Circuit Court for Cecil County
Case Nos.: C-07-CV-23-000420, C-07-CV-23-000421

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

Nos. 362 & 433

September Term, 2024

IN THE MATTER OF JAMES SANDERS

Leahy,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 16, 2025

These cases concern the Maryland Public Information Act ("MPIA"). Appellant James Sanders formerly worked for the Aberdeen Proving Ground Police Department ("APGPD"). In October 2020, Appellees Cecil County Deputy Sheriff Corporal Christopher Lewis and Town of Perryville Police Officer John Peer[1] individually contacted APGPD about a domestic dispute between Mr. Sanders and his ex-girlfriend. As a result of those conversations, both officers sent documents about Mr. Sanders to APGPD. When Mr. Sanders learned about these disclosures, he sued Corporal Lewis and Officer Peer, in separate cases in the Circuit Court for Cecil County. Mr. Sanders asserted that neither officer was a "custodian" under the MPIA, and therefore they violated the MPIA by sending the documents to his employer. Both officers moved, in their individual cases, to dismiss for failure to state a claim. The circuit court granted both motions, and Mr. Sanders appealed.

In these appeals, we must resolve one issue: Did the circuit court err in dismissing Mr. Sanders's complaints?

Finding no error, we affirm the judgments.

FACTS AND PROCEEDINGS

Although they come to us from different circuit court proceedings, these appeals stem from the same underlying series of events and present the same legal question. We synthesize the facts from Mr. Sanders's two complaints below, but we decide each case

[1] Corporal Lewis is the appellee in Case No. 362, and Officer Peer is the appellee in Case No. 433.

based solely on its own record.

Underlying Incident

On Friday, October 23, 2020, Officer Peer and another Town of Perryville police officer responded to Mr. Sanders's home for a domestic dispute between Mr. Sanders and his ex-girlfriend. Over the ensuing weekend, Officer Peer informed Mr. Sanders's supervisor at APGPD about the incident. As a result of their conversation, Officer Peer sent Mr. Sanders's supervisor two police reports ("the Police Reports"). He did not receive a written request before doing so. When Mr. Sanders returned to work on Monday, October 26, 2020, he learned that Officer Peer had contacted his supervisor about the incident, but he did not yet know that the Police Reports had been provided to his supervisor. Mr. Sanders eventually learned that Officer Peer had disclosed the Police Reports when they were submitted as part of an administrative action against Mr. Sanders by APGPD.

Then, on October 27, 2020, Corporal Lewis and another Cecil County Deputy Sheriff served Mr. Sanders with a domestic protective order ("the Protective Order") entered against him by the Circuit Court for Cecil County. Before doing so, Corporal Lewis called APGPD "to inquire about [Mr. Sanders's] service weapon[.]" During the call, APGPD asked Corporal Lewis to provide it with a copy of the Protective Order. Corporal Lewis sent a copy of the Protective Order to the agency without a written request. Mr. Sanders then learned of this disclosure when he reported to work as his supervisor had a copy of the Protective Order.

Three years later, Mr. Sanders sued Corporal Lewis and Officer Peer, separately, in the Circuit Court for Cecil County. Mr. Sanders alleged that because neither officer was a "custodian" under the MPIA, their disclosure of the Police Reports and the Protective Order was unlawful. Both officers moved to dismiss.

Case No. 362

The circuit court held a hearing on Corporal Lewis's motion on March 22, 2024. At the hearing, Mr. Sanders conceded that the Protective Order was a public record at the time Corporal Lewis disclosed it to APGPD.[2] Mr. Sanders added that he had "no issue" with Corporal Lewis telling APGPD about the Protective Order or even orally disclosing its substance. Mr. Sanders argued only that Corporal Lewis was forbidden from sending a copy of the Protective Order to APGPD because he was not the custodian of the record.

The circuit court disagreed, ruling that, under the MPIA, Corporal Lewis was a custodian of the Protective Order. It reasoned that "[h]e was without doubt, by definition, an authorized individual who had physical custody and control of a public record." Accordingly, the court dismissed the complaint, leading to this appeal.[3]

[2] The record suggests that the Protective Order was shielded in early 2021.

[3] The circuit court did not enter a written order memorializing its oral ruling until August 30, 2024, after this Court remanded the case and directed the court to enter an appropriate written order. We note that, although it still grants Corporal Lewis's motion and dismisses the case, the written order contradicts the court's oral ruling. It states: "There has been no violation of the Maryland Public [I]nformation Act as [Corporal] Lewis was *not* a custodian or official custodian of the records for Cecil County Sherriff's [sic] Office[.]" (Emphasis added). This discrepancy does not affect our analysis.

Case No. 433

In his motion to dismiss, Officer Peer argued that no written request was required for him to disclose the Police Reports because the Town of Perryville Police Department had designated police records as available to any applicant immediately upon oral or written request. He supported his motion with an affidavit from the Department's designated MPIA representative and a copy of the Town of Perryville's Information Request Form. Mr. Sanders failed to oppose the motion, and the court dismissed the case without explanation. Mr. Sanders timely appealed.

STANDARD OF REVIEW

We review the granting of a motion to dismiss for legal correctness. *Floyd v. Mayor of Baltimore*, 463 Md. 226, 241 (2019) (quoting *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 496-97 (2014)). We "accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party[.]" *Sprenger v. Pub. Serv. Comm'n of Md.*, 400 Md. 1, 21 (2007) (quoting *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004)). "Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff." *Pendleton v. State*, 398 Md. 447, 459 (2007) (quoting *Ricketts v. Ricketts*, 393 Md. 479, 492 (2006)). We will affirm a dismissal "on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised." *Harris v. McKenzie*, 241 Md. App. 672, 678 (2019) (quoting *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 385 (2009)).

We note, however, that Officer Peer's motion was supported by an affidavit and exhibits that included matters outside the pleading. When such materials are attached to a motion to dismiss and are not excluded by the court, the motion should be treated as a motion for summary judgment. Md. Rule 2-322(c); *see also D'Aoust v. Diamond*, 424 Md. 549, 572–73 (2012). The court's order in Officer Peer's case does not explain the basis for its decision or whether it treated Officer Peer's motion as a motion to dismiss or as a motion for summary judgment. Because we ultimately review the motion without considering the affidavit or exhibits, we shall treat it as a motion to dismiss. *Cf. Phillips v. Allstate Indem. Co.*, 156 Md. App. 729, 740 (2004) ("If the trial court does not state its reasons for granting [a motion for summary judgment], we will affirm the judgment so long as the record 'discloses it was correct in so doing.'" (quoting *Casey Dev. Corp. v. Montgomery County*, 212 Md. 138, 145 (1957))).

DISCUSSION

The MPIA "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). This right stems from the principle 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." *Id.* (alteration in original) (quoting Md. Code Ann. (2014, 2019 Repl. Vol.), § 4-103(a) of the General Provisions Article ("GP")). The statute governs requests for access to records both from the public and from other government agencies. GP §§ 4-101(b), 4-103(b); 81 Md. Op. Atty. Gen. 164, 164 (1996).

The MPIA commands that it "shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection." GP § 4-103(b). To that end, it encourages "proactive disclosure of public records" that are not subject to a disclosure exception. GP § 4-104(a). Indeed, inspection or copying of a public record may be denied only to the extent permitted under the MPIA. GP § 4-201(a)(2).

In a typical MPIA action, a requestor sues an agency to compel the production of documents that the requestor believes have been wrongfully withheld. *See*, *e.g.*, *ACLU Found. of Md. v. Leopold*, 223 Md. App. 97 (2015). Unlike its federal counterpart, however, the MPIA also permits a "reverse" action—one to prevent rather than allow disclosure, or one for damages suffered due to an improper disclosure.[4] GP § 4-401(a)(1) creates a civil cause of action by an individual against a person who "willfully and knowingly allows inspection or use of a public record in violation of [the MPIA]," if the public record identifies the individual by an "identifying factor."

Mr. Sanders presents a reverse MPIA action with a novel twist. His claims are not about the documents that were disclosed; he concedes that, when they were disclosed, the Protective Order and the Police Reports were public records, and he does not contend that

[4] The federal Freedom of Information Act does not create a private right of action to prohibit disclosure of information. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 290–94 (1979). Instead, parties seeking to prevent disclosure must resort to the Administrative Procedure Act. *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1133 n.1 (D.C. Cir. 1987).

any provision of the MPIA precluded disclosure.[5] Instead, Mr. Sanders's issue is with *who* disclosed the records.

In both cases, Mr. Sanders alleged that the respective officers violated GP § 4-202, which addresses the requirement for a written application and the obligations of a non-custodian who receives an application. Mr. Sanders's basic legal theory was that Corporal Lewis and Officer Peer were not "custodians" of the public records they disclosed. Thus, according to him, when APGPD asked the officers for copies of the Protective Order and Police Reports, the officers should have directed APGPD to submit a written request to someone else at their agency. We disagree.

Agencies may have many custodians of their records. *Glass*, 453 Md. at 211. The MPIA defines "custodian" two ways, but, in practice, there are four types of custodians.

First is "the official custodian," which "means an officer or employee of the State or of a political subdivision who is responsible for keeping a public record, whether or not the officer or employee has physical custody and control of the public record." GP § 4-101(d)(1), (f). The official custodian has the overall legal responsibility for the care

[5] In Case No. 433, Mr. Sanders, relying on GP § 4-103(b), asserts generally that the presumption in favor of disclosure applies only "unless an unwarranted invasion of the privacy of a person in interest would result[.]" The quoted text "is part of an internal statutory construction provision having no independent effect." *Police Patrol Sec. Sys., Inc. v. Prince George's County*, 378 Md. 702, 717 (2003). In other words, § 4-103(b) does not, itself, permit withholding a public record. *Id.* A public record may be withheld only if it falls within one of the specific exemptions set forth in the MPIA. *Id.*; *see* GP §§ 4-301–4-358 (setting forth exceptions to disclosure). Mr. Sanders does not contend any of these exemptions apply here.

and keeping of public records. *See Glass*, 453 Md. at 211. Often, this person will be the head of the agency. *Cf. Ireland v. Shearin*, 417 Md. 401, 409 (2010).

Second, a custodian is "any other authorized individual who has physical custody and control of a public record." GP § 4-101(d)(2). This person is the "physical custodian." *See Ireland*, 417 Md. at 409. The physical custodians of public records "may include most employees." *Glass*, 453 Md. at 211.

Third, an agency official or employee who lacks actual legal authority to possess a public record may still be a "custodian" under the MPIA. If an agency official or employee receives custody of a public record "in a manner that was calculated to induce individuals, including the person in actual custody of the [public] records, to believe that he had legal authority to possess the records[,]" that individual becomes a "de facto custodian." 65 Md. Op. Atty. Gen. 365, 370 (1980).

Finally, the MPIA also requires "[e]ach governmental unit that maintains public records [to] identify a representative who a member of the public should contact to request a public record from the governmental unit[.]" GP § 4-503(a)(1). This person is the "designated custodian." *See Glass*, 453 Md. at 234.

Mr. Sanders's argument that Corporal Lewis and Officer Peer were not custodians under the MPIA flows from his interpretation of the statutory definition of "custodian" in GP § 4-101(d). In his view, "authorized individual" means authorized by the agency to release records or respond to MPIA requests. Our courts have not squarely addressed this issue, but in 1980, the Attorney General, in determining whether a de facto custodian was

an ”authorized individual” under the MPIA, interpreted “authorized” to mean “authority to obtain and possess the records.[6] Although the focus of the Opinion of the Attorney General was not the meaning of “authorized,” this interpretation is consistent with the plain language of the statute as the adjective “authorized” modifies the noun “individual” (who has physical custody of a public record). We conclude, therefore, that “authorized,” in this context, means “authorized to possess the records.” *Cf. Glass*, 453 Md. at 211 (observing that “most employees” are, to some extent, custodians).

Under this reading of the MPIA, both officers here were custodians of the public records they disclosed. Corporal Lewis received the Protective Order as part of his job duties when he was assigned to serve it on Mr. Sanders. Mr. Sanders conceded that Corporal Lewis was authorized to possess the Protective Order. Thus, while Corporal Lewis had custody and control of the Protective Order, he was a physical custodian of the record. *See Stromberg Metal Works, Inc. v. University of Maryland*, 382 Md. 151, 154 (2004) (remarking that an employee who, as part of their job duties, received monthly reports about a project, was a custodian of the reports).

The record in Officer Peer’s case does not disclose how he obtained the Police Reports, but Mr. Sanders does not allege that he was unauthorized to possess them. Rather, he challenges Officer Peer’s authority to disclose them. We infer from the context of the complaint that the Police Reports concerned the domestic incident at Mr. Sanders’s home,

[6] At the time, the definition used the phrase “authorized person.” This slight change in language does not alter our opinion.

to which Officer Peer responded. It follows that Officer Peer, as part of his job duties, would have created the Police Reports. Thus, while he had custody and control of them, Officer Peer was a physical custodian of the records. *See id.* (remarking that an employee who, as part of their job duties, created monthly reports about a project, was a custodian of the reports).

Because Corporal Lewis and Officer Peer were police officers who obtained the relevant documents in the ordinary course of their police duties, they were authorized to waive any requirement for a written application and, upon APGPD's oral request for copies, disclose them to APGPD. GP § 4-202(b). Neither officer was required to direct APGPD's request elsewhere. Further, no other provision of the MPIA precluded disclosure of either the Protective Order or the Police Reports. Thus, because the complaints did not allege any violation of the MPIA, Mr. Sanders failed to state a claim against either Corporal Lewis or Officer Peer. *See Police Patrol*, 378 Md. at 718. The circuit court therefore did not err in dismissing either case..

JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.