Circuit Court for Allegany County
Case No. 01-C-16-043775

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1444

September Term, 2016

ANTHONY JOHNSON

v.

FRANK BISHOP, ET AL.

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 13, 2017

*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.

Anthony Johnson, appellant, brought suit in the Circuit Court for Allegany County, against Frank Bishop, Jr., appellee, Warden of the North Branch Correctional Institute ("NBCI"), alleging violations of the Maryland Public Information Act. Appellee filed a Motion for Summary Judgment, the circuit court granted it, and this appeal followed. For the following reasons, we shall affirm.

Maryland Rule 2-501(f) governs motions for summary judgment and provides that a trial court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." "For the opposing party to defeat such a motion, it 'must show that there is a genuine dispute as to a material fact by proffering facts which would be admissible in evidence.'" *ACLU v. Leopold*, 223 Md. App. 97, 110 (2015) (citation omitted). "[T]he standard for appellate review of a trial court's grant of a motion for summary judgment is simply whether the trial court was legally correct." *Id*. (citation omitted).

The Maryland Public Information Act ("PIA"), codified in Md. Code (2014, 2016 Supp.), General Provisions Article (GP), §§ 4-101 et seq., "provides members of the public with a right to inspect and copy public records, subject to certain exceptions." *Glass v. Anne Arundel County*, 453 Md. 201, 208 (2017). Section 4-362 of the statute permits that

> a person who is denied inspection of a public record to file an action in court[,] and authorizes the court, in an expedited manner, (1) to order production of the record, (2) to assess damages against any custodian who knowingly and willfully failed to disclose the record, and (3) to assess reasonable counsel fees and other litigation costs against the Governmental unit.

Stromberg Metal Works, Inc. v. University of Maryland, *et al.*, 382 Md. 151, 160 (2004).

Johnson filed two complaints in the circuit court, which were filed under the same case number. The first complaint, received by the court on December 31, 2015, alleged that appellee did not respond to a request for "dietary records" that was submitted on November 23, 2015, and that the failure to respond was "knowing and willful."

Appellee's motion for summary judgment was supported by the affidavit of Leslie Simpson, the Public Information Officer at NBCI, stating that she received the request for "dietary records" on December 31, 2015, and responded by letter dated January 4, 2016. That letter, which was attached as an exhibit to the affidavit, notified Johnson that the 450 pages of records responsive to his request had been located, and that they would be provided upon payment of $67.50, representing copying fees of 15 cents per page.[1] The letter advised Johnson to contact Ms. Simpson if he wished to pay the fees and move forward with his request, but, according to the affidavit, Johnson never followed up.[2]

The second complaint filed by Johnson, which was received by the court on March 14, 2016, alleged that appellee had not granted a PIA request that he made on January 12, 2016, seeking records disclosing "the amount of funds provided to create jobs for inmates" at NBCI, and further alleging that the "denial" was "knowing and willful." According to Ms. Simpson's affidavit and exhibits thereto, she initially responded to that request on

[1] The PIA permits a custodian to charge an applicant a reasonable fee for the "search for, preparation of, and reproduction of a public record[.]" GP § 4-206(b)(1).

[2] GP § 4-206(e) provides for an official custodian of public records to consider an applicant's request for waiver of fees, but, according to appellee, Johnson did not make such a request.

February 11, 2016, informing Johnson that there were no documents responsive to his request. On July 20, 2016, she sent an amended response to his request, stating that, upon further review, she had located a document responsive to that request, and included with the amended response a document listing total "inmate wages" expenditures for the "Division of Correction – West Region" in 2015, as well as what had been budgeted for that line item in 2016, and requested for 2017.

Appellee's motion for summary judgment and the supporting affidavit demonstrated that appellee had not denied appellant the right to inspect and copy the requested records, in violation of the PIA. Johnson did not file a response to the motion for summary judgment proffering facts that would be admissible in evidence, showing that there was a genuine dispute of material fact, or arguing that appellee was not entitled to judgment as a matter of law.[3] Accordingly, the trial court was legally correct in granting summary judgment in favor of appellee.

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

[3] On appeal, Johnson claims that summary judgment was improperly granted because, according to Johnson, appellee did not respond to his requests within the time limits established in GP §§ 4-202 and 4-203. Johnson, however, did not file an opposition to the motion for summary judgment that put this contention before the motions court, and "an appellate court ordinarily should limit its review of a grant of a motion for summary judgment to 'only the grounds upon which the trial court relied in granting summary judgment.'" *State Center LLC. v. Lexington Charles Ltd. Partnership*, 438 Md. 451, 498 (2014) (citation omitted). In any event, even assuming that the record supported Johnson's claim of untimeliness, it would not have constituted a dispute of material fact such that the trial court would have been constrained to deny appellee's motion for summary judgment. *See Stromberg*, 382 Md. at 159 (noting that "although the PIA sets time limits on a response by the Governmental unit, it says nothing expressly about the effect of non-compliance with those limits.")