Circuit Court for Washington County
Case No.: C-21-CV-23-000016

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 870

September Term, 2024

IN THE MATTER OF JUSTIN HOLDER

Graeff,
Albright,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned)
JJ.

Opinion by Albright, J.

Filed: July 23, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Justin K. Holder, filed several requests pursuant to the Maryland Public Information Act ("MPIA"), Md. Code Ann., General Provisions Article ("GP") § 4-101 *et. seq.*, with the Washington County Board of County Commissioners. Dissatisfied with the responses received, Mr. Holder filed a complaint for judicial review in the Circuit Court for Washington County against Appellees, Washington County Board of County Commissioners and former county attorney, Kirk C. Downey (collectively, Appellees or "the County"). The circuit court granted Appellees' request for summary judgment and Mr. Holder noted the instant appeal. For the reasons we shall discuss below, we affirm the judgment of the circuit court.

BACKGROUND

I. The Requests

Mr. Holder has submitted over 185 MPIA requests to the County in recent years. This case arises from five of those requests, initiated by Mr. Holder between November of 2022 and March of 2023. They are as follows:

A. The "Civil War Rail Trail Request"

On December 11, 2021, Mr. Holder requested documents relating to a bicycle and pedestrian trail in Washington County called the "Civil War Rail Trail[.]" On January 27, 2022,[1] the County notified Mr. Holder that "there are thousands of responsive documents" and accordingly, requested that Mr. Holder either make a $500 deposit so the

[1] On January 7, 2022, the County notified Mr. Holder that the County employee who was "knowledgeable about this project and can provide applicable records is out for an undetermined amount of time due to a family emergency" and that "[a]s soon as [they] are able to obtain all the records you seek, [they would] promptly provide them."

County could "continue to work on locating and copying the responsive documents[,]" or, that Mr. Holder narrow the request.

In response, Mr. Holder asserted that he would narrow his request "upon production of a list of the total responsive records" including, "a) The initial form letter sent[;] b) The List of recipients to the initial letter[; and] c) The list of responses received by the county." The County declined Mr. Holder's request and reiterated that the search results totaled "1 GB of data." Additionally, the County contended that "creation of a screenshot constitutes the creation of a new public record, which the County is neither required to create nor provide" under the MPIA. In a "show of good faith[,]" the County provided two documents free of charge to Mr. Holder, but the parties remained at an impasse after Mr. Holder requested to come in and take "screenshots" of the information requested "[him]self."

B. The "Zip File Request"

On November 3, 2022, Mr. Holder requested a zip file containing several documents. On November 29, 2022, after noting that they had already provided the zip file to Mr. Holder, the County provided the zip file to Mr. Holder for the "second or third time."[2] In response, Mr. Holder contested the manner in which the zip file was produced.

[2] As the County explained at the hearing on its motion for summary judgment, the zip file contained

> documents that were retrieved, and actually provided to Mr. Holder in one of Mr. Holder's other cases, uh, involving documents that were held at the suggestion of then Assistant State's Attorney, Joe Michael, now Judge Michael. . . . I asked for a meeting on November 10 because I was really

(continued)

Specifically, he requested that a specific county employee forward Mr. Holder a copy of a previously-sent email containing the zip file. The County declined and noted that the zip file had been produced to Mr. Holder.

C. The "FBI Communication Request"

On December 12, 2022, Mr. Holder requested documents relating to a cybersecurity breach that occurred weeks earlier in Washington County. The County denied Mr. Holder's request for three reasons: (1) pursuant to GP § 4-351(a)(1), because there was an active law enforcement investigation of the cybersecurity breach; (2) pursuant to GP § 4-338, because the request sought information about the security of the County's information systems; and (3) pursuant to GP § 4-343, because it would be contrary to the public interest.

D. The "Permanent Records Request"

1. Background

In April of 2020, Mr. Holder requested documents related to water in the town of Keedysville, Washington County, including when the town installed water, when "the [K]eedysville [B]oonsboro water board . . . was formed" and "[t]he ordinance, charter and agreement created by the Washington county sanitary district when forced main sewer was installed in [K]eedysville and [S]harpsburg in 1988." The County responded that it had no records responsive to Mr. Holder's request, but that it was possible

> unclear why this request came in given the fact that the documents had already been provided to Mr. Holder. We had that meeting on the 14th and the county again provided, I think for the second or third time, the zip-file and the documents.

responsive records "would be in the possession of the Mayor and Council of Keedysville, the Keedysville Water Commission, or the Boonsboro Keedysville Water Advisory Board."

The following month, Mr. Holder requested, in pertinent part, "[a]ll loan applications, grant applications, bond agreements, ordinances, mandates, laws, agreements related to the 1885 to 1991 installation of forced main sewer in [S]harpsburg md and [K]eedysville[.]" The County responded that the request was "very broad as written" and that "there are over 5,000 pages" of responsive records and that "the cost of reproducing the records is estimated at $1,300." Mr. Holder replied that he was no longer interested in the documents requested.

Although it is unclear when, at some point thereafter, Mr. Holder once more requested documents "concerning the provision of sewer service in the town limits of Keedysville." In September of 2021, the County responded with the following:

> This correspondence serves as a re-iteration of prior responses to you concerning your Public Information Act request for any intergovernmental agreement between the Town of Keedysville, the former Washington County Sanitary District, and/or the Board of County Commissioners for Washington County concerning the provision of sewer service in the town limits of Keedysville. The County has conducted a search of records maintained by the Department of Water Quality, the Division of Environmental Management, and historical records in its possession from the now-defunct Sanitary District. The County also searched the records of the County Attorney's Office and minutes of the Sanitary District and the Board of County Commissioners. The County has been unable to identify any responsive comprehensive intergovernmental agreement concerning the construction, operation, and maintenance of sewer service in the Town of Keedysville.

2. The Permanent Records Request

On February 15, 2023, Mr. Holder requested documents "relating to the destruction of 'Permanent Records' . . . specifically in reference to the destruction of the 1988-1991 agreement(s) between "Washington County and sub division / town for water and sewerage services." On March 2, 2023, the County responded that it had no documents responsive to the request and added that, as it stated previously, "'the County is not in possession of any "agreement between 'Washington County and sub division/town for water and sewerage services[.]'" That same day, Mr. Holder sought, specifically as related to his February 2023 request, "[a]ny and all amendments provided to the Md. Dept of General services of county records retention scheduled C882 or C1068 (previously C772) [sic]." On March 31, 2023, the County responded that it had no responsive records and provided a link for information regarding revisions to retention schedules.

E. The "Maugansville Request"

On March 24, 2023, Mr. Holder submitted a request for agreements related to the water and sewer systems between the County and several municipalities or subdistricts. Specifically, Mr. Holder requested:

> The 'agreements' to operate, construct and maintain a sewer/water system made between the Washington County Government and/or Washington County Sanitary District and municipalities/political bodies representing:
>
> Subdistrict 1 Halfway;
> Subdistrict 2 Conococheague;
> Subdistrict 3 Hunter Hill Estates;
> Subdistrict 5 Potomac;
> Subdistrict 5-1 Cloverton/Greenlawn;
> Subdistrict 6 Fountainhead;

Subdistrict 7 Mt. Aetna;
Subdistrict 9 Highfield/Cascade;
Subdistrict 12 Rolling Hills;
Subdistrict 14 Sharpsburg Pike;
Subdistrict 15 Maugansville/Orchard Hills;
Subdistrict 15-1 Martins Crossroads/Cearfoss;
Subdistrict 16 Saint James;
Subdistrict 18 Conococheague; and
Subdistrict 19-1 Sandy Hook

Signed and sealed on or before December 31, 1993.

In response, the County asserted that:

> Responsive records, if any, are maintained by the County in boxes labeled with the names of former projects. The County is in possession of boxes relating to fifteen such projects. The County estimates that it will take two County employees 2.5 hours [to] search through the boxes for each project and locate the potentially responsive records you requested. The combined hourly rate of those two employees is $104.15 an hour. Thus, the County estimates that it will cost approximately $520.75 to search for each project. Because there are fifteen projects in total, the County estimates that it will cost $7,811.25 to search for, identify, and retrieve the records you requested. Because the first two hours of search time under the [M]PIA are free, the total estimate for the County's search for and retrieval of those records is $7,602.95, i.e., $7,811.25 — (104.15 x 2).

Mr. Holder responded requesting a fee waiver or permission to inspect the records himself. On April 24, 2023, the County determined that Mr. Holder was not eligible for a fee waiver and that, because a County employee would need to review the documents prior to Mr. Holder's inspection, that Mr. Holder would not be able to inspect the records himself.

Accordingly, on April 25, 2023, Mr. Holder submitted a new request seeking:

> [T]o inspect, photograph or copy the "agreements" to operate, construct and maintain a sewer/water system made between the Washington County Government and/or Washington County Sanitary District and municipalities/ political bodies representing:

> Subdistrict 5-1 Cloverton/Greenlawn;
> signed and sealed on or before December 31st 1993.

The following day, the county produced the documents requested in Mr. Holder's April 25 request.

Mr. Holder then submitted another request, seeking:

> [T]o inspect, photograph or copy the 'agreements' to operate, construct and maintain a sewer/water system made between the Washington County Government and/or Washington County Sanitary District and municipalities/political bodies representing:
> Subdistrict 15 Maugensville [sic]/orchard Hills;
> signed and sealed on or before December 31st 1993.

The County denied the request, noting that "[i]t has become apparent to the County that you are attempting to individually request those agreements to circumvent the fee estimate and the request for a deposit that the County previously provided to you." The County asserted that it would proceed with his request upon payment of the previously requested deposit.

II. Procedural Background

On January 12, 2023, Mr. Holder filed a petition for judicial review, which he amended on May 31, 2023, alleging that Appellees failed to comply with the MPIA in responding to the Civil War Rail Trail Request, the Zip File Request, the FBI Communications Request, the Permanent Records Request and the Maugansville Request. He sought, among other things, to "[e]njoin [Appellees] from: (l) withholding the public records requested by Mr. Holder; or (2) withholding a copy, printout, or photograph of the public records requested by Mr. Holder" and "an order for the

production of the public record(s) or a copy, printout, or photograph of the public record that was withheld from Mr. Holder[.]"

Appellees filed a motion to dismiss, or in the alternative, a motion for summary judgment, asserting that they had already responded to and/or denied each of his requests and further, that the case was moot. In support, they attached an affidavit from Appellee Kirk Downey, as well as twenty-nine other exhibits. On August 9, 2023, the circuit court held a hearing. Thereafter, the court found that Appellees "did comply by way of response or lawful exception" and granted summary judgment in favor of Appellees.

Mr. Holder noted the instant appeal, where he presents three questions, which we consolidate and recast into one: Did the circuit court err in granting summary judgment in favor of Appellees?[3] For the reasons we shall discuss, we answer that question in the negative, and we affirm the judgment of the circuit court.

[3] The questions as presented in Mr. Holder's brief are:

> A. Did the trial court err in law, or abuse its discretion when it granted summary judg[]ment when the non-priv[i]ledged/non-exempt public records that are the subject of the Appellant's MPIA requests were not provided to the Appellant?
>
> B. Did the trial court error in granting summary judg[]ment when the County affidavit did not allege facts that would sufficiently shift the burden to Appellant?
>
> C. Did the trial court err in law, or abuse its discretion when it found that Appellees had complied with the statutory guidelines in the Maryland Public Information Act, even though it was undisputed that the Appellees did not grant the requests in the thirty (30) days provided for in that statute; allegedly destroyed or hid records that are to be permanently maintained; allegedly misrepresented the facts related to FBI communications, that on their face will not prejudice or interfere with an investigation; failed to provide the

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STANDARD OF REVIEW

Summary judgment is appropriate where "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." Md. Rule 2-501(f). "To be 'genuine' in this context, the dispute must be more than hypothetical or conjectural: 'the mere existence of a scintilla of evidence in support of the [non-moving party's] claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the plaintiff.'" *Woznicki v. GEICO Gen. Ins. Co.*, 216 Md. App. 712, 725 (2014) (quoting *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 738 (1993)). In other words, to survive a motion for summary judgment, "the party opposing summary judgment 'must do more than simply show there is some metaphysical doubt as to the material facts.'" *Beatty*, 330 Md. at 738 (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

"The question of whether a trial court's grant of summary judgment was proper is a question of law subject to *de novo* review on appeal." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006). In other words, "we independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving

> "attached in a zip" record with metadata as agreed to on Nov. 14, 2022; charged unreasonable fees to inspect the "Maugansville inter-municipal sewer agreement"; and/or allegedly misrepresented that taking a screenshot, or photograph of the index of files stored on the Appellees' hard drive would constitute creating a new public record, even though that record existed, and that position is completely inconsistent with the holding of Maryland's highest court in the case of Immanuel v. Comptroller Maryland?

party is entitled to judgment as a matter of law." *Id*. "[A] dispute as to facts relating to grounds upon which the decision is not rested is not a dispute with respect to a material fact and such dispute does not prevent the entry of summary judgment." *Salisbury Beauty Sch. v. State Bd. of Cosmetologists*, 268 Md. 32, 40 (1973). Finally, "we review 'only the grounds upon which the trial court relied in granting summary judgment.'" *River Walk Apartments, LLC v. Twigg*, 396 Md. 527, 541–42 (2007) (quoting *Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 450 (2006)).

DISCUSSION

Mr. Holder asserts that Appellees failed to properly support their motion for summary judgment through affidavit and facts admissible at trial as required by Md. Rule 2-501. Further, he asserts that summary judgment was not proper because Appellees had failed to demonstrate that they had complied with the MPIA. We disagree with both contentions, and address each in turn.

The circuit court concluded that summary judgment was proper on the basis that Appellees had properly complied with the MPIA through "response or lawful exception." Accordingly, because our review is limited to the grounds upon which the circuit court granted summary judgment, our role is to review the record *de novo* to determine whether the circuit court properly granted summary judgment on those grounds. *River Walk Apartments*, 396 Md. at 541–42. Because we conclude that it did, we shall affirm the judgment of the circuit court.

I. Appellees Properly Supported Their Request for Summary Judgment.

A. The Affidavit Attached to Appellees' Motion Complied with Md. Rule 2-501.

Mr. Holder asserts that the court erred in granting summary judgment because Appellees failed to include an affidavit made "under personal knowledge that sets forth facts that are admissible into evidence," as required under Md. Rule 2-501. In support, he asserts that because the affiant, Mr. Downey, was "not the author of the emails" attached as exhibits to Appellees' motion, that he "absolutely was not competent to testify about those facts, nor did he have personal knowledge of those facts[.]" Further, Mr. Holder adds that the exhibits attached to the motion constituted hearsay evidence, and thus, that the court improperly relied upon those exhibits when granting summary judgment in favor of Appellees. In response, Appellees maintain that the affidavit was expressly made upon Mr. Downey's personal knowledge and thus, that it complied with the requirements of Md. Rule 2-501.

Md. Rule 2-501(a) provides that a motion for summary judgment shall be supported by affidavit if it is "based on facts not contained in the record." Further, the affidavit "shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit." Md. Rule 2-501(c); *see also White v. Friel*, 210 Md. 274, 280 (1956) (holding that because an affidavit must be made upon personal knowledge, that "an affidavit to the effect that an allegation is true to the best of one's knowledge and belief is not [] sufficient[.]").

Here, Mr. Holder's contention that Mr. Downey did not have personal knowledge of the matters within the affidavit or that he was not competent to testify regarding the matters therein is plainly contradicted by the record. Mr. Downey attested in the affidavit that he had "personal knowledge of the facts and circumstances set forth below, and that all such facts and circumstances are true[.]" He noted that in his position as County Attorney and Public Information Act Representative, that he "receive[s] some requests made pursuant to the Maryland Public Information Act and oversee[s] and coordinate[s] the County's responses to those requests, including a litany of requests made by [Mr. Holder], and those requests referenced by Mr. Holder in the Complaint[.]" Further, Mr. Downey "solemnly affirm[ed] under the penalties of perjury and upon personal knowledge that the contents of the foregoing [affidavit] are true." Accordingly, we are unpersuaded that the affidavit failed to establish that Mr. Downey had personal knowledge or that he was competent to testify regarding the matters therein as required by Md. Rule 2-501(c).

B. The Exhibits Attached to Appellees' Motion Adequately Supported Their Request for Summary Judgment.

Mr. Holder asserts that the County's motion, and attachments thereto, lacked detail and precision necessary to support a motion for summary judgment. Further, he asserts that the exhibits attached to Appellees' motion constituted hearsay evidence, and thus, that the judge "denied Mr. Holder his ability to attack the credibility of the hearsay evidence… when he granted summary judg[]ment[.]" Appellees respond that their

motion was supported by thirty "relevant, detailed, and dispositive exhibits[,]" and thus that summary judgment should be affirmed.

On a motion for summary judgment, "the moving party has the initial burden 'to state sufficient grounds for summary judgment and to provide support for his or her arguments by placing before the court facts that would be admissible in evidence or otherwise detailing the absence of evidence in the record to support a cause of action.'" *Matter of Carpenter*, 264 Md. App. 138, 169–70 (2024), *cert. denied*, 490 Md. 290 (2025) (quoting *Webb v. Joyce Real Estate, Inc.*, 108 Md. App. 512, 522 (1996)) (internal quotation marks and citation omitted). "However, once the movant makes [t]his showing, the burden shifts to the nonmoving party to identify with particularity the material facts that are disputed." *Id*. at 170 (cleaned up; internal emphasis removed); *see also* Md. Rule 2-501(b) (providing that a response to a motion for summary judgment shall "(1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute.").

Here, we see no support for Mr. Holder's contention that Appellees' motion lacked the detail or precision necessary to successfully move for summary judgment. Appellees filed a thirty-three-page motion for summary judgment, noting that they had either already provided responsive documents where available, offered to produce documents upon Mr. Holder's payment of a deposit, or denied requests for reasons permitted under the MPIA. In support, they attached thirty exhibits, which included an

affidavit, made upon personal knowledge, from Mr. Downey, the County Attorney. Based upon these facts, Appellees plainly set forth sufficient grounds for summary judgment.

Nor are we persuaded that Appellees improperly relied upon hearsay evidence in support of their motion. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). It is not admissible "[e]xcept as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes[.]" Md. Rule 5-802.

There are several exceptions to the rule against hearsay evidence, including the public records and reports exception. *See, e.g.,* Md. Rule 5-803. Indeed, Md. Rule 5-803(b)(8) provides, in part, that "a memorandum, report, record, statement, or data compilation made by a public agency setting forth (i) the activities of the agency; (ii) matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report[,]" fall within the public records and reports hearsay exception. Finally, "[t]he burden rests upon the party opposing the introduction of a public record to demonstrate the existence of negative factors sufficient to overcome the presumption of reliability[.]" *In re H.R.*, 238 Md. App. 374, 406 (2018) (quoting *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581, 612 (1985)).

Here, the exhibits challenged were admissible under the public records exception. They contained statements made by Appellees (or their counsel) in response to Mr. Holder's MPIA requests. Accordingly, they were statements setting forth matters

"pursuant to a duty imposed by law" (i.e., the MPIA) as expressly contemplated by the public records exception. Indeed, Mr. Holder did not dispute that the exhibits were public records before the circuit court, but contended that the "statements made in those public records" did not meet the public records exception because Mr. Downey had not attested that he had "personal knowledge that there's been a search for the sewer agreement[.]" As noted *supra*, the affidavit plainly noted that Mr. Downey had personal knowledge of the facts supporting summary judgment as required under Md. Rule 2-501. Nor did Mr. Holder demonstrate, or even allege, that the exhibits or information therein "lack[ed] trustworthiness[,]" warranting their exclusion under the public records exception. *See* Md. Rule 5-803(b)(8)(B). Accordingly, we are unpersuaded that Appellees improperly relied upon facts that would not be admissible in evidence in support of their motion for summary judgment.

II. The Circuit Court Properly Granted Summary Judgment After Concluding that Appellees Complied with the MPIA By Way of Response or Lawful Exception.

A. The Civil War Rail Trail Request and the Maugansville Request: Appellees Complied with the MPIA by Offering to Produce the Documents Following Payment of a Deposit For Substantial Costs Associated with the Requests.

"The Public Information Act grants the public the right to inspect public records in a way that favors public access." *Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 265 (2014). Further, the MPIA provides that an agency "may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection." GP 4-206(c). However, an agency

> may charge an applicant a reasonable fee for: (i) the search for, preparation of, and reproduction of a public record prepared, on request of the applicant, in a customized format; and (ii) the actual costs of the search for, preparation of, and reproduction of a public record in standard format, including media and mechanical processing costs.

GP § 4-206(b)(1); *see also Action Comm. for Transit, Inc. v. Town of Chevy Chase*, 229 Md. App. 540, 543–44 (2016) (noting that the MPIA "permits government agencies to charge a reasonable fee for expenses incurred in the course of responding to a request to inspect public records."). Further, as the Maryland Supreme Court has noted, "agencies sometimes require pre-payment of fees or a commitment to pay fees when the cost of processing a PIA request is likely to be substantial." *Glass v. Anne Arundel Cnty.*, 453 Md. 201, 212–13 (2017). Finally, agencies may—but are not required to—waive fees as provided in GP § 4-206(e).

Here, in both the Maugansville Request and the Civil War Rail Trail Request, the County noted that the documents responsive to the request were extensive and accordingly, requested an advanced deposit due to the substantial nature of the request. Indeed, in the Maugansville Request, the County noted that it was "in possession of boxes relating to fifteen [] projects" responsive to the request and that it estimated "it will take two County employees 2.5 hours [to] search through the boxes for each project and locate the potentially responsive records[.]" Accordingly, the County requested a deposit, as expressly contemplated in *Glass*.[4]

[4] Mr. Holder does not challenge the County's denial of his request for a fee waiver associated with the Maugansville Request. We note that the record reflects that after the parties appeared before the circuit court on the County's motion for summary judgment, (continued)

Further, in the Civil War Rail Trail Request, the County noted that "there are thousands of responsive documents" and accordingly, requested a deposit for the County to "continue to work on locating and copying the responsive documents." Alternatively, Mr. Holder was given the option to "narrow the request so that it is not so voluminous." In response, Mr. Holder requested a list or a screenshot of documents responsive to his request, which the County declined on the basis that it was not required to create a new record under GP § 4-205(c)(4). *See* GP § 4-205(c)(4)(iii) (noting that a custodian is not required to "create, compile, or program a new public record" in response to an MPIA request).

On appeal, Mr. Holder asserts that the County's position that his request sought creation of a new record was "in direct conflict of the teachings of *Comptroller of Treasury v. Immanuel*" and that he was "entitled to take a photograph" of the information requested under GP § 4-205(b). We disagree. In *Immanuel*, we noted that information requested from the agency in that case did not require the agency to create a new record specifically because "[a]ccording to the [agency's] own witness, the [agency] gathers and maintains the information Mr. Immanuel has requested in the normal course and stores that information in a database from which the information can be (and is, for a price) extracted, sorted, and produced." *Comptroller of Treasury v. Immanuel*, 216 Md. App. at

the Public Information Act Compliance Board ("PIACB") determined that the fee was not reasonable and reduced it to $758.16. Nonetheless, neither the PIACB opinion, nor any authority cited by Mr. Holder, stands for the proposition that the County violated the MPIA by requesting Mr. Holder pay a deposit due to the substantial nature of the request, and we are not aware of any.

267. Here, there is no evidence that the County "gathers and maintains" the list or screenshot requested by Mr. Holder "in the normal course" as was the case in *Immanuel*. *See id*.

Nor are we persuaded that GP § 4-205(b) provides that Mr. Holder was entitled to the list or screenshot requested regarding the Civil War Rail Trail Request. That provision provides that if requested, an agency will provide a "copy, printout, or photograph of the public record" or "access to the public record to make the copy, printout, or photograph." *Id*. However, "public record" is defined as "the original or any copy of any documentary material that: (i) is made by a unit or an instrumentality of the State or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business[.]" GP § 4-101(k)(1)(i). Here, there is no support for Mr. Holder's contention that his requested list or screenshot constituted "documentary material" or that it was material "made . . . or received by" the County. *See id*. Instead, as noted by the County and undisputed by Mr. Holder, the nature of the document(s) requested "would have to be independently created to aid him in narrowing the scope of his MPIA request."

B. The Zip File Request: The County Complied with the MPIA by Providing the Zip File.

As noted *supra*, on November 3, 2022, Mr. Holder requested a zip file containing several documents, and, on November 29, 2022, the County provided the zip file to Mr. Holder for the "second or third time." At the hearing, Mr. Holder conceded that he had

previously received the zip file documents in paper form but asserted that the new request was for the documents in an electronic format:

> THE COURT: Well[,] you've been provided that [the zip file] though, haven't you?
>
> . . .
>
> [MR. HOLDER]: . . . So they provided me paper copies, PDFs of what was in these files, but I asked for it in a searchable and electronic format.

On appeal, Mr. Holder does not assert that the County has failed to provide the actual zip file. Instead, he takes issue with the fact that the County has not "forward[ed] the email from the recipient or senders [sic] email account with . . . all the metadata in tact [sic][.]" As an initial matter, we note that Mr. Holder's suggestion that the County was required to "forward [an] email" is distinct from the actual Zip File Request, which sought "the [zip file] record as it was provided in the email[.]" In any event, we note that the MPIA provides that agencies provide documents, where possible, in a "searchable and analyzable electronic format[.]" GP § 4-205(c). It does not require agencies to "forward" specific internal emails directly "from the recipient or sender[']s email account[.]" Mr. Holder provides no support for his contention that he was entitled to production of any documents in this particular manner, and we are not aware of any. In sum, the County complied with the Zip File Request when it produced the zip file to Mr. Holder, in an electronic and analyzable electronic format, on November 29, 2022.

C. The FBI Communications Request: The County Complied with the MPIA by Noting Lawful Exceptions to the Request.

As noted *supra*, the County denied Mr. Holder's request for production of documents relating to a cybersecurity breach in Washington County, citing three lawful

exceptions: (1) an active law enforcement investigation pursuant to GP § 4-351(a)(1); (2) that the request sought information about the security of the County's information systems pursuant to GP § 4-338; and (3) that production of the requested documents would be contrary to the public interest pursuant to GP § 4-343.

On appeal, Mr. Holder asserts that the County unlawfully denied his request pursuant to the law enforcement investigation exception under GP § 4-351(a)(1), asserting that producing the documents requested would "not prejudice or interfere with any investigation." However, at the summary judgment hearing, the County disagreed, specifically noting that the "investigation is still ongoing" and that the records "are not properly disclosable at this time." Mr. Holder acknowledged that there was an ongoing investigation. His contention that his MPIA request would not prejudice or interfere with that investigation does not further his entitlement to the information he requested. Accordingly, because of the ongoing investigation regarding the security breach, the records were properly denied due to the MPIA's law enforcement investigation exception.[5]

[5] Mr. Holder attaches documents responsive to the FBI Communications Request, produced by the County subsequent to the circuit court's grant of summary judgment, to his appellate brief, and asserts that they prove that documents were unlawfully withheld. However, those documents are not part of the record, and we decline to consider them. *See Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 200 (2008).

D. The Permanent Records Request: The County Complied with the MPIA by Response Noting that It Had No Documents Responsive to the Request.

As noted *infra*, Mr. Holder requested documents "relating to the destruction of 'Permanent Records' . . . specifically in reference to the destruction of the 1988-1991 agreement(s) between 'Washington County and sub division / town for water and sewerage services.'" The County responded that it had no documents responsive to the request and added that, as it stated previously, "the County is not in possession of any 'agreement between "Washington County and sub division/town for water and sewerage services[.]"'" Mr. Holder thereafter sought "[a]ny and all amendments provided to the Md. Dept of General services of county records retention scheduled C882 or C1068 (previously C772) [sic]." The County responded that it had no responsive records and provided a link for information regarding revisions to retention schedules.

The extent of Mr. Holder's appellate argument on this issue is that "[t]he County alleged that it does not possess the Sanitary District SD-4-1 Keedysville/Sharpsburg - inter-municipal sewer agreement, but did not support its allegations by affidavit" and that he "intends to prove that the County's search for this record was not reasonable[.]" However, as we have already noted, Appellees' motion was properly supported by affidavit as required by Md. Rule 2-501. Moreover, Mr. Holder's unsupported assertion that he "intends to prove" that the search regarding the Permanent Records was not reasonable is not sufficient to show that summary judgment was improperly granted. To survive a motion for summary judgment, a party "must do more than simply show there is some metaphysical doubt as to the material facts." *Beatty*, 330 Md. at 738 (cleaned up);

see also Abell Found. v. Balt. Dev. Corp., 262 Md. App. 657, 716 (2024) (where appellant "did not generate a factual dispute as to whether [appellee] actually possessed the documents that [appellant] says the [appellee] withheld, the circuit court did not err in entering summary judgment in the [appellee's] favor.").

In sum, we see no violation of the MPIA under the facts before us. The circuit court properly granted summary judgment in favor of the County.

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