IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

John Doe et al.,	:	
Plaintiffs-Appellants,	:	Nos. 25AP-798 (C.P.C. No. 24CV-6195)
v.	:	and No. 25AP-799
City of Columbus,	:	(C.P.C. No. 24CV-6428)
Defendant-Appellee.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on September 24, 2026

On brief: *Meyer Wilson Werning Co., LPA*, *Matthew R. Wilson*, and *Jared W. Connors*; *Cooper & Elliot, LLC*, *Rex H. Elliott*, and *Spencer C. Meador*; *Arnold & Clifford, LLP*, *James E. Arnold*, *Damion M. Clifford*, *Gerhardt A. Gosnell II*, and *Damien C. Kitte*; *Schiff & Associates Co., L.P.A.*, *Scott W. Schiff*, and *Zachary L. Schiff*, for appellants. **Argued:** *Jared W. Connors*.

On brief: *Zachary M. Klein*, City Attorney, *Lara N. Baker-Morrish*, *Westley M. Phillips*, and *Paul M. Bernhart*; *Vorys, Sater, Seymour and Pease LLP*, *Christopher L. Ingram*, *John Landolfi*, *Henry J. Moseley*, *Celina J. Needle*, *Margaret S. Echols*, for appellee. **Argued:** *Christopher L. Ingram*.

APPEALS from the Franklin County Court of Common Pleas

BOGGS, P.J.

{¶ 1} Plaintiffs-appellants, John Doe Nos. 1 through 5 and Jane Doe, appeal the Franklin County Court of Common Pleas' judgments granting a motion by defendant-appellee, the City of Columbus, to dismiss appellants' complaints, which asserted claims arising from a cyberattack on the city's information technology ("IT") system in July 2024. For the following reasons, we reverse the trial court's judgments.

I. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} These consolidated appeals stem from two cases, each of which named the city as the sole defendant, filed in the trial court in August 2024. Appellants identified as John Doe Nos. 1 and 2 filed case No. 24CV-6195 on August 9, 2024, and appellants identified as John Does Nos. 1 through 8 and Jane Doe No. 1 filed case No. 24CV-6428 on August 20, 2024. The trial court consolidated the cases on November 7, 2024, after which appellants filed a Consolidated Amended Class Action Complaint (the "consolidated complaint"), individually and on behalf of a class of "[a]ll persons whose [personally identifiable information ("PII")] was released and compromised in the [July 2024] Data Breach[.]" (Dec. 20, 2024 Consol. Compl. at ¶ 124.) Appellants John Does Nos. 1 through 5, who are city-employees, also brought this action on behalf of a subclass of individuals consisting of "[a]ll employees of the [city] . . . whose PII was compromised in the Data Breach[.]" *Id.* at ¶ 125. The consolidated complaint alleges claims of negligence/recklessness, negligence per se, breach of implied contract, invasion of privacy, and breach of fiduciary duty, all arising out of the July 2024 cyberattack.

{¶ 3} Appellants are five city employees who provided personal information to the city in connection with their employment and one non-employee who provided personal information to the city in connection with a visit to city hall and payment of a parking ticket. John Doe No. 1 is an undercover city police officer who received notification that his PII is on the Dark Web and who fears for his safety and financial security as a result. John Doe No. 2 is a city police officer whose bank account revealed unauthorized purchases and who received a text message after the cyberattack demanding a ransom to avoid release of his information on the Dark Web. John Doe No. 3, also a city police officer, has spent time and money since the cyberattack to ensure that his stolen data would not be used. John Doe No. 4, a city employee, has received ransom emails threatening to distribute his PII. John Doe No. 5, a city firefighter, has received alerts that his credit card has been compromised and information indicating that his Social Security number and work email address are accessible on the Dark Web. The final appellant, Jane Doe, has never been a city employee, but she provided her driver's license to the city to gain access to city hall and provided personal information to the city when she paid a parking ticket. A credit-monitoring service has notified her that her PII has appeared on the Dark Web. All appellants allege they have suffered actual injury from the theft and exposure of their PII.

{¶ 4} In the consolidated complaint, appellants allege that the city "failed to maintain reasonable security safeguards or protocols to protect the Class's PII and failed to adequately train its employees on cybersecurity." *Id.* at ¶ 5; *see also id.* at ¶ 49. More specifically, they allege the city "failed to design and structure its IT systems to limit the possible harm from a breach, including but not limited to compartmentalizing City systems so that a breach of one system will not implicate all City systems," *id.* at ¶ 50, and "failed to design and structure its IT systems to ensure that access is controlled and monitored to prevent breaches of this type and to allow the City to identify the source and circumstances of the breach." *Id.* at ¶ 51. Appellants maintain that the city failed to follow industry standards and federal guidelines for data security and that, by downplaying the impact of the breach, it delayed remedial action and exacerbated the resultant harm. Appellants allege the activities "at issue in this litigation-the operation of a city-wide IT infrastructure— are Proprietary Activities as defined by [R.C.] 2744.01(G)(1)." *Id.* at ¶ 18.

{¶ 5} Because the trial court decided this matter under Civ.R. 12(B)(6), based solely on its determination that the city is entitled to political-subdivision immunity under R.C. Chapter 2744, we focus primarily on the alleged facts in the consolidated complaint that relate to the question of immunity.

{¶ 6} The city, a municipal corporation, "maintains a host of city services, including but not limited to first responders such as the Columbus Police Department ('CPD') and the Columbus Fire Department. The City is also responsible for the Franklin County Municipal Court." *Id.* at ¶ 21. "In connection with providing these services, [the city] has a Department of Technology ('DoT'), which has a 'primary mission [of] supporting and partnering with public facing agencies across the City in using technology to serve the residents and businesses of Columbus and Central Ohio.' " *Id.* at ¶ 22, quoting https://www.columbus.gov/Government/Departments/Technology/About-DoT. The DoT "operates by 'planning, designing, procuring, and delivering information technology, telecommunications, and media services in partnership with City departments, City Council, boards and commissions, and other government entities.' " *Id.* at ¶ 23, quoting https://www.columbus.gov/Government/Departments/Technology/About-DoT.

{¶ 7} The city maintains a "single, unified IT system for all City services and entities." *Id.* at ¶ 28. It "maintains, via its consolidated [IT] infrastructure, the electronic records for all City operations." *Id.* at ¶ 2. Those records include "highly sensitive [PII] and other sensitive information about both its current and former City employees and citizens who interact with the City in various capacities." *Id.* at ¶ 3. Appellants allege the city "agreed it would safeguard the data" in its possession "in accordance with its internal policies, and state and federal law." *Id.* at ¶ 29.

{¶ 8} On July 19, 2024, "particularly sophisticated" cybercriminals targeted the city's IT system with a cyberattack. *Id.* at ¶ 54. The city publicly acknowledged the cyberattack on July 29, 2024 and stated in a press release that the DoT had " 'quickly identified the threat and took action to significantly limit potential exposure, which included severing internet connectivity.' " *Id.* at ¶ 35. On July 31, 2024, however, cybercriminals posted on the Internet that they were in possession of data, including PII, from the city's IT system and that they would make available for sale on the Dark Web if the city did not pay a ransom. The city notified employees on August 1, 2024 that cybercriminals had accessed its data, and the city offered employees two years of credit-monitoring service.

{¶ 9} On August 5, 2024, cybercriminals attempted to auction 6.5 terabytes of the city's data, including " 'internal login and passwords of employees, a full dump of servers with emergency services applications of the city, [and] access from city video cameras.' " *Id.* at ¶ 40. A portion of the stolen data was released to the Dark Web on August 8, 2024. Columbus Mayor Andrew Ginther stated on August 13, 2024 that the released data was either encrypted or corrupted and was, thus, unusable by bad actors, but "data security professionals have reviewed the information on the Dark Web and have been able to identify the PII of City of Coumbus employees and citizens." *Id.* at ¶ 44. Appellants claim they have evidence that their information has been delivered onto the Dark Web in usable form.

{¶ 10} In the consolidated complaint, appellants, on behalf of the proposed class and subclass, seek declaratory, injunctive, and other equitable relief, in addition to money damages, interest, and attorney fees. They claim the city breached its duties by utilizing inadequate security practices and was negligent in failing to prevent the data breach. They claim the city failed to follow guidelines issued by the Federal Trade Commission ("FTC"), which has encouraged that "the need for data security should be factored into all business decision-making," as well as relevant industry standards. *Id.* at ¶ 114.

{¶ 11} Pursuant to Civ.R. 12(B)(6), the city filed a motion to dismiss the consolidated complaint for failure to state a claim upon which relief could be granted. The city argued it is entitled to political-subdivision immunity from appellants' tort-based claims, that appellants lack standing to sue, and that the consolidated complaint otherwise fails to state cognizable claims against the city. After full briefing by the parties, the trial court rejected the city's standing argument and held that appellants alleged sufficient facts to establish standing under Ohio law. Nevertheless, the trial court granted the city's motion to dismiss, concluding, as a matter of law, that the city is entitled to political-subdivision immunity under R.C. Chapter 2744.

{¶ 12} Appellants filed a timely notice of appeal.

II. ASSIGNMENT OF ERROR

{¶ 13} Appellants raise a single assignment of error, challenging only the trial court's dismissal of their tort claims: "Because cybersecurity is a proprietary function, not a governmental function, the trial court erred in granting the City of Columbus political subdivision immunity on Plaintiffs-Appellants' tort-based claims." (Appellants' Brief at 1.)

III. DISCUSSION

A. Political-Subdivision Immunity

{¶ 14} R.C. Chapter 2744, Ohio's Political Subdivision Tort Liability Act, "generally shields political subdivisions from tort liability in order to preserve their fiscal integrity." *Riscatti v. Prime Properties Ltd. Partnership*, 2013-Ohio-4530, ¶ 15, citing *Hubbell v. Xenia*, 2007-Ohio-4839, ¶ 23, and R.C. 2744.02(A)(1). R.C. Chapter 2744 sets out a three-tiered analysis for determining whether a political subdivision is immune from liability. *Doe v. Greenville City Schools*, 2022-Ohio-4618, ¶ 9. First, R.C. 2744.02(A)(1) sets out a general rule that political subdivisions and their employees are immune, but "[t]hat immunity. . . is not absolute." *Id.* at ¶ 10, citing *Hill v. Urbana*, 1997-Ohio-400. As to the first tier of the immunity analysis here, there is no dispute that the city, as a municipal corporation, is a political subdivision under R.C. 2744.01(F) and is, therefore, presumptively immune from tort liability.

{¶ 15} In addition to setting out a general rule of immunity, R.C. 2744.02(A)(1) classifies the functions of political subdivisions as either governmental functions or proprietary functions and states that the general rule of immunity is limited by R.C. 2744.02(B), which lists five exceptions to that rule, when a political subdivision is *not* immune. *Greene Cty. Agricultural Soc. v. Liming*, 2000-Ohio-486, ¶ 25. Under the second tier of the analysis for determining whether a political subdivision is immune from liability, courts must decide whether any of the exceptions to immunity set out in R.C. 2744.02(B) apply. *Id.* In its motion to dismiss, the city argued that appellants cannot establish the applicability of any exception under R.C. 2744.02(B) to the general rule of immunity.

{¶ 16} The only potentially applicable exception—and the only exception appellants raised in the consolidated complaint and in their memorandum in opposition to the city's motion to dismiss—is R.C. 2744.02(B)(2), which states, in part: "political subdivisions *are liable* for injury, death, or loss to person or property caused by the negligent performance of acts by their employees *with respect to proprietary functions* of the political subdivisions." (Emphasis added.) Appellants allege in the consolidated complaint, "The activities of [the city] at issue in this litigation—the operation of a city-wide IT infrastructure—are Proprietary Activities as defined by [R.C.] 2744.01(G)(1)." (Consol. Compl. at ¶ 18.) The city, on the other hand, argues that the operation of its IT infrastructure is a governmental function to which the R.C. 2744.02(B)(2) exception to immunity does not apply.

{¶ 17} If none of the exceptions to immunity listed in R.C. 2744.02(B) applies, the trial court's analysis is at an end, and the political subdivision retains immunity. *See Liming* at ¶ 26. But if one or more of the R.C. 2744.02(B) exceptions does apply, the court must proceed to the third and final tier of the immunity analysis, by which it must determine if one of the defenses contained in R.C. 2744.03 applies to reinstate the political subdivision's immunity. *Id.* at ¶ 25, citing *Cater v. Cleveland*, 1998-Ohio-421, ¶ 15. Having agreed with the city that appellants could not establish an applicable exception to immunity under R.C. 2744.02, the trial court held that the city was entitled to immunity without having to reach the third tier of the immunity analysis.

B. Civ.R. 12(B)(6) and Standard of Review

{¶ 18} The city moved the trial court for dismissal pursuant to Civ.R. 12(B)(6), arguing that the consolidated complaint failed to state a claim upon which relief could be granted, because the city is entitled to immunity under R.C. Chapter 2744. A Civ.R. 12(B)(6) motion to dismiss tests the sufficiency of the complaint. *Volbers-Klarich v. Middletown Mgt.*, 2010-Ohio-2057, ¶ 11, citing *Assn. for the Defense of the Washington Local School Dist. v. Kiger*, 42 Ohio St.3d 116, 117 (1989). When ruling on a Civ.R. 12(B)(6) motion to dismiss, the court must presume the truth of all factual allegations in the complaint and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). The court need not, however, accept as true unsupported conclusions of law contained in a complaint. *See id.* at 193. Before the court may dismiss a complaint under Civ.R. 12(B)(6), it must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *Schmitz v. NCAA*, 2018-Ohio-4391, ¶ 10, citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1975).

{¶ 19} Although a political subdivision's entitlement to immunity is generally a question of law, "[t]his does not mean . . . that the immunity question always can be determined at the earliest stage of litigation," as "questions of law may require courts to evaluate 'both facts and evidence in reaching its legal determination.' " *Harris Farms, LLC v. Madison Twp. Trustees*, 2018-Ohio-4123, ¶ 38 (4th Dist.), quoting *Pangle v. Joyce*, 1996-Ohio-381. A trial court may properly grant a Civ.R. 12(B)(6) motion to dismiss based upon an affirmative defense, like political-subdivision immunity, only when the affirmative defense is conclusively established from the face of the complaint. *Molnar v. Green*, 2019-Ohio-3083, ¶ 13 (9th Dist.), citing *Brannon v. Edman*, 2018-Ohio-70, ¶ 9 (9th Dist.). Because a plaintiff is under no obligation to prove his case in the complaint, a plaintiff " ' "need not affirmatively dispose of the immunity question altogether at the pleading stage." ' " *Id.*, quoting *Chunyo v. Gauntner*, 2017-Ohio-5555, ¶ 10 (9th Dist.), quoting *Scott v. Columbus Dept. of Pub. Utils.*, 2011-Ohio-677, ¶ 8 (10th Dist.). Indeed, a plaintiff is not required to anticipate and plead specific facts to counteract a political subdivision's affirmative defense of sovereign immunity to withstand a motion to dismiss. *Id.* at ¶ 14, citing *Rogers v. Akron City School Sys.*, 2008-Ohio-2962, ¶ 19. Instead, a plaintiff needs only allege a set of facts that, if proven, would plausibly allow for recovery. *Scott* at ¶ 8. Requiring a plaintiff to demonstrate an exception to immunity in the complaint would be tantamount to "requiring the plaintiff to overcome a motion for summary judgment at the pleading stage." *Id.*

{¶ 20} We review a dismissal pursuant to Civ.R. 12(B)(6) de novo. *Schmitz* at ¶ 10, citing *Perrysburg Twp. v. Rossford*, 2004-Ohio-4362, ¶ 5. Because the trial court dismissed this case pursuant to Civ.R. 12(B)(6), we may look only to the consolidated complaint and, like the trial court, must presume the factual allegations are true and make all reasonable inferences in appellants' favor. *Id.* at ¶ 3.

C. Application of R.C. 2744.02(B)(2)

{¶ 21} Because the city is undisputedly a political subdivision covered by the general rule of immunity under the first tier of the immunity analysis, we turn to the second tier of that analysis and consider the applicability of the exceptions to immunity listed in R.C. 2744.02(B). Particularly, we consider the applicability of R.C. 2744.02(B)(2), which removes a political subdivision's immunity for loss caused by its employee's negligent performance of acts with respect to the political subdivision's proprietary functions. Application of R.C. 2744.02(B)(2) here thus depends on whether appellants allege negligence with respect to a governmental function or with respect to a proprietary function.

{¶ 22} "[W]hether a function is proprietary or governmental often depends on the particular facts of the case." *Scott* at ¶ 17, citing *Beauford v. Columbus*, 1981 Ohio App. LEXIS 12838 *4 (10th Dist. Oct. 13, 1981). A function is a governmental function if it is specifically listed in R.C. 2744.01(C)(2) or if it satisfies one of the criteria in R.C. 2744.01(C)(1)(a) through (c). Proprietary functions, on the other hand, are listed in R.C. 2744.01(G)(2) or defined by criteria listed in R.C. 2744.01(G)(1). The definitions of governmental functions and proprietary functions are "mutually exclusive." *5812 Invest. Group, LLC, v. Columbus*, 2024-Ohio-5930, ¶ 15 (10th Dist.), citing *Liming*, 2000-Ohio-486. "Where . . . the activity alleged in a complaint is not clearly a governmental function based on the face of the complaint, a Civ.R. 12(B)(6) motion to dismiss, on the basis of R.C. Chapter 2744 immunity, must be denied." *Scott* at ¶ 17.

{¶ 23} The city's IT operations do not fall within any of the specifically listed governmental or proprietary functions listed in R.C. 2744.01(C)(2) or (G)(2). Therefore, like the trial court, we must look to R.C. 2744.01(C)(1) and (G)(1) to characterize the city's activity as governmental or proprietary. In its motion to dismiss, the city argued that its IT infrastructure constitutes a governmental function under R.C. 2744.01(C)(1)(b) and (c). R.C. 2744.01(C)(1) states, in relevant part:

> "Governmental function" means a function of a political subdivision . . . that satisfies any of the following: . . .
>
> (b) A function that is for the common good of all citizens of the state;
>
> (c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

Appellants, on the other hand, argued in response that operation of the city's IT infrastructure is a proprietary function under R.C. 2744.01(G)(1), which states, in part:

> (1) "Proprietary function" means a function of a political subdivision . . . that satisfies both of the following:
>
> (a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;
>
> (b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

{¶ 24} The trial court agreed with the city that its IT infrastructure constitutes a governmental function under R.C. 2744.01(C)(1)(b) and (c), because it "supports core public services, such as police, fire, and administrative operations." (Sept. 26, 2025 Decision & Entry Granting Def. City of Columbus' Mot. to Dismiss Filed Jan. 17, 2025 at 10.) It stated that the factual allegations in the consolidated complaint "describe an integrated system for executing essential public services, rather than a service customarily provided by private entities to the general public." *Id.* at 12. It also noted that the city operates its IT infrastructure through the DoT, which is established by the Columbus

Municipal Code and is tasked with city wide responsibilities for technology management and coordination.

{¶ 25} As they did in the trial court, appellants argue on appeal that the consolidated complaint alleges negligence with respect to the city's performance of a proprietary function, for which the city is not entitled to immunity. They argue that the city's IT and cybersecurity activities are functions that do not benefit all citizens of the state under R.C. 2744.02(C)(1)(b) and that they do not qualify as a governmental function under R.C. 2744.02(C)(1)(c) because nongovernmental entities customarily engage in similar IT and cybersecurity activities.

{¶ 26} To determine whether a function is a governmental or a proprietary function, a court must first " ' "defin[e] what . . . the political subdivision is actually doing when performing the function." ' " *Alcus v. Bainbridge Twp.*, 2020-Ohio-543, ¶ 70 (11th Dist.), quoting *Kenko Corp. v. Cincinnati*, 2009-Ohio-4189, ¶ 27 (1st Dist.), quoting *Allied Erecting & Dismantling Co., Inc. v. Youngstown*, 2002-Ohio-5179, ¶ 41 (7th Dist.). A court must " 'look at the particular, specific activity that allegedly resulted in the plaintiff's injury.' " *5812 Invest. Group, LLC* at ¶ 19, quoting *DSS Servs., L.L.C., v. Eitel's Towing, LLC*, 2019-Ohio-3158, ¶ 18 (10th Dist.).

{¶ 27} The consolidated complaint characterizes the activities at issue as the city's "operation of a city-wide IT infrastructure" through which the city maintains electronic records for all city operations and PII about current and former employees and citizens who otherwise interact with the city. (Consol. Compl. at ¶ 18.) According to appellants, the July 2024 data breach occurred because the city "failed to maintain reasonable security safeguards or protocols" to protect PII and "failed to adequately train its employees on cybersecurity." *Id.* at ¶ 5. Appellants challenge the "design and structure" of the city's IT system, *id.* at ¶ 50-51, as well as the city's response to the breach.

{¶ 28} We will address in turn the trial court's conclusions that the consolidated complaint alleges negligence with respect to the city's performance of a governmental function under R.C. 2744.01(C)(1)(b) and (c).

1. R.C. 2744.01(C)(1)(b)

{¶ 29} Under R.C. 2744.01(C)(1)(b), governmental function includes "[a] function that is for the common good of all citizens of the state." Appellants argue that the city's IT operations, and particularly its cybersecurity practices, were not undertaken for the common good of all Ohioans, because they benefit only those individuals whose personal information is held by the city. But the trial court rejected that argument as a too narrow reading of R.C. 2744.01(C)(1)(b). The trial court cited *Georgantonis v. Reading*, 2020-Ohio-3961 (1st Dist.), and *Lyons v. Teamhealth Midwest Cleveland*, 2011-Ohio-5501 (8th Dist.), for the broad proposition that municipal functions involving public safety and administration serve the common good of all Ohio citizens.

{¶ 30} As relevant here, the First District Court of Appeals held in *Georgantonis* that a city's operation and maintenance of a street-lighting system constituted a governmental function under R.C. 2744.01(C)(1)(b) and (c). The court of appeals rejected the appellants' argument that the street-lighting system was not for the common good of all state citizens because it was geographically limited and benefited only visitors to nearby streets. The court stated, "where, as here, the function is related specifically to the safety of the public, courts have found the function to be for the common good of all state citizens." *Id.* at ¶ 27. *See also Nordonia Landscape Supplies, LLC v. Akron*, 2020-Ohio-2809, ¶ 10 (9th Dist.) (removal of snow and ice from public roads is for the common good of all state citizens because it makes vehicular travel safer and more convenient); *Svette v. Caplinger*, 2007-Ohio-664, ¶ 17 (4th Dist.) (operation of a 911 service is a governmental function performed for the common good of all citizens); *Lyons* (emergency dispatch service serves the common good of all citizens).

{¶ 31} The Supreme Court of Ohio, however, has warned Ohio courts against reading R.C. 2744.01(C)(1)(b) too broadly. Doing so, it stated, "would subsume the definition of a governmental function found in R.C. 2744.01(C)(1)(c)," because " '[a]ny activity that promotes or preserves the public peace, health, safety, and welfare would also fall within a broad definition of what is for the common good of all citizens of the state, thus obscuring the legislature's purpose in crafting a distinction between activities engaged in or customarily engaged in by nongovernment persons and those that are not.' " *Liming*, 2000-Ohio-486, at ¶ 36, quoting *Greene Cty. Agricultural Soc. v. Liming*, 1999 Ohio App. LEXIS 3710, *13-14 (2d Dist. Aug. 13, 1999). In other words, the Supreme Court instructed that not every activity that promotes or preserves the public peace, health, safety, and welfare can be considered an activity that is for the common good of all state citizens. The

Supreme Court held in *Liming* that the Greene County Agricultural Society acted in a proprietary function when it conducted a hog show at the Greene County Fair and when it subsequently investigated the eligibility of one of the winning hogs. With respect to R.C. 2744.01(C)(1)(b), the Supreme Court stated, "The activities at issue benefit only some of the citizens of the state, not all citizens." *Id. See also Ryll v. Columbus Fireworks Display Co., Inc.*, 2002-Ohio-2584, ¶ 24 (fireworks sponsored by municipality did not benefit all citizens of the state); *Alcus*, 2020-Ohio-543, at ¶ 115 (11th Dist.) ("The Township's maintenance of its grounds only benefits some of the citizens of the state, mainly Township employees who work there, and to some extent, the visitors who are permitted access, not all citizens of the state.").

{¶ 32} We cannot conclude, based solely on the allegations in the consolidated complaint, that either the city's maintenance and operation of its IT infrastructure or the security safeguards it employed to protect PII stored within that system is an activity performed for the common benefit of all citizens of the state.[1] While the city uses IT functionality in its provision of governmental functions like police, fire, and emergency response, we must focus on the specific activity that allegedly resulted in appellants' injuries. *See 5812 Invest. Group, LLC*, 2024-Ohio-5930, at ¶ 19 (10th Dist.). Indeed, in *Liming*, the Supreme Court recognized that, while holding a county fair might be a governmental function, the issue "is not whether holding a county fair is a governmental function; rather, it is the more specific question of whether conducting the hog show at the county fair and conducting the investigation into the allegations of irregularity surrounding the entry of [the winning hog] are governmental functions." *Liming* at ¶ 39. The Supreme Court answered that question in the negative.

{¶ 33} To characterize the city's maintenance and operation of its IT infrastructure, and its protection of PII maintained therein, as activity related specifically to the safety of the public and as a governmental function that benefits all citizens of the state simply

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[1] We acknowledge that the Fourth District Court of Appeals has concluded, with no analysis, that designating street numbers and the development of an orderly system to do so served the common good of all state citizens and, thus, constituted a governmental function under R.C. 2744.01(C)(1)(b). *Nihiser v. Hocking Cty. Bd. of Commrs.*, 2013-Ohio-3849, ¶ 17 (4th Dist.). With respect to its additional conclusion that the case involved a governmental function under R.C. 2744.01(C)(1)(c), the Fourth District stated that street-number designation assists timely and accurate emergency response. *Id.*, citing *Lyons*. We disagree, however, that such an attenuated connection to public safety justifies that court's conclusion that the case involved a governmental function under R.C. 2744.01(C)(1)(b).

because public-facing city departments utilize the city's IT systems stretches the precedent the trial court cites too thinly. The provision of street lighting in *Georgantonis* and the removal of snow and ice from public roads in *Nordonia Landscape Supplies* directly enhanced the safety of public roads, open to all citizens, and can reasonably be understood as extending that benefit to all citizens of the state, whether or not a particular citizen takes advantage of driving upon those particular roads. There is no similar direct relationship between the city's maintenance and operation of its IT infrastructure and public safety. At best, the public may indirectly benefit from the city's provision of an IT infrastructure when other city departments use that infrastructure to provide independent public-safety services. The specific activity at issue here, however, directly benefits only those individuals whose PII the city maintains in its IT systems, whereas a large swath of Ohio's citizenry undoubtedly has no connection to the city of Columbus, has provided no PII to the city, and obtains no benefit whatsoever from the city's IT infrastructure. We therefore conclude, contrary to the trial court, that appellants' claims do not involve a governmental function under R.C. 2744.01(C)(1)(b).

2. R.C. 2744.02(C)(1)(c)

{¶ 34} We now turn to the trial court's determination that appellants' claims involve a governmental function under R.C. 2744.01(C)(1)(c), *i.e.* a function "that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function."

{¶ 35} Appellants argue that the city's maintenance and operation of its integrated IT system, and particularly its cybersecurity practices, cannot qualify as governmental functions under R.C. 2744.01(C)(1)(c) because non-governmental entities customarily perform those same activities. The relevant question is whether appellants pled facts sufficient to demonstrate that the city's activities vis-à-vis its IT infrastructure and cybersecurity practices are activities customarily engaged in by nongovernmental persons. *See Doe v. Cleveland Metro. School Dist.*, 2012-Ohio-2497, ¶ 31 (8th Dist.). In *Doe*, the appellant failed to plead facts demonstrating that the city's actions in distributing grants for educational purposes and assisting and overseeing the program for which those funds were provided were activities that are customarily conducted by non-governmental persons. *Id.* at ¶ 32.

{¶ 36} There can be no doubt that non-governmental entities customarily maintain and operate IT systems and implement cybersecurity practices, and the city does not argue otherwise. Instead, contrary to the plain statutory language, the city seeks to shift the focus with respect to the second prong of R.C. 2744.01(C)(1)(c) from who performs the activity to who benefits from it. In support of that effort, the city cites *Dalrymple v. Westerville*, 2022-Ohio-4094, ¶ 34 (10th Dist.), in which this court stated, " 'an activity that is customarily performed by nongovernmental persons does not render proprietary an overarching function that is governmental.' " *Id.*, quoting *McDonald v. Lacy*, 2018-Ohio-2753, ¶ 18 (2d Dist.), citing *Shank v. Springfield*, 1995 Ohio App. LEXIS 1818 (2d Dist. May 3, 1995.). *Dalrymple*, however, does not support the city's effort to distract from the statutorily required consideration whether its relevant activity is an activity customarily performed by nongovernmental entities. The appellant in *Dalrymple* claimed the city promised her grant money but then withheld that money based on zoning and building-code requirements the city had imposed with respect to renovations to her property. She argued that the issuance of grant money is an activity customarily performed by non-governmental persons and, therefore, constituted a proprietary function. Yet this court held that the appellant's claims arose out of the city's performance of a governmental function, focusing not on the issuance of grant money but on the city's basis for withholding that money from the appellant. We reasoned that the city engaged in a governmental function when it provided appellant advice on compliance with building and zoning codes, and we stated, "the issue of grant funds cannot be divorced from the fact that program funding (provided under the city's Façade Improvement Program and earmarked for improvements made to buildings in the city's historic district) was contingent upon an applicant's compliance with applicable building and zoning code requirements[.]" *Id.* at ¶ 38.

{¶ 37} Similarly, in *McDonald*, the Second District stated, "the construction (and reconstruction) of [a] median was part of the city's Entryway Enhancement Project, which was a governmental function. So the activities connected with that project must be considered in that context." *Id.* at ¶ 19. That is the takeaway from *Dalrymple* and *McDonald*: context matters. When a political subdivision engages in an overarching governmental function, individual components of its activities in support of that governmental function do not become proprietary simply because, in another context, they may be performed by non-governmental persons.

{¶ 38} The city also argues that activities necessary to perform governmental functions constitute governmental functions themselves, but the cases it cites do not support such a broad rule of law. For example, in *Wolanin v. Holmes*, 2007-Ohio-3410, the Eighth District Court of Appeals held that operation of an internal shuttle on zoo grounds was part of the political subdivision's maintenance and operation of a zoo, which is expressly defined as a governmental function under R.C. 2744.01(C)(2)(u)(iii). The court did not conclude that operation of the shuttle was a governmental function because it was necessary to the maintenance and operation of the zoo, but because it constituted maintenance and operation of the zoo itself. In *Moncrief v. Bohn*, the Eighth District Court of Appeals rejected the appellant's argument that the Cuyahoga County Metropolitan Housing Authority, acting as a landlord, was engaged in a proprietary function, because operation of a public housing authority is itself a governmental function under R.C. 2744.01(C)(2). *Moncrief*, 2014-Ohio-837, ¶ 13 (8th Dist.), citing *Moore v. Lorain Metro. Hous. Auth.*, 2009-Ohio-1250, ¶ 17. The housing authority's activity in *Moncrief* was inherently part of operating a public housing authority. In *Akron ex rel. Christman-Resch v. Akron*, 2005-Ohio-715 (9th Dist.), the court of appeals held that the city's trapping of at-large cats was part of its enforcement of city ordinances, and enforcement of the law is a governmental function under R.C. 2744.01(C)(2)(i). The activities in those cases fell within expressly defined governmental functions; the courts did not designate them as such because they were necessary to the performance of other governmental functions.

{¶ 39} Citing *Wilson v. Stark Cty. Dept of Human Servs.*, 70 Ohio St.3d 450 (1994), the city argues that its integrated IT system is a governmental function because it is an instrumentality through which it carries out governmental functions. The issue in *Wilson* was whether immunity under R.C. Chapter 2744 extended to a county human services department. The Supreme Court of Ohio recognized that the statutory definition of "governmental function" includes the operation of a human services department. *Id.* at 452, citing R.C. 2744.01(C)(2)(m). It was unnecessary for the Supreme Court to determine whether the county human services department was, itself, a political subdivision, because the department was "the instrumentalit[y] through which" the county carried out its own governmental function under R.C. 2744.01(C)(2)(m). In other words, the county carried out the governmental function of operating a human services department through its human services department. Like in *Wolanin*, *Moncrief,* and *Akron ex rel. Christman-Resch*, the city's activity in *Wilson* involved performance of a governmental function expressly set out in R.C. 2744.01(C)(2). In contrast here, while the city may rely on its integrated IT infrastructure as part of its provision of governmental services like law enforcement and fire protection, we cannot say that the IT infrastructure itself constitutes the performance of a governmental function set out in R.C. 2744.01(C)(2).

{¶ 40} As much as the city would like to make this case about public safety, it is about a data breach—allegedly facilitated by the city's failure to safeguard sensitive data. Again, we must look at the specific activity that allegedly caused appellants' injury to determine whether appellants' claims involve a governmental or a proprietary function. *See 5812 Invest. Group, LLC*, 2024-Ohio-5930, at ¶ 19 (10th Dist.) That specific activity is the city's "operation of a city-wide IT infrastructure" and its "failure to protect highly sensitive data" about appellants and putative class members. (Consol. Comp. at ¶ 1, 18.) There are simply no facts in the consolidated complaint to suggest that the city's IT infrastructure was created or maintained as part of the city's provision of public safety, even though that infrastructure provides downstream support for city services related to public safety. Appellants specifically allege in the consolidated complaint that the city's operation of its integrated IT infrastructure involves activities that are customarily engaged in by non-governmental persons. (Consol. Compl. at ¶ 18.) Indeed, the consolidated complaint cites FTC guidelines stating that data security broadly "should be factored into all business decision-making." *Id.* at ¶ 114. Assuming the truth of the facts alleged in the consolidated complaint and construing those facts in appellants' favor, it is not beyond doubt that appellants could prove a consistent set of facts establishing the city is liable for negligence with respect to a proprietary function. In other words, the activity by which appellants claim they were injured is not clearly governmental on the face of the complaint. *See Carr v. Canton City School Dist. Bd. of Edn.*, 1998 Ohio App. LEXIS 3999, *8 (5th Dist. Aug. 24, 1998); *Harris Farms, LLC,* 2018-Ohio-4123, at ¶ 30 (4th Dist.) (pleadings failed to conclusively show maintenance of a drainage ditch involved a governmental function).

Accordingly, at this early stage, we conclude that the trial court erred in determining solely from the face of the complaint that the city is entitled to immunity.[2]

3. R.C. 2744.03(A)(5)

{¶ 41} The city goes on to argue that, even if the exception to immunity for negligent performance of a proprietary function applies in this case, it is still entitled to immunity under R.C. 2744.03(A)(5), which states that, in a civil action against a political subdivision for injury, death, or loss to person or property allegedly caused by an act or omission in connection with a governmental or proprietary function:

> The political subdivision is immune from liability if the injury, death, or loss to person or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

The city maintains that, even if the general grant of immunity is removed under the second tier of the immunity analysis, the defense provided by R.C. 2744.03(A)(5) would restore immunity under the third tier of that analysis.

{¶ 42} The city acknowledges that the trial court did not reach this issue, as its conclusion that there was no applicable exception to immunity rendered moot the third tier of the immunity analysis. Even accepting the city's position that its maintenance and operation of its IT infrastructure involves the exercise of discretion how to use city resources, it is not clear from the face of the consolidated complaint that the city did not exercise its discretion with a malicious purpose, in bad faith, or in a wanton or reckless manner. As we have previously stated, appellants were not required to plead facts to disprove the affirmative defense of immunity in their consolidated complaint. *See 5812 Invest. Group, LLC*, 2024-Ohio-5930, at ¶ 9 (10th Dist.). The absence of factual allegations in the complaint that the city exercised its discretion with malicious purpose, in bad faith, or in a wanton or reckless manner is not grounds to grant a Civ.R. 12(B)(6) motion to dismiss based on R.C. 2744.03(A)(5). The trial court will have the opportunity on remand to determine in the first instance whether R.C. 2744.03(A)(5) applies.

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[2] We offer no opinion whether or how additional information regarding the city's IT activity and the breach that comes to light through discovery may alter the ultimate determination of R.C. 2744.01(C)(1)(c)'s applicability.

IV. CONCLUSION

{¶ 43} Having determined that the trial court erred by granting the city's Civ.R. 12(B)(6) motion to dismiss based on its premature determination that the consolidated complaint asserts claims related to the city's performance of a governmental function, we sustain appellants' assignment of error. We therefore reverse the Franklin County Court of Common Pleas' judgments and remand this matter to that court for further proceedings consistent with this decision and the law.

Judgments reversed
and cause remanded.

LELAND and DINGUS, JJ., concur.