UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2077

September Term, 2015

GARY GLASS
v.

ANNE ARUNDEL COUNTY, MARYLAND, ET AL.

Eyler, Deborah S.,
Graeff,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: December 15, 2016

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In the Circuit Court for Anne Arundel County, Gary Glass, the appellant, filed suit against Anne Arundel County ("the County"), and the custodians of records for the Office of the County Executive, the County Department of Central Services ("Central Services"), the County Fire Department ("AACFD"), and the County Police Department ("AACPD"), the appellees,[1] for alleged violations of the Maryland Public Information Act ("PIA"), Md. Code (2014), sections 4-101–4-601 of the General Provisions Article ("GP").[2] He sought injunctive and declaratory relief, damages, and attorneys' fees. Following a bench trial, the circuit court entered judgment in favor of the County.

Glass appeals, presenting three questions, which we have rephrased:

> I. Did the circuit court err by not ordering the AACFD to conduct a search of off-site records that were potentially responsive to Glass's PIA request?
>
> II. Did the circuit court err by not declaring that the AACPD failed to conduct a reasonable search of its records until after the litigation commenced and by not awarding Glass attorneys' fees and costs?
>
> III. Did the circuit court err by not ordering the County to disclose severable information from the Self Insurance Fund Committee ("SIFC")?

For the following reasons, we shall affirm the judgment of the circuit court.

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[1] We shall refer to the appellees collectively as "the County" except when necessary to distinguish between them.

[2] When Glass submitted his PIA request, the PIA was codified in the State Government Article. Because the PIA was recodified without substantive change, we cite to the GP Article.

LEGAL BACKGROUND

The PIA was modeled after the federal Freedom of Information Act ("FOIA") and provides that "[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees." GP § 4-103. To accomplish this aim, custodians of governmental records are required to allow an individual "to inspect any public record at any reasonable time" unless the record is exempted from disclosure. GP § 4-201.

If a person wishes to inspect or obtain copies of a public record, he or she must make a written application to the custodian of the record. GP § 4-202(a). Within thirty days of its receipt, the custodian must grant or deny the application. GP § 4-203(a). If the custodian denies the application, in whole or in part, he or she must inform the applicant of "the reasons for the denial[,] . . . the legal authority for the denial[,] and . . . notice of the remedies under this title for review of the denial[.]" GP § 4-203(c)(2). The custodian also must permit inspection of "any part of the record that is subject to inspection and is reasonably severable." GP § 4-203(c)(3).

A custodian shall deny inspection of any public record that is "privileged or confidential" under the law or if disclosure would violate state or federal law. GP § 4-301. Even if disclosure would not be unlawful, a custodian may deny inspection if the "custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest." GP § 4-343. The statute enumerates records the disclosure of which would be contrary to the public interest, including, as pertinent here,

"any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit." GP § 4-344.

A person aggrieved by a denial of an application to inspect public records may file a complaint in the circuit court. GP § 4-362(a). In such a proceeding, the government agency bears the burden of proving that the denial of inspection was justified. GP § 4-362(b)(2). In ruling on the complaint, the court may enjoin the governmental unit from denying inspection and/or order the prompt production of a public record; award actual damages upon proof by clear and convincing evidence that the agency knowingly and willfully failed to disclose a public record; upon a finding that a custodian acted arbitrarily or capriciously by withholding a public record, send a certified copy of its findings to the custodian's appointing authority; and, if the court finds that the complainant "substantially prevailed," "assess against a defendant governmental unit reasonable counsel fees and other litigation costs that the complainant reasonably incurred." GP § 4-362(d)(e) & (f).

FACTS AND PROCEEDINGS

On August 5, 2014, Glass submitted five separate PIA applications to the County, only one of which is relevant to the instant appeal.[3] In that application, he requested

[3] Glass's PIA applications are part of his self-declared campaign to root out misconduct by County employees. His distrust of County employees stems from a 2010 traffic stop. *See Glass v. Anne Arundel County*, 38 F.Supp.3d 705 (D. Md. 2014). The PIA request at issue in this appeal has no relation to that incident, however.

> all records of [the County] about the circumstances of the complaints of Joshua Brandon Feinblum and Karl Christian Schmidt against Louis Anthony D'Camera and the [AACFD], as described more fully in the LGTCA letter dated December 19, 2007 to [the County Attorney] and [the head of the Odenton Volunteer Fire Company] from [an attorney representing Feinblum and Schmidt].

D'Camera was the former quartermaster for the Odenton Volunteer Fire Company ("OVFC"). In 2004 and 2005, Feinblum and Schmidt, both teenage recruits with the OVFC, made complaints alleging that D'Camera had engaged in sexually inappropriate behavior with them. In 2005, after D'Camera was arrested and charged with indecent exposure in an unrelated incident, he committed suicide. Feinblum and Schmidt subsequently sued the OVFC and the County in federal court for damages. In 2009, the County's SIFC[4] approved a $321,000 settlement of that case with Feinblum and Schmidt.[5] None of this background information was included in Glass's PIA request, however.

Glass specified that he sought, among other things, any records of "complaints made to the [AACFD and the AACPD]" and communications and investigations relative

[4] Anne Arundel County is self-insured and maintains a Self Insurance Fund to satisfy claims brought against it or its employees. When a claim is asserted against a County employee arising from acts or omissions occurring within the scope of their employment, the SIFC is the body that reviews and approves or disapproves any settlement of those claims in excess of $5,000. *See* §§ 3-11-101–3-11-111 of the Anne Arundel County Code. The threshold amount has since been increased to $10,000.

[5] Glass learned of the allegations against D'Camera because he previously had made a PIA request to review all of the Local Government Tort Claims Act ("LGTCA") claim notices made to the County. The LGTCA claim notice filed by Feinblum and Schmidt was among the notices he reviewed.

to those complaints; "Risk Management records" relative to D'Camera; and SIFC records relative to D'Camera, including agendas and meeting minutes. He asked to be given the opportunity to inspect any responsive records before determining if he wished to pay for copies of those records.

By letter dated September 5, 2014, Phillip Culpepper, an Assistant County Attorney, replied to Glass's request on behalf of all of the County agencies.[6] He stated that Glass's request was being granted in part and denied in part. The Office of Risk Management, in Central Services, had located one responsive record: a claim file pertaining to the allegations against D'Camera made by Feinblum and Schmidt. Culpepper advised Glass that he could make arrangements to inspect that record. The AACFD had located "no records in its control, custody, or possession that [were] responsive . . . likely because the firefighter in question [*i.e.*, D'Camera] was a volunteer firefighter from the [OVFC], and not the [AACFD]." The AACPD was "unable to locate any responsive records . . . without identifiable information such as a police report number, date, time or location of the incident. A name search [did] not turn up any general police department records." The County Executive's Office did not locate any responsive records. The request for SIFC records was denied because those records were "privileged attorney-client communications, attorney work product, and executive deliberative privileged documents." Alternatively, Culpepper asserted that the SIFC records were exempt because they constituted "intra-agency memoranda not available to

[6] Culpepper's letter addressed all five PIA requests made by Glass.

a private party in litigation with the County" and disclosure of them would "harm the public's interest by undermining the confidential nature of the [SIFC]'s efforts to resolve claims in a manner to shield taxpayers from exposure to liability."

Glass made arrangements to meet with Culpepper on September 11, 2014, to review the responsive records. Prior to their meeting, Culpepper prepared a letter advising Glass that four documents had been removed from the claims file identified by Central Services because they were "protected by the attorney-privilege and attorney work product doctrine as well as the inter and intra-agency memorandum exception" under the PIA. Those documents were a "claims abstract prepared by the adjuster in conjunction with the Office of Law during active litigation," "email chains between lawyers in the Office of Law and adjusters in Risk Management which discuss active litigation and evaluate strengths and weakness [sic] of respective positions," a "confidential memorandum from the Office of Law directed to the [SIFC] which advises of strengths and weaknesses with identifiable active litigation and recommends legal strategy and position," and a "confidential memorandum from the Office of Law to the Central Services adjuster advising of the claim and analyzing the strengths and weaknesses as well as legal strategies and position in conjunction with an identifiable litigation."

When Culpepper met with Glass, he gave him this letter and provided him the redacted claim file to review. Culpepper advised Glass that the custodian of AACPD records, Christine Ryder, "would need additional information to help her locate . . . [any]

responsive records." Expressing disbelief that Culpepper was not familiar with the details of the allegations against D'Camera, Glass refused to provide any additional information. Glass then told Culpepper that he already had drafted a complaint and would be filing a lawsuit. He warned Culpepper that "25 more PIA's were coming, five more lawsuits, and that he would continue to do this until he died."

On October 1, 2014, Glass filed an eight count complaint in the circuit court, which he later amended. He named six defendants: the County and the custodians of records for the AACPD (Ryder), AACFD ("Joseph Doe"), the Office of Law (David Plymyer), the SIFC (Nancy Duden), the Office of the County Executive ("Jane Doe"), and Central Services ("John Doe"). In Count I, he alleged that the County had failed to conduct a reasonable search for all responsive records. In Count II, he asserted that the County improperly invoked exemptions to disclosure. In Count III, he alleged that the County failed to adequately explain the reasons for denying disclosure of the SIFC records. In Count IV, he alleged that the County failed to sever and/or redact exempt material from the SIFC records and to otherwise disclose them. In Count V, Glass asserted that because public interest was the basis for the County's denial of inspection of the SIFC records, the County was required to petition the court for permission to continue denying inspection on that basis. In Count VI, he alleged that the County's violations of the PIA amounted to a pattern or practice of illegal conduct. In Counts VII and VIII, he alleged that the County acted willfully and knowingly (Count VII), and arbitrarily and capriciously (Count VIII) in its unlawful conduct. In all counts, Glass sought actual

damages in excess of $100,000; attorneys' fees and costs; injunctive relief; and declaratory relief.

During discovery, Glass served interrogatories on Ryder. As pertinent, she was asked to identify "each Police Department Report, file and other document concerning any police investigation of Louis Anthony D'Camera that was opened between January 1, 1998 and July 31, 2005." Ryder responded on or about January 14, 2015, that while Glass had not requested that specific information in his PIA request, she had located six police reports responsive to that request. She listed the report numbers, which included one report from 1998, one from 2004, and four from 2005. In response to another interrogatory, Ryder explained that she located those police records by "conduct[ing] a name search for Louis D'Camera."

By letter dated April 10, 2015, the County supplemented its response to Glass's PIA request. It provided Glass's counsel with "[p]olice reports recently located concerning complaints by Joshua Feinblum and Karl Schmidt against Louis D'Camera," an agenda from an SIFC meeting held on January 29, 2009, "that considered the memorandum about *John Doe No. 1, et al., v. [OVFC], et al.*," and a CD containing the Office of Law's file on the matter to the extent that it wasn't privileged or under seal.[7]

A bench trial was held on November 4, 2015. Glass testified and called four witnesses: Amy Lanham, the SIFC custodian of records; Ryder, who as mentioned was

[7] As we shall discuss, *infra*, at trial Glass denied having received an agenda from a January 2009 SIFC meeting. He claimed the only agenda he received was for a meeting in April 2009.

the AACPD's custodian of records; Captain Russ Davies, the AACFD custodian of records; and Culpepper. Lanham testified that she supervised the safety and insurance divisions within the County. In that role, she was in charge of preparing agendas for SIFC meetings, providing the committee with memoranda from County attorneys seeking settlement authority, and attending meetings. She explained that she could not recall Glass's PIA request specifically, but her usual practice upon receiving a PIA request is to forward it to the County Office of Law for advice about what, if any, records to provide. Ordinarily, upon receiving a response, she would forward the responsive records to the Office of Law for its review.

Lanham identified e-mail correspondence she and Culpepper had exchanged regarding Glass's claim and explained that, based upon that correspondence, it appeared that she had forwarded SIFC claim files to Culpepper. Those files would contain transaction logs, memoranda, and contact information. The SIFC minutes and agendas were separately catalogued by meeting date. Lanham did not provide any meeting minutes or agendas to Culpepper in response to Glass's PIA request.

Ryder testified that upon receiving Glass's PIA request, she conducted a name search in the police records management system, an electronic database indexed by the names of persons involved in any police report. A name search within the database will produce "name files" for each individual with that name. Often, there are multiple "name files" for more common names. By clicking on a "name file," Ryder can see each report number associated with that name. Using that report number, Ryder can search other

electronic databases for the reports. Depending on the year the police report was written, it may be an electronic, searchable record; it may be a scanned image of the physical police report; or it may be a paper file.

Ryder searched under Feinblum's name and Schmidt's name, but not under D'Camera's name. She explained that she made the assumption that the claims against D'Camera arose from acts he undertook in his official capacity as a firefighter, not from criminal acts he was alleged to have committed. She testified that if D'Camera was involved in an incident in his official capacity, his name would not be "searchable by name" in the database.

Ryder's search revealed eight separate name files for "Karl Schmidt," meaning that the AACPD had reports related to eight different individuals named Karl Schmidt. She did not click on any of the name files because she needed additional information in order to determine which Karl Schmidt was the individual relevant to Glass's PIA request. Her search further revealed one name file for Joshua Feinblum with two associated police report numbers, one from 2003 and one from 2005. Both of those reports would have been scanned in and available for Ryder to view in the report database. Ryder did not retrieve the police reports, however, because she did not believe she would be able to tell whether "what [she] was reading in a police report was something that later resulted in a complaint against somebody." She also believed, based upon Glass's application referencing a December 19, 2007 "LGTCA letter" that the

incident had occurred in 2007. Thus, the two reports from 2003 and 2005 did not appear to be responsive.

On August 27, 2014, Ryder emailed Culpepper to explain the results of her search. She advised him that she believed Glass's request involved a "Fire Department complaint only," but she could not "determine police department records without specific facts of the complaint (report number or date, time, location, etc.)."

Ryder's answers to interrogatories, discussed above, were introduced into evidence. She testified that the police reports discovered as a result of the search she conducted during discovery would also have been found if she had conducted a name search under D'Camera's name during her initial PIA search or if she had further reviewed the Feinblum name search results.

Captain Davies testified that he received Glass's PIA request and conducted the searched for responsive AACFD records. He had known D'Camera personally and knew the nature of the complaints made by Feinblum and Schmidt. He initially searched for any equal employment opportunity complaints lodged against D'Camera, but found no records. He then spoke to the fire chief, the assistant fire chief, and two deputy fire chiefs. None of them had any records in their possession responsive to the PIA request. One of the deputy fire chiefs had personal knowledge of the allegations against D'Camera, and he advised Captain Davies that "no records existed" in the AACFD because Feinblum and Schmidt had made complaints to the OVFC, not to the AACFD, and that that complaint had been forwarded to the AACPD. The complaint would not

have been "referred back to the [AACFD] for [its] portion of [the] investigation" until the AACPD's investigation was complete. The AACPD investigation never was completed, however, because the investigation was closed upon D'Camera's suicide.

Captain Davies testified that D'Camera's personnel file was not stored at the AACFD headquarters because it had been archived with a private company. He did not know the process involved in "recall[ing] a box" from that company, but he did know that there was "a cost associated with it." Captain Davies explained that he did not seek to recall the box containing D'Camera's personnel file because "there would be nothing in his personnel file [about the investigation of the allegations of sexual misconduct]" "if there was no investigation [by the AACFD] that had been completed." Thus, he had no reason to believe that the personnel file contained any responsive records. Finally, Captain Davies testified that he did not search for any email correspondence relative to the allegations against D'Camera because the IT electronic record retention policy was to retain emails for a period of two years; thus any emails about the matter would have been deleted long before 2014.

Culpepper testified that he was the attorney in charge of PIA requests in the Office of Law when Glass made his PIA request. Ordinarily, he does not respond directly to PIA requests. Rather, he reviews responsive documents to ensure that no materials are exempt from disclosure and directs the custodian to respond directly to the applicant. He explained that in the instant case, he decided to "coordinate a response" on behalf of all of the custodians of records because he knew Glass to be "litigious" and wanted to

"shield" the custodians from his "wrath." He directed each custodian to conduct a search for records responsive to the request and then to forward those records to him for review.

Culpepper testified that he wrote the September 5, 2014 letter to Glass granting in part and denying in part his application before he had reviewed the Risk Management claim file and determined that some of the records contained therein were exempt from disclosure. He also did not review any SIFC records before issuing a denial because, based upon his experience, the only records in an SIFC file would be "memos that would be drafted by attorneys . . . [a]nd sent to the [SIFC] for discussion." In his view, those were "without a doubt, without question, and in no way can be anything but attorney work product and attorney privileged communications." Culpepper was not aware that any SIFC meeting agendas and/or minutes were maintained by the County.

Glass testified about his history with the County, his interactions with County staff relative to his August 2014 PIA request, and the damages, fees, and costs he incurred as a result of the alleged violations of the PIA. He stated that the materials provided to him by Culpepper on September 11, 2014, were not at all relevant or responsive to his request. He did receive responsive records during discovery, however, including the police reports. He also received a copy of an SIFC meeting agenda dated April 21, 2009, and a letter from the County to the federal district court judge presiding over the settlement conference in the federal lawsuit brought by Feinblum and Schmidt, which we shall discuss *infra*.

At the close of all the evidence, the County moved to dismiss the claims against Plymyer and Duden, arguing that there was no evidence that either individual had had any involvement in handling Glass's PIA request or that they were custodians of any responsive records. The court granted the motion and Glass does not challenge that ruling in this appeal.

In closing, Glass's counsel asked the court to declare that, in August and September 2014, the County did not conduct a search reasonably calculated to uncover responsive records. He emphasized that Ryder never searched the AACPD database under D'Camera's name until after the litigation was pending and did not make any effort to view the records that she did find when she searched under Feinblum and Schmidt. Similarly, Lanham did not search for SIFC minutes and agendas when she searched the Central Services' records despite those records having been specifically requested by Glass. Second, with respect to the records the County was withholding, he asked the court either to conduct an *in camera* review or to rule that the County had failed to meet its burden to show that those documents were exempt. Third, he asked the court to order the County to conduct additional searches and to then come back before the court to prove that there were no additional records responsive to Glass's request. Glass maintained that the County's conduct in violation of the PIA was knowing and willful, entitling him to damages, and that he also was entitled to an award of prevailing party attorneys' fees.

The County argued in closing that it had proved that it made a legally adequate search for documents in response to Glass's request and that it had disclosed all non-exempt materials to him.

The court ruled that the County "had conducted a reasonable search and that the exemptions and the position that the County took was a reasonable position to take." On that basis, it entered judgment in favor of the County on all counts of the amended complaint. After the court ruled, Glass reiterated his request that the court make an *in camera* inspection of the withheld documents. The court reviewed two documents from the SIFC file and concluded that both were entirely attorney work product and exempt from disclosure.

This timely appeal followed. We shall include additional facts in our discussion of the issues.

STANDARD OF REVIEW

"'The purpose of the Maryland Public Information Act . . . is virtually identical to that of the FOIA'; consequently, to the extent that the [PIA] is like the FOIA, the federal circuits' interpretation of the FOIA is persuasive." *MacPhail v. Comptroller of Md.*, 178 Md. App. 115, 119 (2008) (quoting *Faulk v. State's Attorney for Harford Cty.*, 299 Md. 493, 506 (1984)). "We review a circuit court decision reviewing an agency's response to a [PIA] request to determine whether that court had an adequate factual basis for the decision it rendered and whether the decision the court reached was clearly erroneous."

Comptroller of Treasury v. Immanuel, 216 Md. App. 259, 266 (2014). "We review *de novo* any purported errors in interpreting the Act itself." *Id*.

DISCUSSION

I.

Glass contends the circuit court erred by not ordering the County to "complete a legally adequate search for all of the records that he requested." He maintains that Captain Davies's testimony that he declined to search off-site storage for responsive records establishes, as a matter of law, that the search was inadequate. He argues, moreover, that the County falsely asserted in the September 5, 2014 response letter that no records existed when it was known that there were off-site records that had not been searched.

The County responds that the court made non-clearly erroneous factual findings that the search conducted was reasonable based upon Captain Davies's testimony that he searched all of the on-site records and that the only records stored off-site would not have included responsive records. We agree with the County.

In assessing whether a search was reasonable under the PIA, the test is "not whether every single potentially responsive document has been unearthed, but whether the agency has demonstrated that it has conducted a search reasonably calculated to uncover all relevant documents." *Ethyl Corp. v. U.S. E.P.A.*, 25 F.3d 1241, 1246 (4th Cir. 1994) (citations omitted). Here, Captain Davies gave detailed testimony explaining the files that he searched and the inquiries he performed to attempt to locate responsive

records. His search revealed that there had been no internal AACFD investigation into allegations by Feinblum and Schmidt because that matter was being handled by the AACPD. Captain Davies further testified that unless and until the AACFD *completed* an internal investigation into allegations of misconduct against D'Camera, there would not be documents in his personnel file pertaining to any allegations against him. This testimony amply supported the circuit court's finding that the search was reasonable in its scope and its decision not to order the AACFD to conduct any additional searches of off-site records.

Glass also is incorrect that the County misrepresented the results of its search in the September 5, 2014 letter. Captain Davies testified that his search revealed no responsive records and that he believed that part of the reason that no records were found was because the complaints made by Feinblum and Schmidt were lodged with the AACPD and the OVFC, not the AACFD. This was consistent with Culpepper's letter of September 5, 2014.

II.

Glass contends the circuit court erred by not declaring that the AACPD's search was unreasonable given that it disclosed 21 additional pages of responsive records during the instant litigation.[8] He emphasizes that had the court made such a finding that would

[8] Glass also urges us to reverse and remand for the entry of a proper declaratory judgment. The court concluded that Glass was not entitled to declaratory relief, however, and as such, it was not required to enter a declaratory judgment.

have "trigger[ed] [his] right . . . to petition for an award of counsel fees and other litigation costs incurred to obtain those police reports."

The County responds that the circuit court did not clearly err by finding that Ryder's search was reasonable given the information provided by Glass in the PIA request. It emphasizes that when Glass was asked to provide additional information, such as the date when the alleged incidents occurred, he refused.

Federal case law makes clear that an applicant seeking access to public records must "reasonably describe" the records sought to ensure that "'the agency is able to determine precisely what records are being requested.'" *Kowalczyk v. Dep't of Justice,* 73 F.3d 386, 388 (D.C. Cir. 1996) (quoting *Yeager v. Drug Enforcement Administration*, 678 F.2d 315, 326 (D.C. Cir.1982)). Here, Glass's request did not identify the type of allegations made by Feinblum and Schmidt against D'Camera or the year when those complaints were made. The only date in the letter pertained to the December 19, 2007 LGTCA letter, but a copy of that letter was not attached. The custodian of records for the AACPD could not be expected to know the contents of the December 19, 2007 LGTCA letter because that record was not in her custody.[9]

Ryder explained the assumption she made in initiating her search for the records, *i.e.*, that the allegations against D'Camera concerned actions he took in his official

[9] To the extent that Glass argues that Culpepper or other employees within the Office of Law could have and should have provided that information to Ryder, we disagree that the PIA imposes any such duty on the County. In any event, Culpepper testified that he did not know the details of the D'Camera investigation.

capacity as a firefighter. While this assumption was mistaken, it was not unreasonable. As Ryder explained, almost all of the PIA requests she handled for the AACPD concerned allegations of misconduct by police officers acting in their official capacity. The electronic database did not index records by the names of the police officers, however. Thus, it was her ordinary practice to search only by the name of the complainants. Ryder reasonably determined to search under the names of the complainants, not under D'Camera's name.

Ryder's search turned up multiple "Karl Schmidt" name files. It was impossible for her to distinguish between them without additional information. Her search turned up only one name file for Feinblum, with two related police reports. Ryder testified that because the dates associated with those reports—2004 and 2005—preceded the only date provided by Glass in his letter, she did not have reason to believe that those reports would be responsive. Thus, she declined to conduct a search for those reports in a separate database. Rather, she requested that Culpepper seek additional information from Glass to assist her in her search. This also was reasonable. The circuit court did not clearly err by finding that the County's search, coupled with Ryder's request for additional information, was reasonably calculated to locate responsive records.[10] It follows that the circuit court

[10] This finding was borne out by the fact that Ryder easily located the responsive records after Glass requested, through interrogatories during this litigation, that Ryder search for records pertaining to the "police investigation of . . . D'Camera that was opened between January 1, 1998 and July 31, 2005."

did not err by declining to grant Glass declaratory relief relative to the AACPD's search and by not considering his request for attorneys' fees and costs.

III.

Finally, Glass contends the circuit court erred by not ordering the County to "disclose the severable information from the responsive [SIFC] records" and by not ordering it to "search for one missing agenda of a[n] SIFC meeting." We shall address the latter contention first.

During discovery, the County produced an SIFC meeting agenda dated April 21, 2009. The third agenda item was listed as "08-0027 & 08-0027 A John Doe No. 1 et al[.] v[.] [OVFC] (2 attachments)." The County also produced a letter, dated January 22, 2009, from a senior assistant County attorney to Judge James Bredar,[11] a federal magistrate judge for the United States District Court for the District of Maryland. The letter pertained to a "settlement conference scheduled for January 30, 2009," before Judge Bredar in the federal lawsuit brought by Feinblum and Schmidt against the County and the OVFC. In her letter, the County attorney explained the manner in which the County could obtain settlement authority from the SIFC. She stated that the SIFC "meets approximately every six weeks" and that the "matter [would] be presented to the [SIFC] prior to the settlement conference."

The January 22, 2009 letter was introduced into evidence during Glass's testimony. He explained that, in his view, the letter proved that the County was

[11] Judge Bredar has since been elevated to a district judge.

withholding an agenda and minutes from an SIFC meeting that occurred sometime between January 22, 2009, and January 30, 2009. Glass testified that he had not received any agenda for that meeting in response to his PIA request or during discovery in the litigation, however.[12]

The circuit court reviewed that letter at the time it was admitted into evidence and stated that it disagreed that the letter established that the D'Camera matter came before the SIFC in January 2009. It emphasized that the settlement conference could have been postponed after that letter was sent and that the agenda for the April 21, 2009 SIFC meeting may have been "the one and only [responsive] agenda." The court noted that the parties would be free to argue the meaning of the letter in closing, however.

Glass argued in closing that the County was withholding an SIFC agenda from January 2009. As explained, the court ruled that the County conducted a reasonable and legally sufficient search for responsive records. It was implicit in that ruling that the court found that the County's search did not unreasonably fail to uncover a second responsive agenda. That determination was not clearly erroneous.

Glass's argument that portions of the withheld SIFC records were severable and should have been provided to him also lacks merit. The County withheld two SIFC records: 1) a memorandum from an assistant County attorney to the SIFC offering the attorney's opinion of the merits of the claim and the County's potential liability, and 2)

[12] As noted earlier, the County's supplemental response to the PIA request made on April 10, 2015, purported to include a copy of an SIFC meeting agenda from January 29, 2009. Thus, it is not clear to this Court whether Glass did in fact receive this agenda.

the minutes of the April 21, 2009 SIFC meeting at which the County attorney argued the positions expressed in his memorandum and the SIFC voted to approve a settlement amount. The court reviewed both documents *in camera* and ruled that both were properly exempt from disclosure as attorney work product. *See* GP §§ 4-343 & 4-344 (custodian may deny inspection of records the disclosure of which would be contrary to the public interest, including intra-agency memoranda that would not be subject to discovery in litigation with the agency); *see also Cranford v. Montgomery Cty.*, 300 Md. 759, 775–76 (1984) (attorney work product materials are not routinely discoverable and thus, would not be available to a party in litigation with the agency).

Glass contends that the meeting minutes and the memorandum were not exempt work product materials because they were not prepared in anticipation of litigation. He asserts that the minutes were prepared in the ordinary course of business as part of the SIFC record keeping and that the memorandum was prepared in the ordinary course of business for "insurance claims adjustment." He further argues that any work product protection afforded the minutes and the memorandum was waived when those matters were presented to the SIFC, a non-client. Glass did not make either of these arguments before the circuit court and we decline to consider them on appeal.[13]

[13] To the contrary, at the bench trial Glass's counsel implicitly conceded that the minutes and memoranda of the SIFC were attorney work product and that work product materials presumptively fall within the public interest exception under GP section 4-344, but argued that the court should rule that the passage of time had diminished any public interest in withholding those records and/or that the County should be ordered to redact the work product material and permit inspection of the remainder of the records.

Glass also contends the County was obligated to disclose the severable portions of both documents. The County responds that Culpepper's testimony established that memoranda prepared by County attorneys for the SIFC are entirely work product and that the SIFC meetings are merely an opportunity for the attorney to argue the same points raised in those memoranda. We agree that the County met its burden of showing that the memorandum and the related minutes were exempt under GP sections 4-343 and 4-344 and that the propriety of the exemption was confirmed by the circuit court's findings on *in camera* review that the documents were entirely work product and not subject to redaction.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.