THIRD DIVISION
December 26, 2018

No. 1-17-2909

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SONYA BLACKMAN and OILY THOMAS,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County.
	)	
v.	)	No. 16 CH 9590
	)	
CITY OF CHICAGO,	)	Honorable
	)	Franklin Ulyses Valderrama,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

ORDER

¶ 1. *Held*: The judgment of the circuit court of Cook County granting summary judgment in favor of defendant on plaintiffs' complaint under the Freedom of Information Act is affirmed; defendant showed it conducted a reasonable search geared to recover the documents requested and plaintiffs failed to show defendant did not conduct the search in good faith.

¶ 2. Plaintiffs, Sonya Blackman and Oily Thomas, appeal from the trial court's order granting

summary judgment in favor of defendant, the City of Chicago, based on the finding defendant complied with plaintiffs' Freedom of Information Act (FOIA) request. 5 ILCS 140/1 *et seq.* (West 2016). Blackman, on behalf of Thomas, filed a FOIA request with the City of Chicago seeking the police records for an investigation of a homicide for which Thomas was convicted. A FOIA officer in the Chicago Police Department retrieved the homicide file and sent it to plaintiffs. Plaintiffs discovered certain documents were missing based on the inventory ledger in the file. Plaintiffs requested defendant provide a section 11(e) index (5 ILCS 140/11(e) (West 2016)) and locate the missing documents or provide a blank copy of a form that was missing if the original filled out form could not be found. The FOIA officer made a subsequent request to locate the missing documents and informed plaintiffs the documents could not be located. She provided plaintiffs with an index listing the documents provided and explaining redactions made from the documents provided. Plaintiffs then filed this complaint in the circuit court of Cook County, alleging defendant failed to comply with FOIA. Plaintiffs alleged defendant failed to produce an adequate index under the statute, failed to provide a missing form or a blank copy of that form as it was used at the time of the homicide investigation, and did not look for missing documents in good faith.

¶ 3. BACKGROUND

¶ 4. On February 2, 2016, Blackman sent an email to the Chicago Police Department's FOIA office requesting, on behalf of Thomas, "all evidence reports and evidence books" collected in the investigation of the homicide of Edward McComb. McComb was killed on June 4, 1991, and a police investigation ensued. Following a jury trial in June 1992, Thomas was convicted for the first-degree murder of McComb and sentenced to 75 years' imprisonment. Officer Janina Farr received plaintiffs' FOIA request and, on February 9, 2016, Officer Farr contacted the

police department's Homicide Detective Division to request the homicide file from the investigation of McComb's death. Officer Farr received a file from the Homicide Detective Division on February 11, 2016. On February 23, 2016, Blackman sent a subsequent email to the Chicago Police Department stating she had not yet received any response and attached a filled out freedom of information form. On February 27, 2016, Officer Farr sent an email to Blackman with the response letter and the file, which Officer Farr had redacted.

¶ 5. On March 30, 2016, plaintiffs sent an email, through counsel, to the Chicago Police Department's FOIA office to follow up. Plaintiffs indicated that a hat was listed in the property inventory, next to which was written "T.O. to OWNER F 54." Plaintiffs sought to obtain that "Form 54" which was filled out when the hat was returned to its owner, or a blank Form 54 if the original could not be found. Plaintiffs also sought production of an inventory ledger. Plaintiffs sent a follow up email on April 29, 2016 seeking a reply to the March 30 email. Later, on April 29, 2016, Officer Farr replied to plaintiffs' email and informed plaintiffs that she would "re-order this file to make sure nothing was inadvertently left out and diligently search for these documents." Officer Farr next contacted plaintiffs via email on May 9, to inform them that she had reviewed the homicide file and the items plaintiffs requested were still missing. Plaintiffs replied to this email on May 9, asking if she could provide a date by which she could comply with the FOIA request because the statutory period of time to respond to the request had expired. Officer Farr contacted plaintiffs, who sent an email reply on May 12 asking if she could provide them with a blank Form 54 as plaintiffs had requested if she could not locate the filled out original.

¶ 6. On July 21, 2016, plaintiffs filed their complaint against defendant, alleging their FOIA request had been denied. Defendant filed its answer to plaintiffs' complaint on September 22,

2016, claiming it complied with its obligations under FOIA and "conducted a thorough and extensive search and could not locate" the records plaintiffs requested.

¶ 7. On January 12, 2017, plaintiffs filed a motion for a section 11(e) index under FOIA. 5 ILCS 140/11(e) (West 2016). Section 11(e) provides: "On motion of the Plaintiff, prior to or after *in camera* inspection, the court shall order the public body to provide an index of the records to which access has been denied." *Id.* This requires the public body to include: (1) "A description of the nature or contents of each document withheld, or each deletion from a released document, provided, however, that the public body shall not be required to disclose the information which it asserts is exempt;" and, (2) "A statement of the exemption or exemptions claimed for each such deletion or withheld document." *Id.* Plaintiffs requested defendant provide an index following the guidelines of section 11(e) "for each requested record not fully produced." Defendant filed its response on January 27, 2017, arguing "no records were entirely withheld." Defendant provided plaintiffs with an index of the records which were produced and a description of the redactions made under the FOIA exemption for redacting private information. 5 ILCS 140/7(1)(b) (West 2016). On February 27, 2017, the trial court entered an order finding "plaintiffs' motion for section 11(e) Index has been rendered moot by defendant's response to plaintiffs' motion."

¶ 8. On March 27, 2017, defendant filed its motion for summary judgment. Defendant argued there was no genuine issue of material fact because it discharged its obligations under FOIA. Defendant claimed it provided the requested records to plaintiffs and that it performed a search for missing documents but could not locate them. Attached to the motion for summary judgment was the affidavit of Officer Farr. Officer Farr averred that she reviewed plaintiffs' request for documents relating to the investigation of the homicide of Edward McComb. After making a

request of the Homicide Detective Division, Officer Farr was provided with a 126 page homicide file that she sent to plaintiffs after making redactions. After plaintiffs informed her that documents were missing from the file, Officer Farr replied that she would re-order the file. She averred that:

> "I reordered the file through the Homicide Detective Division on April 29, 2016. I received it on May 5, 2016. I noticed the same documents were still missing; I contacted the Homicide Detective Division inquiring why these documents were missing. They informed me that if they weren't in the homicide file then CPD doesn't have them and they can't provide me a rationale to why they are missing. I contacted [plaintiffs' counsel] by phone and relayed this information to him and he said ok."

The trial court set a briefing schedule on April 13, 2017. Plaintiffs failed to file a response to defendant's motion for summary judgment.

¶ 9. On June 7, 2017, the trial court entered an order granting defendant's motion for summary judgment after plaintiffs "failed to file a response and the court consider[ed] the affidavit attached to defendant's motion." On July 7, 2017, plaintiffs filed a motion to vacate summary judgment. The trial court granted this motion on July 14, 2017, vacated its order granting defendant's motion for summary judgment, and set a briefing schedule. Plaintiffs also filed on July 7, a combined response to defendant's motion for summary judgment and a motion to provide a more detailed index. Plaintiffs claimed the case was not ripe for summary judgment because defendant had not yet turned over all requested records and the index provided was inadequate. Plaintiffs argued defendant failed to provide a detailed explanation for why certain documents were not produced. Plaintiffs further contended the trial court erred in granting

defendant's motion for summary judgment because discovery had not yet closed.

¶ 10. Defendant filed its response to plaintiffs' combined motion on July 28, 2017. Defendant stated it attached the affidavit of Officer Farr to its motion for summary judgment and that Officer Farr averred she conducted a diligent search. Defendant argued Officer Farr's affidavit should be accorded a presumption of good faith. Defendant maintained summary judgment was appropriate because there was no genuine issue of material fact after Officer Farr's unrefuted affidavit explained defendant conducted a diligent search for missing documents and produced all other documents. Defendant further argued that discovery was not warranted here because plaintiffs failed to show Officer Farr's affidavit demonstrated bad faith.

¶ 11. On August 10, 2017, the trial court entered its order granting defendant's motion for summary judgment. The court found:

> "9. Plaintiffs' response to Defendant's Motion does not challenge the sufficiency of the affidavit provided in support of Defendant's Motion for Summary judgment or raise any other objection to the granting of summary judgment for Defendant. Plaintiffs' response, instead, addresses the insufficiency of Defendant's response to Plaintiffs' Motion for Index, which the Court had found moot on February 2017, and which Plaintiffs did not timely contest.
>
> 10. As such, the Court finds that: (1) Plaintiffs, not having timely challenged the sufficiency of the Defendant's response to their Motion for Index, therefore forfeited that argument, and (2) Plaintiffs did not satisfy their burden to challenge the sufficiency of the affidavit submitted in support of Defendant's Motion for Summary judgment."

¶ 12. Plaintiffs filed a motion for reconsideration on September 11, 2017. The trial court

denied this motion in an order dated October 30, 2017. This appeal followed.

¶ 13. ANALYSIS

¶ 14. Plaintiffs appeal the trial court's order granting defendant's motion for summary judgment and denying plaintiffs' motion for reconsideration. Defendant's motion for summary judgment argued there was no genuine issue of material fact because it complied with its obligations under FOIA. Plaintiffs argue summary judgment was inappropriate because genuine issues of material fact remain. Plaintiffs contend there was a material question of fact concerning whether defendant fully complied with FOIA because documents plaintiffs requested were missing from defendant's disclosures and the section 11(e) index defendant provided was inadequate. Defendant contends the issue for summary judgment is not whether missing documents were produced, but whether the search for those missing documents was adequate. Defendant claims it provided a blank copy of the requested form and the original could not be found after conducting a search. Defendant further contends the section 11(e) index provided was adequate because no documents were withheld.

¶ 15. We review appeal from orders granting motions for summary judgment *de novo* because whether a genuine issue of material fact existed is a question of law. *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 766 (2009). "Summary judgment is appropriate where the pleadings, depositions, affidavits, and admissions on file, when viewed in the light most favorable to the nonmoving party, show that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law." *Id.* A court ruling on a motion for summary judgment must draw all reasonable inferences from the record in favor of the nonmoving party. *BlueStar Energy Services, Inc. v. Illinois Commerce Comm'n*, 374 Ill. App. 3d 990, 993-94 (2007). Defendant has the burden of showing it complied with FOIA at the

summary judgment stage. *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 313–14 (D.C. Cir. 2003).

¶ 16. The purpose of FOIA is to make government records open to public scrutiny.

> "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 2016).

Under FOIA, public records are presumed to be open and accessible. *Cooper v. Department of the Lottery*, 266 Ill. App. 3d 1007, 1011 (1994). "When a public body receives a proper FOIA request, it must comply with that request unless one of the narrow statutory exemptions set forth in section 7 of the FOIA applies." *BlueStar Energy Services, Inc.*, 374 Ill. App. 3d at 994. "The legislature patterned the Illinois law after the Federal Freedom of Information Act, (5 U.S.C. § 552) and case law construing the Federal statute should be used in Illinois to interpret our own FOIA." *Cooper v. Department of the Lottery*, 266 Ill. App. 3d 1007, 1012 (1994).

¶ 17. Defendant has not claimed any documents plaintiffs requested are exempt from disclosure and therefore has not invoked any of the statutory exemptions. Instead, defendant claims it conducted a reasonable search that could not produce the documents plaintiffs requested because those documents are missing. In replying to a challenge to the adequacy of its search, a public body may meet its burden of showing it complied with FOIA by providing a reasonably detailed affidavit that sets forth the search terms and type of search performed and avers that all files likely containing responsive materials were searched. *Iturralde*, 315 F.3d at

313-14. "The plaintiff may then provide 'countervailing evidence' as to the adequacy of the agency's search. [Citation.] '[I]f a review of the record raises substantial doubt, particularly in view of "well defined requests and positive indications of overlooked materials," summary judgment is inappropriate. [Citations.]' " *Id.* Defendant supported its motion for summary judgment with the affidavit of the police department's FOIA Officer. "While a party need not support his summary judgment motion with affidavits, if he does and the party opposing the motion files no counteraffidavits, the well pleaded material facts in the movant's affidavits stand as admitted. [Citation.] Mere allegations cannot prevail over the uncontradicted facts set forth in affidavits submitted by the movant." *Getman v. Indiana Harbor Belt R.R. Co.*, 172 Ill. App. 3d 297, 300 (1988). Plaintiffs did not file a counteraffidavit with their response to defendant's motion for summary judgment.

¶ 18. Defendant argues plaintiffs forfeited their arguments contesting whether the search was conducted in good faith because plaintiffs failed to raise any such arguments in their response to defendant's motion for summary judgment. Plaintiffs only contested the adequacy of the section 11(e) index defendant provided. Plaintiffs first raised their challenge to the adequacy of defendant's search for documents in their motion to reconsider. "Issues cannot be raised for the first time in the trial court in a motion to reconsider and issues raised for the first time in a motion to reconsider cannot be raised on appeal. [Citation.] On appeal, issues not argued are considered waived and 'shall not' be raised in the reply brief, oral argument or a petition for rehearing." *American Chartered Bank v. USMDS, Inc.*, 2013 IL App (3d) 120397, ¶ 13. Accordingly, plaintiffs forfeited their arguments contesting the validity of defendant's search. See *Patterson v. I.R.S.*, 56 F.3d 832, 841 (7th Cir. 1995) ("Since [the plaintiff] failed to question the adequacy of the IRS' search before the district court, she waived her opportunity to

demonstrate that responsive documents existed.").

¶ 19. If we were to consider plaintiffs' forfeited arguments contesting whether defendant's search was conducted in good faith, we would still reach the same conclusion that defendant met its burden to show it complied with its obligations under FOIA.

¶ 20. Adequacy of Defendant's Search for Missing Documents

¶ 21. Plaintiffs contend granting defendant's motion for summary judgment is improper because a genuine issue of material fact exists about whether defendant fully complied with its obligations under FOIA. Plaintiffs claim defendant did not produce the original filled out Form 54 or provide them with a blank copy of the form as it was used during the time of the murder investigation and Thomas's trial. Plaintiffs also argue defendant's search should have produced documents that had previously been in defendant's possession, that defendant's search was inadequate, and that the search was not conducted in good faith.

¶ 22. As noted above, defendant's burden on its summary judgment motion is to prove it fully discharged its obligations under FOIA. *Miller v. U.S. Department of State*, 779 F.2d 1378, 1382 (8th Cir. 1985). To meet this burden defendant "must prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." *National Cable Television Ass'n, Inc. v. Federal Communications Comm'n*, 479 F.2d 183, 186 (D.C. Cir. 1973).

> "The adequacy of an agency's search for requested documents is judged by a standard of reasonableness, *i.e.*, 'the agency must show beyond material doubt *** that it has conducted a search reasonably calculated to uncover all relevant documents.' [Citation.] But the search need only be reasonable; it does not have to be exhaustive. [Citation.] An agency may prove the reasonableness of its

> search through affidavits of responsible agency officials so long as the affidavits are relatively detailed, nonconclusory, and submitted in good faith. *** '[T]hese affidavits are equally trustworthy when they aver that all documents have been produced or are unidentifiable as when they aver that identified documents are exempt.' [Citation.]" *Miller*, 779 F.2d at 1382–83.

Defendant maintains it met its burden on summary judgment by providing the affidavit of Officer Farr. Defendant claims the affidavit provided a relatively detailed description of a reasonable search and that the affidavit was submitted in good faith. "Agency affidavits are accorded a presumption of good faith, which cannot be rebutted by 'purely speculative claims about the existence and discoverability of other documents.' " *SafeCard Services, Inc. v. S.E.C.*, 926 F.2d 1197, 1200 (D.C. Cir. 1991).

> "Despite this weight to be accorded to agency affidavits, the burden remains on the government to demonstrate that it has thoroughly searched for the requested documents where they might reasonably be found. If the agency has not made this showing, then the requester can avert a motion for summary judgment merely by demonstrating some reason to think that the document would have turned up if the agency had looked for it, *e.g.*, by showing that the document originated with the agency or that the agency is set up to retrieve just that kind of document. [Citation.] But once the agency has shown by convincing evidence that its search was reasonable, *i.e.*, that it was especially geared to recover the documents requested, then the burden is on the requester to rebut that evidence by a showing that the search was not in fact in good faith. [Citation.] Summary judgment would be improper if the adequacy of the agency's search were materially

> disputed on the record, for such a dispute would indicate that material facts were still in doubt." *Miller*, 779 F.2d at 1383.

¶ 23. When a plaintiff contests the adequacy of the public body's search, the question is "whether the search was reasonably calculated to discover the requested documents, not whether it actually uncovered every document extant. [Citations.] Mere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them." *Id.* at 1201. An agency is not required to recreate or reacquire a document no longer in its possession. "If the agency is no longer in possession of the document, for a reason that is not itself suspect, then the agency is not improperly withholding that document and the court will not order the agency to take further action in order to produce it." *Id.*

¶ 24. Plaintiffs do not argue Officer Farr conducted her search in bad faith. Rather, they claim documents are still missing and Officer Farr was not the person who checked inside the Homicide Detective Division for the file, therefore, the person who responded to Officer Farr's request may have conducted their search for missing documents in bad faith. Plaintiffs contend their allegation the missing documents would turn up in a reasonable search and their allegation of bad faith are not based on mere speculation because the index provided indicates a number of missing documents. They argue that the missing Form 54 must be in defendant's possession and that yet uncovered documents must exist.

¶ 25. Despite plaintiffs claiming they are not raising merely speculative claims of defendant conducting a bad faith search, they failed to show in the first place that a more diligent search would yield the missing documents. To survive a motion for summary judgment, plaintiffs have the burden of showing "the agency might have discovered a responsive document had the agency

conducted a reasonable search." *Maynard v. C.I.A.*, 986 F.2d 547, 560 (1st Cir. 1993). Setting aside the issue of plaintiffs forfeiting the opportunity to demonstrate that responsive documents existed, plaintiffs failed to provide any indication that any requested documents could be found or that they still exist. *Patterson*, 56 F.3d at 841. "The adequacy of an agency's search for documents under FOIA is judged by a standard of reasonableness and depends upon the facts of each case. [Citation.] The crucial issue is not whether relevant documents might exist, but whether the agency's search was 'reasonably calculated to discover the requested documents.' " *Maynard*, 986 F.2d at 559–60. Plaintiffs have not shown that further search by defendant will uncover missing documents. Moreover, because defendant supported its motion for summary judgment with a reasonably detailed affidavit of the FOIA officer who responded to plaintiffs' FOIA request, that affidavit is accorded a presumption of good faith. Plaintiffs failed to file any affidavit in support of their response to defendant's motion for summary judgment. Plaintiffs have only raised purely speculative claims that more documents must have existed in a murder investigation and that any missing documents must be in defendant's possession.

¶ 26. Plaintiffs argue further search in the Chicago Police Department would yield the missing documents because they must still be in possession of the Chicago police. " 'There is no requirement that an agency search every record system.' [Citation.] Nor is there any requirement that an agency provide a comprehensive list of record systems unlikely to contain responsive records." *Id.* at 563. "We recognize the difficulty a FOIA requester has in demonstrating that a file he has never seen in fact exists. That will often be almost as difficult a task as that the government faces when it seeks to demonstrate that a specific file does not exist. But a search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request." *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir.

1986). Plaintiffs have not shown that defendant's effort was not reasonable in light of their request. Defendant here supplied plaintiffs with the file containing the documents from the investigation of the murder of Edward McComb. Defendant could not locate the original Form 54 that was filled out when a hat in evidence was returned to its owner. Defendant's affidavit specified that the FOIA officer made multiple requests for the file and that the missing documents could not be located. Officer Farr averred that further search would be fruitless because the only place the file could have been stored was in the Homicide Detective Division, and that the documents could not be located outside the file. Defendant subsequently supplied plaintiffs with a blank copy of the Form 54 plaintiffs requested.

¶ 27. Plaintiffs maintain that defendant's failure to produce the original document demonstrates defendant conducted an inadequate search.

> "[I]t is long settled that the failure of an agency to turn up one specific document in its search does not alone render a search inadequate. [Citations.] Rather, the adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search. [Citation.] After all, particular documents may have been accidentally lost or destroyed, or a reasonable and thorough search may have missed them." *Iturralde*, 315 F.3d at 315.

Plaintiffs speculate that missing documents may be found if defendant conducts a more thorough search, but plaintiffs fail to demonstrate defendant did not take appropriate means to carry out the search. Defendant conducted a search in its Homicide Detective Division, the place where the file containing the documents plaintiffs requested was kept, and defendant located the investigation file.

¶ 28. Plaintiffs argue that the missing form related to a piece of evidence used to implicate Thomas and would not be otherwise lost or destroyed. "In certain circumstances, a court may place significant weight on the fact that a records search failed to turn up a particular document in analyzing the adequacy of a records search." *Id.* However, plaintiffs failed to offer evidence of circumstances sufficient to overcome an adequate agency affidavit. Plaintiffs have not shown defendant failed to search offices or files where documents plaintiffs requested might have been kept. *Id.* Nor were there indications in documents recovered that those missing documents might be in some other file or otherwise located with defendant. *Id.* Plaintiffs have also not pointed to any evidence indicating that at the time defendant searched their files there was reason to believe the requested documents were there.

> "Thus, this case is unlike *Oglesby v. United States Dep't of the Army*, 79 F.3d 1172, 1185 (D.C.Cir.1996), where there was evidence in a published book that the agency had produced records in response to a FOIA request by another individual, or *Founding Church of Scientology*, 610 F.2d at 834, where the court relied on the distribution of responsive documents by the agency to other agencies. Further, in those cases, the adequacy of the agency affidavits was at issue and the affidavits were determined to be inadequate for purposes of summary judgment. [Citations.] In short, '[m]ere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them.' [Citations.]" *Id.* at 315–16.

¶ 29. Plaintiffs' claim of a bad faith search depended on them providing some indication an inappropriate search was carried out and that documents were not lost or destroyed. Plaintiffs have not shown a more thorough search would have turned up the requested documents, nor that

defendant's search was inadequate, nor that defendant conducted its search in bad faith. As noted above, plaintiffs have not claimed Officer Farr conducted her search or responded to plaintiffs' request in bad faith. Plaintiffs failed to offer anything more than mere speculation that the requested documents presently exist or that further search would yield the documents. As plaintiffs requested, defendant provided plaintiffs with a blank copy of the form missing from the disclosure as it was used when it was filled out. We cannot say defendant's search was inadequate or unreasonable, or that it was not conducted in good faith. *Meeropol*, 790 F.2d at 956.

¶ 30. Adequacy of Defendant's Section 11(e) Index

¶ 31. Plaintiffs contend that even if defendant's search was adequate, summary judgment nevertheless was not appropriate because defendant's inadequate section 11(e) index created a genuine issue of material fact. Plaintiffs argue defendant's section 11(e) index is inadequate because it fails to explain defendant's refusal to turn over certain documents.

¶ 32. We note the trial court here found plaintiffs forfeited any objection to the index defendant provided because plaintiffs failed to raise an objection when defendant filed the index with its motion for summary judgment. Plaintiffs filed their motion for a section 11(e) index on January 12, 2017. Defendant filed its response on January 27, 2017 and attached a section 11(e) index detailing the disclosed documents and the redactions made under specified FOIA exemptions. The trial court entered an order on February 27, 2017, ruling that "plaintiffs' motion for section 11(e) index has been rendered moot by defendant's response to plaintiffs' motion." The court then continued the matter and set a date for case management. After the trial court vacated its order granting defendant's motion for summary judgment, the court considered plaintiffs' response to defendant's motion for summary judgment. Plaintiffs' contested defendant's motion

for summary judgment due in part to the inadequacy of the index defendant provided, and the trial court found plaintiffs forfeited any objection to the adequacy of the index.

¶ 33. As noted above, defendant's burden on its motion for summary judgment was to prove it fully discharged its obligations under FOIA. *Miller*, 779 F.2d at 1382. Plaintiffs claimed defendant did not discharge its obligations under FOIA because defendant did not "prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." *National Cable Television Ass'n, Inc.*, 479 F.2d at 186. Plaintiffs argued that because defendant did not produce certain documents, its section 11(e) index should list why those documents are exempted from production, and that the index provided failed to do so. Therefore, plaintiffs could argue in response to defendant's motion for summary judgment that a genuine issue of material fact existed because plaintiffs asserted defendant had not fully complied with FOIA and defendant had to show it discharged its obligations under FOIA to succeed in its motion for summary judgment.

¶ 34. Moreover, there is no provision in Illinois Supreme Court Rule 307(a) providing for interlocutory appeal from the trial court's order denying plaintiffs' motion for a section 11(e) index as moot. Ill. S. Ct. R. 307(a) (eff. Nov. 1, 2017); see *Goodrich Corp. v. Clark*, 361 Ill. App. 3d 1033, 1040 (2005) ("The court's indexing order only concerned the procedural aspects of this case. To appeal the court's indexing order, the Division could have waited until a final judgment had been entered, obtained a Rule 304(a) finding concerning the indexing order from the court, or been found in contempt of court."). Plaintiffs filed a motion requesting a more detailed index. "If the requesting party finds the index inadequate, it can move for the agency to provide a more detailed index." *Goodrich Corp.*, 361 Ill. App. 3d at 1046. We find plaintiffs did

not forfeit their challenge to the adequacy of the index defendant provided and we will consider plaintiffs' challenge to the adequacy of the index.

¶ 35. Plaintiffs contend documents were withheld and defendant did not claim a statutory exemption for withholding those documents, therefore defendant's index was not adequate under the standards set out in *Goodrich Corp.*, 361 Ill. App. 3d at 1045-46.

> "[A]n agency must provide a detailed justification for its refusal to turn over the requested document or documents. [Citation.] The index must address requested documents specifically and in a manner that allows for adequate adversary testing. [Citation.] The index should include the following: (1) the title of the document or the category of documents, (2) the date the document was created or at least an estimate thereof, (3) the name of the author and recipient, (4) a detailed factual description, and (5) the claimed statutory exemption." *Id.*

Plaintiffs assert defendant failed to provide police reports and inventory records for evidence inventoried during the investigation. The inventory ledger listed items listed with certain inventory numbers and the record indicates that those inventory numbers are referenced in defendant's disclosure to plaintiffs. Plaintiffs claim defendant failed to provide inventory records and police reports corresponding to those inventory numbers and that, because defendant failed to provide these documents, the index provided was inadequate due to its failure to list which exemption was being claimed for withholding those documents. Although plaintiffs can point to inventory numbers, which are referenced throughout the disclosure, plaintiffs cannot provide any indication from the record that further documents relating to those inventory numbers exist. Plaintiffs can only speculate further documents exist or have been withheld, and as discussed at length above, plaintiffs failed to show defendant did not conduct an adequate

search for those documents.

¶ 36. Plaintiffs contend defendant has not "for any given line item cite[d] which specific statutory authority applies to the document for that line item." However, defendant explained in the column labeled "redaction made" in the index that it was redacting private information and provided citation to the applicable FOIA exemption (5 ILCS 140/7 (1)(b)). Next to each line item defendant identified what particular information was redacted in each redacted document. For instance, for the line item "Incident Summary," defendant indicated it redacted "Victims' home addresses; reporting and supervising officers' signatures." Therefore, defendant's index provided plaintiffs with an explanation of statutory exemptions claimed for redactions.

¶ 37. Plaintiffs maintain the index was nevertheless inadequate because the index did not include page numbers. However, there is no requirement an index of withheld documents include pagination. *Goodrich Corp.*, 361 Ill. App. 3d at 1045-46. Such a request would be absurd. If a public body refuses to turn over a document it would obviously not be included in the disclosure and would therefore not have a page number plaintiffs could use in any way.

¶ 38. Under *Goodrich*, defendant was required to provide an index detailing withheld documents, descriptions of those documents, and explanations of claimed statutory exemptions. *Id.* The "index" here was provided by defendant to explain the redactions made in the documents provided to plaintiffs because defendant did not withhold any documents and therefore did not claim any statutory exemptions. Defendant claimed instead that documents could not be located and therefore defendant cannot provide any further description. Agency documents can be lost or destroyed, and the failure to turn up a document does not alone indicate defendant conducted an inadequate search is or is otherwise withholding those documents. *Iturralde*, 315 F.3d at 315. Therefore, we find plaintiffs have not shown defendant failed to

provide an adequate index under section 11(e) of FOIA. Because we review the judgment of the trial court, and not its reasoning, we may affirm the trial court's ruling for any reason supported by the record. *Leonardi v. Loyola*, 168 Ill. 2d 83, 97 (1995).

¶ 39. CONCLUSION

¶ 40. For the foregoing reasons the judgment of the circuit court of Cook County is affirmed.

¶ 41. Affirmed.