court must apply the law in effect at the time of its decision, *i.e.*, section 4-24. *Kalven*, 2014 IL App (1st) 121846, ¶ 10.

¶ 25 Finally, our holding here is in accord with the recent case, *Christopher J. Perry and Perry & Associates, LLC v. Illinois Department of Financial and Professional Regulation*, No. 2017 IL App (1st) 161870. In *Perry*, we held that a statutory amendment not in effect when plaintiffs made their FOIA request applied to exempt the disclosure of the requested information, where the amendment was in effect at the time the circuit court issued its final ruling on the FOIA request, and where the amendment only affected the present or future disclosure of information and did not otherwise impair the parties' rights with respect to completed transactions made in reliance on the prior law.

¶ 26 The Institute argues that *J.T. Einoder, Inc.*, 2015 IL 117193, compels a different result. In *J.T. Einoder, Inc.*, the Attorney General for the State of Illinois filed a complaint against the defendants alleging they were violating the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq*. (West 2000)), by engaging in open dumping and by permitting the deposit of construction and demolition debris waste above grade without a permit. *J.T. Einoder, Inc.*, 2015 IL 117193, ¶¶1-2. In addition to monetary penalties, the State sought a mandatory injunction pursuant to section 42(e) of the Act requiring the defendants to remove the above-grade waste pile. *Id*. ¶ 17.

The defendants argued that the version of section 42(e) of the Act in effect at the time of the violations did not allow for mandatory injunctive relief. *Id.* The State responded that the amended version of section 42(e), which permits courts to issue mandatory injunctions, applied in this case. *Id.* The circuit court ruled that amended section 42(e) applied, and accordingly the court granted the State's request for a mandatory injunction. *Id.* ¶ 19. The appellate court affirmed. *Id.* ¶ 20.

¶ 27 Our supreme court reversed the appellate court's finding that amended section 42(e) of the Act may be applied retroactively, noting that the amended section "creates an entirely new type of liability—a mandatory injunction—which was not available under the prior statute. Applying it retroactively here would impose a new liability on defendants' past conduct. For that reason, it is a substantive change in the law and cannot be applied retroactively." *Id.* ¶ 36.

¶ 28 In contrast to *J.T. Einoder, Inc.*, the present case involves section 4-24 of the Barber Act, which only affects present or future disclosure of information and which does *not* impose any new liability on past conduct. As such, section 4-24 has no impermissible retroactive effect. Accord *Perry*, 2017 IL App (1st) 161870 (distinguishing *J.T. Einoder, Inc.* on the same basis as here).

¶ 29 For all the foregoing reasons, we reverse the November 12, 2015, order granting the Institute's motion for summary judgment, and the June 30, 2016, order requiring the Department to produce the subject records and awarding the Institute $35,000 in attorney fees.

¶ 30 Reversed.

¶ 31 JUSTICE DELORT, dissenting:

¶ 32 Our supreme court has explained that the retroactive application of a statute is determined under the test set forth in *Landgraf*. Under the first part of the test, "if the legislature has clearly

prescribed the temporal reach of the statute, the legislative intent must be given effect absent a constitutional prohibition." *Hayashi*, 2014 IL 116023, ¶ 23. The second part of the test provides that if the new law contains no "express provision regarding the temporal reach, the court must determine whether applying the statute would have a 'retroactive' or 'retrospective' impact; that is, 'whether it would *impair rights a party possessed* when he acted.' " (Emphasis added.) *Id*. (quoting *Landgraf*, 511 U.S. at 280). If "applying the statute would have a retroactive impact, then the court must presume that the legislature did not intend that it be so applied." *Id.* (citing *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 38 (2001)); see also *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 30 (applying same analysis).

¶ 33 As the majority notes, "Illinois courts will rarely, if ever, need to go beyond step one of the *Landgraf* analysis. This is because an amendatory act which does not, itself, contain a clear indication of legislative intent regarding its temporal reach, will be presumed to have been framed in view of the provisions of section 4 of our Statute on Statutes." *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 31. Section 4 of the Statute on Statutes, in turn, provides that "[n]o new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to *** *any right accrued,* or claim arising under the former law." (Emphasis added.) 5 ILCS 70/4 (West 2014). The law at issue here, section 4-24 of the Barber Act (225 ILCS 410/4-24 (West 2016)), contains no language suggesting that its temporal reach was intended to be retroactive so that it would abrogate record requests validly made before its enactment. Accordingly, section 4 of the Statute on Statutes suggests the plaintiffs are entitled to consideration of their FOIA request on the merits regardless of the later enactment of section 4-24 of the Barber Act.

¶ 34 In considering whether section 4-24 should be construed to be retroactive, we should also be guided by section 1 of FOIA itself, which states:

> "The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." 5 ILCS 140/1 (West 2012).

¶ 35 Public bodies are required to fulfill valid FOIA requests within a few weeks, at most. 5 ILCS 140/3 (West 2012). Additionally, FOIA requires courts to prioritize FOIA litigation over other types of cases. 5 ILCS 140/11(h) (West 2012) ("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."). When, as here, public bodies fail to fulfill FOIA requests "expediently" and require requestors to seek judicial relief to vindicate their rights, the public policy enunciated in FOIA demands that those rights not be thwarted by an unduly strained interpretation of our state's retroactivity jurisprudence.

¶ 36 To avoid this result, the majority cites several authorities, none of which are persuasive. *Wisniewski*, concerned the release of medical records *created* before the enactment of statutes shielding them from disclosure. The request for the records was first made as part of discovery in the underlying lawsuit. The lawsuit itself was not filed until years after the statutes had been enacted. Our supreme court held that the records need not be released, reasoning that:

> "Disclosure, which is the act regulated by both statutes, takes place only in the present or the future. Thus, any new duties regarding disclosure or nondisclosure would likewise be imposed only in the present or the future, not in the past. In

> other words, applying the nondisclosure provisions of the [statutes] to preenactment treatment records and communications would not impair anyone's rights with respect to past transactions. Neither statute impacts any actions that may have taken place in the past with regard to Kownacki's records." *Wisniewski v. Kownacki*, 221 Ill. 2d at 463.

Here, in contrast, the plaintiffs' request was filed and denied before section 4-24 of the Act was enacted. *Wisniewski* is therefore distinguishable.

¶ 37 The majority also relies on a case interpreting the federal Freedom of Information Act, *Center for Biological Diversity*. There, the court held that amendments to the federal version of FOIA enacted while the lawsuit was pending barred disclosure of documents requested before the amendment's enactment. This case is distinguishable for several reasons. First, the federal version of FOIA does not include the strong statement of public policy and the specific declaration of citizens' "right[s]" contained in the Illinois FOIA. Compare 5 U.S.C. § 552 (2012), with 5 ILCS 140/1 (West 2012). Second, while cases interpreting the federal version of FOIA are often helpful in interpreting identical provisions in the Illinois FOIA, "Illinois courts have repeatedly noted that the Illinois version of the FOIA is different from the federal version and is, therefore, subject to a different interpretation." *Rockford Police Benevolent & Protective Association, Unit No. 6 v. Morrissey*, 398 Ill. App. 3d 145, 153 (2010). Similarly, in *American Federation of State, County & Municipal Employees (AFSCME), AFL-CIO v. County of Cook*, 136 Ill. 2d 334, 345 (1990), our supreme court stated: "we decline to interpret the Illinois [FOIA] Act as narrowly as [the Court of Appeals for the District of Columbia Circuit] interpreted the Federal Freedom of Information Act."

¶ 38 The majority also relies on *Kalven*, in which the court held that a court hearing an appeal from a FOIA denial should apply the version of FOIA in existence at the time of its ruling. *Kalven*, 2014 IL App (1st) 121846, ¶ 10. I was on the panel that decided *Kalven* but did not join that part of the opinion. Instead, I specially concurred, stating:

> "I would instead find that the plaintiff's rights to the records vested when he made the request and could not later be rescinded by legislative action. To hold otherwise would encourage governmental bodies to stall FOIA responses until some future time when the legislature might amend the statute in a favorable manner, or to actively lobby for an amendment which shields particular embarrassing records from disclosure." *Id*. ¶ 36 (Delort, J., specially concurring).

Those concerns apply equally to the case now before us. The *Kalven* opinion does not discuss the key—and highly relevant—declaration in section 4 of the Statute on Statutes that "[n]o new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to *** *any right accrued*, or claim arising under the former law." (Emphasis added.) 5 ILCS 70/4 (West 2014).

¶ 39 The *Kalven* court did not have the benefit of the more recent Illinois Supreme court case of *J.T. Einoder, Inc.*, in which the court found that a new law cannot apply retrospectively where it would "have a retroactive impact or result in inequitable consequences." *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 30. Here, the Department eventually denied the plaintiffs' request, requiring the plaintiffs to seek judicial relief to vindicate their rights under FOIA. Under these facts, applying section 4-24 of the Act retroactively would, indeed, have "inequitable consequences." And, for the reasons expressed in my dissent in *Perry*, 2017 IL App (1st) 161780, ¶ __ (Delort, J., dissenting), I do not find the analysis in *Perry* to be persuasive.

¶ 40 As the majority notes, the Department has abandoned its claim that the requested documents were exempt from disclosure pursuant to the six enumerated FOIA exemptions upon which it originally relied. Instead, the appeal before us raises a single issue—whether section 4-24 of the Barber Act applies retroactively to requests made before its enactment but which were not fulfilled. The Institute's right to the subject records, having vested when it made its FOIA request, did not abate when section 4-24 of the Barber Act became effective. I must, therefore, respectfully dissent from the majority's disposition of this appeal. Instead, I would affirm the judgment below and allow the Institute to obtain the records which it sought.