

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0816

September Term, 2014

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JASON TERANCE RICHARDS, ET AL.

v.

STATE OF MARYLAND

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Wright,  
Graeff,  
Alpert, Paul E.  
(Retired, Specially Assigned),

JJ.

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Opinion by Alpert, J.

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Filed: February 4, 2016

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal concerns a request for information pursuant to the Maryland Public Information Act (“PIA”), Md. Code Ann., General Provisions (“GP”) Article<sup>1</sup>, filed by Jason Terance Richards and Stacey Jones,<sup>2</sup> appellants, and directed to the Office of the State’s Attorney for Baltimore County (“SAO”). Dissatisfied with the response to their request for information, appellants filed a complaint against the SAO in the Circuit Court for Baltimore County. The circuit court denied the request for relief and dismissed the complaint. Appellants argue on appeal that the denial was in error. For the reasons stated below, we affirm.

### **FACTUAL AND PROCEDURAL PROCEEDINGS**

In 2005, Richards was convicted by a jury in the Circuit Court for Baltimore County of first-degree murder, two counts of conspiracy to commit first-degree murder, and second-degree rape. He was sentenced, among other things, to three life sentences. Richards appealed. We affirmed his convictions on appeal but remanded for re-sentencing on one of his life sentences. *See Richards v. State*, No. 2117, Sept. Term 2005 (filed February 22, 2008). He is currently serving his sentence at the North Branch Correctional Institute in Cumberland, Maryland.

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<sup>1</sup> Effective October 1, 2014, the Maryland Public Information Act provisions were re-designated from the State Government II Article, §§ 10-611 *et seq.* to the General Provisions Article, §§ 4-101 *et. seq.*

<sup>2</sup> Stacey Jones is listed as an appellant in this case and his name was on all relevant documents and court proceedings below. We are unclear, however, how Jones is involved. He was not a party nor mentioned in the underlying criminal trial proceedings. Nevertheless, we shall treat him as a co-appellant in this matter.

Nine years after his convictions, on February 13, 2014, appellants filed a PIA request with the SAO for all records in her custody, including, the police homicide and rape file, police reports, the defendant’s statements, grand jury minutes, and “[a]ny and all reports” on the murder and rape cases. In their letter, appellants asked that their request “be processed without any fee charged . . . due to our indigence and the public interest[] involved[.]” They did not, however, attach a waiver of fees form or support their indigence with any documentation. Within 11 days, the PIA clerk for the State’s Attorney’s Office for Baltimore County sent Richards a letter, stating:

The Baltimore County State’s Attorney’s Office has received your letter, in which you requested documents pursuant to Maryland’s Public Information Act.

In 2012 you made a similar request for documents from your case file, which this Office offered to provide at a cost of \$1,440.00. If you wish to have the documents produced, please send a check, made payable to THE STATE’S ATTORNEY’S OFFICE FOR BALTIMORE COUNTY, to 401 Bosley Avenue, Room 511, Towson, MD 21204.

On April 6, 2014, appellants filed a complaint in the Circuit Court for Baltimore County against the SAO demanding a hearing, declaratory and injunctive relief, and damages. They argued that the SAO had “constructively denied inspection of the requested records” by “utiliz[ing] fees as an obstacle to disclosure of information sought[.]” The court denied the motion without a hearing.

## DISCUSSION

Appellants argue on appeal that the PIA clerk’s response was “an improper denial of their application” because the clerk should have “either grant[ed] the application and produce[d] the records, or den[ied] it with a proper explanation.” Appellants conclude by stating that “a state’s attorney or other state agency may not charge a criminal defendant for the cost of providing access to, or copies of, written discovery[.]” The State failed to file a response brief. Nevertheless, we shall affirm.

The PIA generally permits access to public records unless disclosure would result in “an unwarranted invasion of the privacy of a person in interest[.]” GP § 4-103(b). It is to be construed liberally in favor of disclosure with “the least cost and least delay” to the person requesting inspection of the public record. *Id.* Section 4-201(a) provides that, unless some exception applies, “a custodian shall allow a person . . . to inspect any public record at any reasonable time.” Section 4-206(b) provides that the official custodian “may charge an applicant a reasonable fee for: the search for, preparation of, and reproduction of a public record[.]” The custodian may waive the fee if the applicant asks for a waiver and the custodian determines, after considering the ability of the applicant to pay and other relevant factors, that “the waiver would be in the public interest.” GP § 4-206(e).

To the extent that appellant attempts to cast the actions of the PIA clerk as a denial of his request for documents, we disagree. The PIA clerk did not deny appellants’ request,

but granted it contingent on appellants paying the stated fee due to the cost of producing the documents.

Appellants cite Md. Rules 16-503(b) and 16-1002(a) and two Attorney General Opinions, 93 Md. Op. Atty. Gen. 138 (2008) and 81 Md. Op. Atty. Gen. 154 (1996) to support his argument that “a state agency may not charge a criminal defendant for the cost of providing access to, or copies of, written discovery[.]” The first three authorities are inapplicable and the fourth supports a contrary position.

Both Rules provide for the imposition of reasonable limits on the inspection of documents to prevent the unnecessary interference with the discharge of the duties of the clerk tasked with maintaining documents. *See* Rule 16-503(b) and 16-1002(b), (d). Although 93 Md. Op. Atty. Gen. 138 provides that a State’s Attorney may not charge a criminal defendant for the cost of providing access to, or copies of, written discovery provided pursuant to the Maryland Rules, an agency *may* charge for copying discovery materials as an accommodation to a defendant when the rules do not require that the party making discovery provide a copy. Additionally, “an agency *may* charge for providing materials outside the discovery process pursuant to the Public Information Act.” (Emphasis added). Contrary to the thrust of appellants’ argument, 81 Md. Op. Atty. Gen. 154 provides that although a convicted defendant may obtain access to the prosecutorial files concerning

him, “[a] defendant is not generally entitled to obtain access unless the defendant pays any applicable fees or you grant a fee waiver in a particular case.”

Under the circumstances presented, the PIA clerk was acting within its rights to request a fee. Accordingly, we shall affirm the ruling of the circuit court.

**JUDGMENT AFFIRMED.**

**COSTS TO BE PAID BY  
APPELLANT.**