Circuit Court for Anne Arundel County
Case No. C-02-CV-14-000205

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 918

September Term, 2015

GARY GLASS

v.

ANNE ARUNDEL COUNTY, *et al*.

Eyler, Deborah S.,
Leahy,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 18, 2018

This appeal follows a series of cases filed by Appellant Gary Glass against Anne Arundel County and several of its employees pursuant to the Maryland Public Information Act ("MPIA"), Maryland Code (2014), General Provisions Article ("GP"), § 4-101 *et seq.* (formerly codified at Maryland Code (1984, 2009 Repl. Vol., 2013 Supp.), State Government Article ("SG"), § 10-611 *et seq*).[1] A September 4, 2010, traffic stop, during which Officer Mark Collier, an off-duty police officer with the Anne Arundel County Police Department (the "Department"), issued a traffic citation to Mr. Glass, set off a tsunami of litigation.[2] Convinced the officer had no basis to stop him, Mr. Glass initiated an investigation into Officer Collier's conduct that the Department ultimately determined to be non-sustained. Mr. Glass then initiated a wave of records requests[3] followed by

[1] Effective October 1, 2014, the MPIA was recodified as Title 4 of the General Provisions Article of the Maryland Code. *See* GP § 4-101 *et seq*. The recodification reorganized the MPIA extensively but did not substantively change the language. *See* 2014 Md. Laws, ch. 94 (H.B. 270) (indicating through comments that the recodification of the MPIA under House Bill 270 resulted in style changes only); s*ee also Am. Civil Liberties Union Found. of Md. v. Leopold*, 223 Md. App. 97, 103 n.3 (2015). Although the MPIA requests at issue in this case were made just prior to the MPIA's reorganization, one of the two denials issued by the County occurred after the new statute became effective, and the parties' subsequent filings below and on appeal refer primarily to the reorganized statute. For consistency, therefore, we shall cite to the 2014 statute and provide reference to the prior codification where necessary.

[2] Following oral argument before this Court, we granted Mr. Glass' motion to stay consideration of the underlying appeal pending the Court of Appeals' decision in a parallel case between these parties that arose from the same facts and involved similar legal issues. *See Glass v. Anne Arundel Cty.*, 453 Md. 201 (2017) [hereinafter *Glass II*]. Our order directed that the stay would remain in place until the parties notified this Court. On July 5, 2018, on a motion by Mr. Glass, this Court lifted the stay.

[3] The County asserts that Mr. Glass filed complaints with the Attorney Grievance Commission against the assistant state's attorney who prosecuted the traffic citation in the district court as well as the assistant county attorney who filed motions in that case to quash

state and federal lawsuits.[4] This specific action concerns a set of MPIA requests that seek disclosure of nearly 10 years' worth of the Department's internal affairs ("IA")

subpoenas issued to County officials. Mr. Glass filed a separate complaint with the Judicial Disabilities Commission against the judge who presided over the traffic citation trial. Additionally, in *Glass II*, the Court of Appeals observed that Mr. Glass commenced federal litigation against the County and the officer involved. 453 Md. at 215 n.15 (2017) (citing *Glass v. Anne Arundel Cty.*, 673 Fed. App'x 313, 2017 WL 203379 (4th Cir. 2017) (dismissing Mr. Glass' appeal of the trial court's award of judgment as a matter of law in favor of the officer); *Glass v. Anne Arundel Cty.*, 38 F. Supp. 3d 705 (D. Md. 2014) (granting partial summary judgment in favor of the officer with respect to Mr. Glass's claims under 18 U.S.C. § 1983)).

[4] In addition to the cases cited so far, the record shows that Mr. Glass also filed the following cases:

1. *Glass v. Anne Arundel Cty., Teare, Hodgson & Police Dep't*, 02-C-11-161016 (filed in the Circuit Court for Anne Arundel County on May 4, 2011; disposed on October 23, 2013).
2. *Glass v. Collier, Anne Arundel Cty., Teare, Davis, Ryder, Fraser, Gilmer & Barcenas*, 1:2012-cv-01901-WDQ (filed on June 23, 2012 in the U.S. District Court for the District of Maryland; disposed of by U.S. Court of Appeals for the Fourth Circuit on March 1, 2018).
3. *Glass v. Collier*, 02-C-11-164173 (filed in the Circuit Court for Anne Arundel County on September 16, 2011; disposed on October 24, 2011).
4. *Glass v. Anne Arundel Cty., and Ryder*, 02-C-12-170607 (filed in the Circuit Court for Anne Arundel County on June 19, 2012; disposed on September 12, 2017).
5. *Glass v. State's Atty's Office, Leitess, Wes, Roessler & Church*, 02-C-14-189953 (filed in the Circuit Court for Anne Arundel County on August 15, 2014; petition for certiorari to the Court of Appeals denied on June 21, 2018).
6. *Glass v. Anne Arundel Cty. Bd. of Educ., Plymer, Ryder & John Does*, 02-C-14-190976 (filed in the Circuit Court for Anne Arundel County on September 25, 2014; disposed on February 15, 2018).
7. *Glass v. Anne Arundel Cty., Ryder, Plymer, Duden & John Does*, 02-C-14-191082 (filed in the Circuit Court for Anne Arundel County on October 10, 2014; disposed on January 5, 2018).
8. *Glass v. Anne Arundel Cty. & Napolitano*, C-02-CV-15-002197 (filed in the Circuit Court for Anne Arundel County on July 7, 2015; disposed on September 19, 2017).

investigation reports ("IA reports")[5] from the Office of Professional Standards. In total, there were 748 records responsive to Mr. Glass' request.

Following the denial of his MPIA requests, Mr. Glass sued Anne Arundel County; Christine Ryder, the police records manager; and Captain Ross Passman, the commander of the Department's Office of Professional Standards (collectively, the "County") in the Circuit Court for Anne Arundel County. He asked the court to enter a declaratory judgment, compel disclosure of the documents requested, and award damages. The County filed a motion for summary judgment. Following a hearing, the circuit court granted the County's motion for summary judgment and denied Mr. Glass's motions. Mr. Glass appealed, presenting two questions for our review, which we condense as follows: Did the circuit court err by failing to order a review, redaction, and severing of the IA reports?[6]

We hold that the County failed to satisfy its burden of demonstrating that the disclosable information in the IA reports was not severable from exempt information in those reports. We remand the case so that the circuit court can exercise its discretion to

[5] Specifically, Mr. Glass sought IA reports completed pursuant to the Department's Complaint Reception and Investigation Written Directive, Index Code 303.2, section V (August 9, 2013), the format of which we outline later in this opinion.

[6] Mr. Glass stated this as two questions:

> I. "Did the circuit court commit legal error by failing to recognize and to exercise its discretion to order redaction and severing of the IAD reports?"
>
> II. "Did the circuit court abuse its discretion when it refused to issue an injunctive order to require that Appellees review the IAD reports for a determination of severability?"

determine whether any information in the IA reports is severable and should be disclosed to Mr. Glass.

BACKGROUND

A. Mr. Glass' Records Requests

In August and September 2014, Mr. Glass submitted a series of requests for records to the Department and the Office of the County Executive under the MPIA. As mentioned above, these were not the first requests that Mr. Glass made to the County for the Department's records. Mr. Glass appealed two related denials of his MPIA requests: (1) a request for IA files relating to Officer Collier, the officer who initiated the traffic stop and issued him a citation, *Glass v. Anne Arundel Cty., et al.*, No. 2306, September Term 2011 (filed May 28, 2013) (unreported) [hereinafter *Glass I*]; and (2) a request for IA files relating to himself, Gary A. Glass. *Glass v. Anne Arundel Cty.*, 453 Md. 201 (2017), *aff'ing*, No. 185, September Term 2015 (filed Mar. 9, 2016) [hereinafter *Glass II*].[7] In *Glass I*, this Court upheld the circuit court's grant of summary judgment to the County regarding Officer Collier's IA records, reasoning that those records constituted personnel records and were exempt from MPIA disclosure. Slip Op. at 7, 17. *Glass II* upheld the denial of Department records relating to Mr. Glass. 453 Md. at 207, 231. In May 2017, the Court of Appeals ruled, *inter alia*, that there was no indication the County would have

[7] Since filing the appeal *sub judice*, Mr. Glass has had two other appeals relating to his MPIA requests come and go from this Court. In *Glass v. Anne Arundel County*, No. 1135, September Term 2016, Mr. Glass voluntarily dismissed his appeal on February 14, 2018, and on February 18, 2018, this Court dismissed Mr. Glass's appeal for his failure to file the requisite transcript in *Glass v. Office of the State's Attorney of Anne Arundel County*, No. 481, September Term 2016, *cert. filed*, Pet. No. 60, September Term 2018.

any records pertaining to Mr. Glass other than those in Officer Collier's IA File and that those records retain their status as the personnel record of an individual protected under GP § 4-311 despite Mr. Glass' re-categorization of them as records relating to himself. *Id.* at 243-46.

While Mr. Glass' appeals of those respective denials made their way through the Maryland judiciary, Mr. Glass broadened the scope of his inquiry. Apparently growing "gravely concerned that [the] County government ha[d] not instituted adequate systems, policies and practices to protect the public from misconduct and illegal actions by personnel in the . . . Department," the stated goal of Mr. Glass' 2014 requests was to reveal how personnel changes within Department leadership over the prior decade affected IA investigations. He directed these requests—those at issue on this appeal—"to [the] County government as a whole, and not [any] particular offices." He submitted two requests on August 5, 2014 ("August Requests"). The first sought *all* Department IA reports from 2009 to 2011 in order "to improve the public understanding and discourse" about how the County's systems, policies, and practices changed "following the appointment of Lt. James Scott Davis as commander of [IA] and the public accusations against John Leopold and the Police Department[.]" And the second sought *all* Department IA reports from 2012 to 2013 "to improve the public understanding and discourse about the County's systems, policies and practices and how those changed following the indictment of John Leopold and the resignation of Chief Teare[.]"

He then submitted two more requests: one on September 10, 2014, and one on September 11 (collectively, the "September Requests"). The September 10 Request

sought *all* Department IA reports from 2013 to present and the September 11 Request sought *all* Department IA reports from 2005 to 2008. These two requests purportedly seek to improve the same public understanding and discourse mentioned in the August Requests, but this time with respect to changes made "following the resignation of Chief Tolliver and appointment of Chief Davis[.]" When combined, the requests covered 748 IA reports created over a period of nearly ten years—from January 1, 2005 through September 10, 2014.[8]

The requests invited redaction of all names and identifying information of County personnel to the extent required by law. For any records that the County did not disclose, Mr. Glass requested a *Vaughn* index[9] identifying the records withheld catalogued by date, sender and all recipients, and a sufficient explanation to make the County's claim of exemption understandable. Because, according to Mr. Glass, disclosure of the information requested would be in the public interest, he requested a waiver of all fees pursuant to GP § 4-206(e).

[8] Mr. Glass's other requests sought records concerning a citation issued to a minor, records concerning complaints against certain named police officers, and records concerning complaints against a specific volunteer firefighter.

[9] As the Court of Appeals explained in *Glass II*, "a 'Vaughn index' is a list of documents in the government's possession, setting forth the date, author, general subject matter, and claim of privilege for each document claimed to be exempt from disclosure. The name is derived from *Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973)." *Glass II*, 453 Md. at 213 n.11 (internal quotations, citations, and alterations omitted).

B. The County's Denial Letters

The County's Office of Law responded to Mr. Glass' requests for records in two separate letters on behalf of the custodian of records for the County Executive's Office and the Department. In the first letter, dated September 5, 2014, the County denied the August Requests. The County asserted that it was required to deny inspection of the records under the MPIA pursuant to: (1) GP § 4-311 because they constituted personnel records; (2) GP § 4-301 because they were confidential by law under the Law Enforcement Officers' Bill of Rights; (3) GP § 4-103(b) because disclosure would have resulted in an unwarranted invasion of privacy to the person in interest; (4) GP § 4-351 because the records constituted investigatory records; and (5) GP § 4-344 because the records constituted agency memoranda not available to a private party in litigation with the County.

The County's auxiliary objection was that even if all the affected police officers consented to disclosure of the records to Mr. Glass, the request was overly broad, burdensome, and costly. In the letter, the County estimated there were approximately 312 responsive records, and that "[b]ased on prior experience redacting one such record, it takes the redactor approximately 7 hours to completely redact a single internal investigations file and remove each and every piece of identifiable information from it." At $20.00 per hour (pursuant to GP § 4-206's requirement that fees be reasonable), the County estimated that the "fee required to perform this overly burdensome task would be $43,620.00."

In the second letter, dated October 10, 2014, the County denied the September Requests based on five exemptions. As it did in its September 5 denial letter, the County claimed it must deny inspection under GP § 4-103(b) for invasion of privacy; GP § 4-351

for investigatory records; GP § 4-311 for personnel records; and GP § 4-344 for agency memoranda. But this letter also asserted that the records were exempt pursuant to GP § 4-301(2)(iv) as contrary to a court order because discovery of the same records was temporarily stayed by court order in a separate action filed by Mr. Glass against the County in federal court. The County estimated that, coupled with Mr. Glass' August Requests, approximately 907 reports were responsive.[10] At $20.00 per hour and approximately one hour to review and redact each document, the total estimated cost for review and redaction for Mr. Glass' requests grew to be $18,100.00, which the County required Mr. Glass to pay before it would begin the work.

C. The Complaint

On October 27, 2014, Mr. Glass filed a complaint against the County in the Circuit Court for Anne Arundel County seeking declaratory judgment, injunctive relief, damages, and to "compel the disclosure of records willfully and wrongfully withheld[.]" It charged that "[d]espite the public interest in the records that [Mr. Glass] requested—or because of it—[the County] failed to conduct legally adequate searches for all of the public records that [Mr. Glass] requested . . . then made invalid claims of exemptions from disclosure that

[10] According to the second denial, the County's estimate to review and redact each report dropped from 7 hours to 1 hour, resulting in an estimate that was less than half the cost to review and redact nearly three times as many records as was estimated in the first denial. The parties do not address or explain this discrepancy in their briefing. We note, however, that the first denial letter initially refers to "312 responsive records," but then refers to "files" when explaining that it takes seven hours to review and redact a "single file . . . [and] to do this for 312 files would take nearly 2,184 hours." Similarly, the County's response on January 30, 2015, to Mr. Glass's interrogatories explains that it takes seven hours to redact an IA file, while it takes one hour to redact a single IA report.

lack[ed] factual or legal basis." The complaint alleged nine violations of the MPIA: (1) failure to search for all responsive records; (2) invalid claims of disclosure exemption; (3) failure to state reasons for denial; (4) failure to redact, sever, and disclose nonexempt materials; (5) failure to petition the court for permission to continue denying inspection; (6) demanding payment of an unreasonable fee; (7) engaging in a pattern and practice of violating the MPIA; (8) willful and knowing violation of the MPIA; and (9) engaging in arbitrary and capricious actions.

Following a motion to dismiss by the County, Mr. Glass amended his complaint to supply more facts to support his contentions. The circuit court denied the County's motion to dismiss on February 10, 2015.

D. Discovery

On November 10, 2014, Mr. Glass mailed interrogatories to the County. Ms. Ryder, the records manager for the Department, responded on January 15, 2015, affirming that she did not search for the records requested by Mr. Glass because she does not have access to IA files. Capt. Passman and the Supervising County Attorney, on behalf of Anne Arundel County, both submitted answers to the interrogatories on January 30, 2015. The Supervising County Attorney indicated, *inter alia*, that to identify the requested records, Capt. Passman "searched the secure[] computer database in the [IA] Division of the [] Department." The Supervising County Attorney also attached a list of "903 cases in the database" for Mr. Glass' requested dates. In his response, Capt. Passman described, *inter alia*, that: (1) to search for Mr. Glass's requested records he "searched the secure[] computer database in the [IA] division computer system (called 'IA Pro') and located the

list of cases opened and remaining in existence" for the requested time period and (2) the records were denied based on the Office of Professional Standard's understanding of how the law applies "to the files generally."

E. Pre-Trial Motions

Ten days later, on April 13, 2015, Mr. Glass filed a motion for partial summary judgment on counts two (invalid claims of disclosure) and four (failure to redact, sever, and disclose) of the complaint. Relying on the Court of Appeals' decision in *Maryland Department of State Police v. Maryland State Conference of NAACP Branches*, 430 Md. 179 (2013), Mr. Glass argued that, although personnel records are generally exempted by the MPIA, redacted copies of records that do not identify individual officers and witnesses are not considered personnel records. Fifteen days after that, the County filed its own motion for summary judgment, arguing that the requested records were: (1) personnel records under GP § 4-311; (2) permissibly withheld based on the Executive and deliberative process privileges under GP §§ 4-301(1) and 4-344; (3) confidential under the Law Enforcement Officer's Bill of Rights pursuant to GP § 4-301(2)(i); and (4) discretionarily withheld as records of a police investigation under GP § 4-351.

The County appended an affidavit by Capt. Passman to its motion, which declared that, after locating the 903 files in the secure database, he "believe[d] that approximately 748 contain[ed] intra-office investigative reports[]" but indicated that he was unable to say for certain "without reviewing every individual file." Reports for the other 155 complaints did not exist because the Department did not investigate them. Capt. Passman further affirmed that the reports

> contain the identities of the investigator, . . . the officer(s) who is (are) the subject of the investigation, . . . witness names, addresses, and phone numbers[,] . . . prior criminal history[,] . . . prior disciplinary action[,] . . . [as well as] the date, time, and place of the incident giving rise to the complaint, and a factual description of the incident.

He also noted that the reports "are the basis for the conclusions and recommendations made by the investigator[]" and are conducted confidentially. That confidentiality, Capt. Passman indicated, was a necessary feature of IA investigations to protect witnesses from "fear that the officer against whom a complaint is made might retaliate against them." Capt. Passman also stated that the factual material in the reports "is not readily separable from findings and conclusions." Finally, he cautioned that, because police incident reports, newspaper reports, and written notices of intent to sue are available for public inspection, "even in redacted form, Mr. Glass could cross-reference an investigative report" to discern an officer's identity.

In addition to Capt. Passman's affidavit, the County attached a "Police Code Index," a Department written directive that set out the policies and procedures for filing, investigating, and disposing of IA complaints. It set out seven classifications of findings: (1) **exonerated**; (2) **policy failure**, meaning the employee acted consistent with policy but the complainant still suffered harm; (3) **suspended** because information critical to the investigation was unavailable at the time; (4) **sustained**; (5) **non sustained**, meaning there was insufficient information to prove or disprove the allegation; (6) **unfounded**, meaning that the allegation did not occur; or (7) **withdrawn** by the complainant**.** The County noted, however, that if the Police Code Index was insufficient, the circuit court could conduct an *in camera* review to satisfy itself that the IA reports were exempt.

On May 13, 2015, Mr. Glass filed a motion asking the circuit court to order the creation of a *Vaughan* index or conduct an *in camera* review of the withheld documents. The County opposed this motion. Reiterating its arguments from its motion for summary judgment, the County further argued that a *Vaughn* index was unnecessary because Capt. Passman had already adequately addressed the reasons for non-disclosure and there was no reason to review each report individually because they were all executive summaries in the same format:

> To
> From
> Subject
> Complainant
> Accused
> Complaint
> Date of Incident
> Witnesses
> Synopsis
> Investigation (including summaries of witness statements)
> Investigative Findings
> Conclusion and Recommendations

The only differences between reports, the County posited, "is the incident and the parties/investigators involved." Consequently, the County suggested that court could simply "review a sample report as representative of all 748 and determine from one whether the exemptions asserted apply to all."

F. Motions Hearing

The circuit court held a hearing on the pre-trial motions on July 6, 2015. At the conclusion of the parties' arguments, Mr. Glass asserted that a *Vaughn* index was essential to his ability to litigate the case but submitted that the County's proposal of an *in camera*

review "[wa]s not a reasonable or necessary thing to do given the volume of records at issue[.]" The County reiterated that it was "whimsical" to suggest it should go through 748 reports when it already knew each contained the same substance and again suggested that "a sample report would let the Court know all it needs to know about all 748 of them." In summation, the County relied on the Court of Appeals' then-recent decision in *Maryland Department of State Police v. Dashiell*, 443 Md. 435, 463 n.20 (2015), and argued that the record before the court made clear that no amount of redaction could change the character of the documents as reflecting agency deliberative process.

The court issued its ruling from the bench. It granted the County's motion for summary judgment and denied Mr. Glass's motions for partial summary judgment, "especially for a Vaughn index, or for any type of in camera review." The court found that the records sought were personnel records and that, based on Capt. Passman's affidavit, it was not possible to redact the reports satisfactorily to sanitize them for public disclosure. In addition to finding the IA reports to be personnel records, the court stated,

> the County makes a very good point in terms of the police investigative process, the deliberative process where they have the discretion to deny this information. The reports are confidential, they are submitted directly to the police, may compromise the investigations, reveal witnesses, I just don't see how you get around that.

Finally, the court noted that it believed Capt. Passman's assertion that Mr. Glass has demonstrated that he could identify the officers involved in an IA report "through media reports and claims that he obtained from the Office of Law in a separate request[.]" Mr.

Glass noted his appeal to this Court.[11]

DISCUSSION

I.

A. The Parties' Contentions

Mr. Glass argues, broadly, that the County failed to carry its burden of proving that the non-privileged portions of the IA reports could not be severed from the privileged portions and, consequently, that the circuit court erred by failing to order the County to create a *Vaughn* index of the files or conduct an *in camera* review of the files to resolve the issue of severability. In response, the County maintains that several other MPIA exceptions apply to the IA reports and that Capt. Passman's affidavit, the Department general orders form, and the Police Index Code that it provided to the circuit court

[11] The circuit court entered an order granting the County's motion for summary judgment and denying Mr. Glass's partial motion for summary judgment following the July 6, 2015 hearing. The order did not adjudicate all claims against all parties and was not a final appealable judgment, however, because the order specified that the County's motion was granted "as to the 10 year Police Internal Affairs Investigation Reports." *See* Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 12-301 (authorizing appeals only "from a *final judgment* entered in a civil or criminal case by a circuit court" (emphasis added)). Nonetheless, Mr. Glass filed a notice of appeal to this Court on July 9, 2015 as well as an unopposed motion to dismiss all remaining claims (relating to requests for records involving specific officers). On August 6, 2015, the circuit court granted Mr. Glass's motion to dismiss and certified that, in light of the dismissal and its previous July 6 order, the August 6 order (entered on August 15) was its final judgment disposing of the entire action. The County then filed a motion to dismiss in this Court, arguing that Mr. Glass noted his appeal before the circuit court entered final judgment on August 15, 2015. While the County's factual characterization is correct, when "a final judgment [is] entered by the lower court after the notice of appeal was filed," this Court may treat "the notice of appeal as if filed on the same day, but after, the entry of judgement . . . and proceed with the appeal." Md. Rule 8-602(e). As a result, this Court denied the County's motion to dismiss on October 21, 2015.

established that the exempt information could not be reasonably severed from the factual information contained in the IA reports.

B. Standard of Review

The Court of Appeals recently enunciated the appropriate standard of review of the grant of summary judgment in an MPIA case in *Amster v. Baker*, 453 Md. 68, 75 (2017). Adopting the reasoning in *Animal Legal Defense Fund v. U.S. Food & Drug Administration*, 836 F.3d 987, 989-90 (9th Cir. 2016), the Court explained that because "'summary judgment may be granted only when there are no disputed issues of material fact and, thus no factfinding by the [lower] court[,]'" we review a trial court's grant of summary judgment without deference. *Amster*, 453 Md. at 75 (quoting *Animal Legal Def. Fund*, 836 F.3d at 989-90); *see also Glass II*, 453 Md. at 231. Although the trial court has discretion to determine whether to conduct an *in camera* review or employ other tools at its disposal to review documents in MPIA cases, *see Cranford v. Montgomery Cty.*, 300 Md. 759, 791 (1984) (stating that the decision to conduct an *in camera* inspection of documents is within the trial court's discretion), we review *de novo* its conclusion that the government satisfied its burden of non-production. *See, e.g.*, *Ely v. F.B.I.*, 781 F.2d 1487, 1491 (11th Cir. 1986) (holding that, although the trial court has discretion to order a *Vaughn* index or conduct an *in camera* review, "the obligation to find, by whichever means, an adequate factual basis to support the claim of privilege is *not* discretionary. It is a *sine qua non*." (emphasis in original) (citation and footnote omitted)).

C. The MPIA

The MPIA 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(a). It reflects the legislative intent to ensure that Maryland citizens "be accorded wide-ranging access to public information concerning the operation of their government." *NAACP Branches*, 430 Md. at 190 (citation and internal quotation marks omitted). Thus, "[t]he well-established general principles governing the interpretation and application of the [MPIA] create a public policy and a general presumption in favor of disclosure of government public documents." *Id*. (citation and internal quotation marks omitted).

Although the MPIA favors public access to information, it includes exemptions to this general rule. As the Court of Appeals set out in *Glass II*, these exceptions fit into four general categories: (1) disclosure controlled by other law; (2) mandatory exceptions; (3) discretionary exceptions; and (4) exceptions by court order to protect the public interest from substantial injury. 453 Md. at 209-10. "Even when one or more of the statutory exemptions from disclosure is clearly involved, the MPIA's strong bias in favor of disclosure dictates that the exemptions from disclosure must be applied narrowly." *Blythe v. State*, 161 Md. App. 492, 519 (2005). In *Office of the Governor v. Washington Post Co.*, the Court of Appeals explained:

> [T]he public agency involved bears the burden in sustaining its denial of the inspection of public records. An in camera inspection by the trial court, while not always necessary, may in some cases be needed in order to make a responsible determination on claims of exemptions. In addition, if parts of a record are exempt but other parts can be revealed, the Act favors severability.

360 Md. 520, 545 (2000) (internal citations and quotations omitted).

Four of the MPIA's exemptions are relevant in this case. First, GP § 4-311(a) mandates that "a custodian shall deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information." Second, GP § 4-301(a)(1) requires that "[a] custodian shall deny inspection of a public record or any part of a public record if . . . by law, the public record is privileged or confidential[.]" Third, GP § 4-344 permits a custodian to "deny inspection of 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." And finally, GP § 4-351(a)(1) permits a custodian to deny inspection of "records of investigations conducted by the Attorney General, a State's Attorney, a municipal or county attorney, a police department, or a sheriff," subject to subsection (b), which mandates disclosure to interested parties and is not relevant here.

D. Personnel Records & Severability

We begin our analysis with whether the IA reports constitute specifically identifiable "personnel records"[12] because GP § 4-304 requires that "a custodian shall deny inspection" of such records, and the custodian's discretionary authority to deny disclosure would not arise. *See Dashiell, supra*, 443 Md. at 463 n.20 (citation omitted).

Mr. Glass argues that, consistent with the Court of Appeals' decisions in *Dashiell* and *NAACP Branches*, he crafted the MPIA requests at issue here to avoid violating the

[12] Subject to two exceptions inapplicable here, GP § 4-311 mandates that "a custodian shall deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information."

substance of the personnel-records exemption by requesting a large, redacted, and aggregated dataset of IA reports rather than that of a specifically identified individual like those at issue in *Dashiell*. Mr. Glass maintains that the portions of the IA reports that inform the public about institutional policies, practices, and trends of the Department relative to IA investigations are not subject to the personnel records exemption and must be disclosed.

The County responds that Mr. Glass failed to carry his burden at the summary judgment stage because he did not produce any evidence that the County withheld documents improperly. The County asserts that the Court of Appeals' decision in *NAACP Branches* is inapposite because there is "clear and unrebutted" evidence that "Mr. Glass sought and intended to circumvent the mandatory personnel records exemption in the MPIA by cross-referencing incidents described in redacted [IA] investigatory reports with known incidents and officers' identities derived from other sources." According to the County, Mr. Glass' purported ability and willingness to cross-reference the redacted IA reports with information from other public sources means that redaction of the IA reports "would likely not remove the substance of the personnel records exemption." Thus, the records' custodian had no assurance that redaction would protect private personnel information and was right to err on the side of caution and deny Mr. Glass' request in its entirety.

The parties here do not dispute that the IA reports in question contain information exempt from disclosure under the personnel-records exemption to the MPIA.[13] The issue is whether the exempt personnel information in the IA reports could have been redacted to render the remaining information disclosable. A recent line of cases from the Court of Appeals explain how and when the government may redact and disclose IA reports.

In *NAACP Branches*, the Court of Appeals considered whether a set of files the State Police compiled while investigating complaints of racial profiling by its officers could constitute personnel records if all the personally identifiable information was redacted from the files. 430 Md. at 194. The NAACP had requested from the Maryland State Police any documents obtained or created "in connection with any complaint of racial profiling[] . . . including all complaints filed, all documents collected or created during the investigation of each complaint, and all documents reflecting the conclusion of each investigation." 430 Md. at 183 (internal quotation marks omitted). Additionally, the NAACP's request invited the State Police to redact any personally identifiable information in the records, assigning each officer involved a unique code to make evident whether an

[13] In *Montgomery County v. Shropshire*, the Court of Appeals ruled that IA reports into the conduct of two Montgomery County Police officers investigating an automobile accident constituted personnel records under GP § 4-311(a) and were thus not subject to disclosure under the MPIA. 420 Md. 362, 365-66 (2011). The Court noted that personnel records are "those relating to hiring, discipline, promotion, dismissal, or any matter involving an employee's status." *Id.* at 378 (citations omitted). The Court concluded that the internal investigation reports in question were in fact non-disclosable personnel records because the reports inquired into whether the officers had committed administrative rule violations that could result in disciplinary action. *Id*. at 381-83.

officer was involved in more than one complaint.[14] *Id*. at 182-84. After reviewing several of the documents *in camera*, the circuit court ordered the State Police to produce the documents with the names and identifying information redacted. *Id.* at 184-85. On appeal, a majority of this Court, sitting *en banc*, held that the investigatory files of racial profiling would not constitute personnel records even if they were unredacted; we also held that the State Police failed to raise, and thus abandoned, the issue of whether the files were exempt as investigatory files. 190 Md. App. 359, 370-75 (2010).

The Court of Appeals upheld the circuit court's order to redact the files but disagreed with this Court's rationale. 430 Md. at 193-96. Focusing on the redacted version of the files, the Court reasoned as follows: "After the names of State Police troopers, the names of complainants, and all identifying information are redacted, the records clearly do not fall within the statutory language of 'record[s] of an individual.' [GP § 4-311]. There would be no 'individual' identified in the redacted records." *Id.* at 195. Further, the Court explained, the plain language of the MPIA "authorizes redactions so that the applicant can receive portions of an exempt record which are severable and the receipt of which does not violate the substance of the exemption." *Id.*

Two years later, the Court of Appeals revisited the issue of redaction. In *Dashiell*, the plaintiff, relying on the Court of Appeals' then-recent decision in *NAACP Branches*, sought the redacted disclosure of IA records of a police officer who used a racial slur when

[14] The plaintiff in *NAACP Branches* wished to survey whether the State Police had complied with a federal court consent order requiring that the State Police ensure that its officers not rely on race when determining whether to conduct a traffic stop and search. 430 Md. at 182.

he left the plaintiff a voicemail. 443 Md. at 439-40. The Court framed the issue as "whether the disclosure should occur under the Public Information Act of internal affairs records of a specifically identified officer where the complaint against the officer was sustained and the officer was identified by the complainant in a public forum." *Id.* at 458. Distinguishing its decision in *NAACP Branches*, the Court ruled that the IA records at issue constituted personnel files because they were specific to one officer. *Id.* at 458-59. Even if redaction was possible, which the Court considered highly unlikely, the records "would be related to a specific identified individual." *Id.* Because personnel records are subject to a mandatory exception under the MPIA and redaction would be ineffective, the Court concluded that an *in camera* review was unnecessary as it could not alter the outcome. *Id.* at 460. In dicta, the Court also noted that, "[w]ere the records to be considered 'investigatory records' solely and not 'personnel records', for the purpose of argument," the records' custodian could permissibly deny disclosure to someone who was not a "person of interest" under the MPIA if the custodian believed disclosure was contrary to the public interest. *Id.* at 462-63 (citing *Mayor & City Council of Balt. v. Md. Comm. Against the Gun Ban*, 329 Md. 78, 82-83 (1993)). But because the records were personnel records, the Court explained that the custodian's discretionary authority "'cannot arise.'" *Id.* at 463 n.20 (quoting *Office of Att'y Gen. v. Gallagher*, 359 Md. 341, 354 (2000)).

Then, in *Glass II*, the Court further elucidated this point. The Court reviewed two other MPIA requests that Mr. Glass made—one in 2011 and another in 2012—concerning the same traffic stop that was the catalyst for this appeal. Mr. Glass's 2011 request sought the IA file of the officer who issued him the citation. *Glass II*, 453 Md. at 215. After

the circuit court denied that request, which this Court upheld in *Glass I*, No. 2306, September Term 2011, Mr. Glass submitted a more-broadly-worded request for files—this time requesting "[a]ny and all records of the police department . . . on Gary A. Glass without temporal limitation and without specifically requesting the IA." *Glass II*, 453 Md. at 217 (internal quotation marks and footnote omitted). Mr. Glass argued that his 2012 request "literally sought records about himself and did not specifically request an IA file, that the rationale of *NAACP Branches* controls, and that he accordingly has a right to redacted versions of any records in Officer Collier's IA File that also pertain to himself." *Id.* at 243.

Although Mr. Glass worded this request more broadly than his request in *Glass I*, the Court of Appeals concluded that, to the extent Mr. Glass' request "encompasse[s] Officer Collier's IA File, the result should be no different from the result with respect to the earlier, more specific request." *Id.* The Court reasoned that there was "no contention that any other IA File would contain documents related to Mr. Glass apart from the file created as a result of his complaints against Officer Collier[,]" and given the history of IA complaints and litigation, the origin of the records in Mr. Glass' 2012 request "would be obvious[.]" *Id.* at 244. The Court distinguished the MPIA request in *NAACP Branches* and concluded that Mr. Glass' request was more akin to the request in *Dashiell* because anything released from Officer Collier's IA File in response to a request for records relating to Gary Glass *would be* the personnel record of an individual and thus exempt under GP § 4-311. *Id.* at 244-45. In closing, the Court cautioned that its ruling "that an IA file can be withheld in its entirety, **without the need for a severability**

review—applies only when a PIA request is directed to a specifically identified IA File—that is, 'a personnel record of *an individual*.'" *Id.* at 245-46 (quoting GP § 4-311(a)) (bold emphasis added) (footnote omitted).

Returning to the case at bar, unlike Mr. Glass' MPIA requests in *Glass II* (or the request in *Dashiell*), the underlying requests were *not* directed to a specifically identified IA file, nor did they focus on any particular person or event such that production of redacted records could not conceal the identity of an individual officer.[15] Instead, Mr. Glass requested every IA report compiled over the span of nearly a decade. Thus, the MPIA's personnel-records exception—as applied in *Dashiell* and *Glass II*—which permits the County to deny an IA report *in its entirety* without a severability review, is inapplicable to Mr. Glass' broad, unspecific records request. *Cf. Glass II*, 453 Md. at 244-46; *Dashiell*, 443 Md. at 460. The County offers no legal support for its position that Mr. Glass' willingness to attempt to cross-reference redacted IA reports against other publicly-available information creates an automatic exception to disclosure—without severability review. As this Court explained in *Blythe v. State*, "the MPIA's strong bias in favor of disclosure dictates that the exemptions from disclosure must be applied narrowly." 161 Md. App. at 519. Moreover, the only exceptions to disclosure are those enumerated in the MPIA. *Id.* If anything, Mr. Glass's ability to cross-reference other public records to

[15] To the extent Mr. Glass' request *did* encompass the IA reports pertaining to Officer Collier's traffic stop of Mr. Glass, the County may still withhold those records. *See Glass II*, 453 Md. at 243 (holding that, with respect to Officer Collier's IA File, "the result should be no different from the result with respect to the earlier, more specific request."

identify personnel information within the IA reports would implicate the level of redaction necessary to disclose the reports; it would not justify a blanket denial of ten years' worth of data. Accordingly, it was error for the circuit court to grant the County's motion for summary judgment based on the personnel-records exception without first conducting a severability review.

E. The *Cranford* Burden

Our decision regarding the personnel records does not end our inquiry, however, because the County insists that the circuit court's ruling was correct based on several permissive exemptions to disclosure. The County argues that the MPIA permitted its withholding of the IA reports based on the exceptions for agency memoranda under GP § 4-344 and/or records of police investigations under GP § 3-351.[16] Mr. Glass does not

[16] The County also asserts on appeal that the circuit court's judgment was proper because the executive privilege applies to the IA reports. However, we read the circuit court's judgment to refer to the deliberative-process privilege that applies to agency memoranda and not the executive privilege. Had a person holding executive privilege invoked that privilege properly (the County's MPIA denials did not mention the executive privilege) and were that privilege to apply to the IA reports at issue here, *see Stormberg Metal Works, Inc. v. Univ. of Md.*, 382 Md. 151, 161-63 (2004) (distinguishing between the constitutionally-based executive privilege and the exemption for interagency or intra-agency letters or memoranda), the proper process was not followed.

When the government properly invokes the executive privilege, a "'presumptive privilege'" attaches and the burden shifts to the plaintiff to make a showing sufficient to overcome that presumption. *Office of the Governor v. Wash. Post Co.*, 360 Md. 520, 558, 561 (2000) (quoting *Hamilton v. Verdow*, 287 Md. 544, 563 (1980)). If the privilege does not attach, the burden remains on the government. *Id.* at 561. If it does, the plaintiff may overcome the presumption with a showing that the information sought is not privileged. If the plaintiff is successful in rebutting this presumption, the court should conduct an *in camera* review "to determine whether the material is privileged, to sever privileged from non-privileged material if severability is feasible, and to weigh the government's need for confidentiality against the litigant's need for production." *Hamilton*, 287 Md. at 567; *see also Washington Post*, 360 Md. at 562 (holding that the

contest the merits of these exceptions. Instead, he maintains that the circuit court erred by granting judgment "without reviewing the documents and without [making] specific findings on severability[.]" Mr. Glass asserts that discretionary determinations of severability and the permissive exemptions under the MPIA require a particularized justification. Specifically, when a law enforcement agency denies the inspection of all portions of IA reports, Mr. Glass contends that "the agency cannot satisfy its statutory burden to justify withholding simply by asserting that all of the records sought are exempt and not severable." Rather, he avers, the County must "produce evidence to factually support a finding that the entirety of each record is exempt and no portion is severable." According to Mr. Glass, Capt. Passman's affidavit was insufficient to justify the court's decision because it was "wholly speculative on the material question of the feasibility of severing information from the 748 IA[] reports." Based on what he refers to as Capt. Passman's "flimsy assertion that redaction is infeasible," Mr. Glass insists that the circuit court erred in denying his motion for injunctive relief or, in the alternative, a *Vaughn* index or *in camera* review.

The County concedes that it bears the burden under the MPIA to redact documents and allow inspection of any part that is reasonably severable. It argues, however, that Capt. Passman's affidavit and the appended Police Index Codes demonstrated that "most

government's "claimed exemption falls at best at the fringes or perimeter of potentially protectable records for which an *in camera* review and balancing test are necessary to assure proper vindication of the competing interests"). On remand, if the circuit court does, in fact, believe that the County properly invoked the executive privilege and that privilege attaches to the documents at issue, it should undertake the burden-shifting and balancing review process as explained in *Hamilton* and *Washington Post*.

factual information" in the IA reports was not readily severable from confidential material pertaining to the Department's deliberative processes. The County insists that because nothing varied between the IA reports other than the incidents, the names of officers, and the witnesses involved, there was no need to index or review the reports—"[t]he privileges claimed either applied to all or none of the reports." Even though the County offered the reports for an *in camera* review during the proceeding below, it argues now that Mr. Glass' argument that the circuit court should order the creation of a *Vaughn* index or conduct *in camera* review is "untenable[.]"

The Court of Appeals' decision in *Cranford v. Montgomery County* is our North Star on the issue of severability. In *Cranford*, the Court of Appeals considered whether Montgomery County, asserting various MPIA exemptions, could withhold from a local reporter certain documents related to the construction of the Montgomery County Government Center.[17] 300 Md. at 762. Montgomery County argued that the documents constituted agency memoranda, privileged attorney-client communications, and were exempt under the executive privilege. *Id.* at 765-66. Without inspecting the documents, the circuit court found that there was sufficient evidence to show that the documents "supported application of the agency memoranda privilege" and entered judgment in the County's favor. *Id*. at 768-69. This Court affirmed, holding that the question of *in*

[17] The reporter's investigation focused on the construction of the Montgomery County Government Center, which had fallen behind schedule, and its principal contractor claims against the County for additional compensation. *Cranford*, 300 Md. at 763.

camera review rests in the circuit court's discretion, and the Court of Appeals granted certiorari. *Id.* at 769-70.

The Court of Appeals began its discussion by announcing that the MPIA "requires agencies to utilize the principle of severability in responding to requests for public records." *Id.* at 774. After noting that there is often an asymmetry of information in MPIA cases between a member of the public requesting information and an agency claiming the exception, the Court explained that the MPIA requires that a record's custodian "make a careful and thoughtful examination of *each document* which fairly falls within the scope of the request in order for the custodian initially to determine whether the document or any severable portion of the document meets all of the elements of an exemption." *Id.* at 777 (emphasis added). The Court looked to case law interpreting the Freedom of Information Act ("FOIA"), the federal counterpart to the MPIA,[18] and warned that courts would "'no longer accept conclusory and generalized allegations of exemptions[.]'" *Id.* at 778 (quoting *Vaughn v. Rosen*, 484 F.2d 820, 826 (D.C. Cir. 1973)). The Court added that an agency seeking judicial approval of a claimed exemption must first "provide 'a relatively detailed analysis'" that "presents enough detail to make

[18] As this Court noted in *Blythe v. State*:

> The provisions of the MPIA are almost verbatim those of the FOIA. . . . [In fact,]"[t]he purpose of the Maryland Public Information Act . . . is virtually identical to that of the FOIA." Following from that symmetry between the two acts, the Court of Appeals further observed that "[w]here the purpose and language of a federal statute are substantially the same as that of a later state statute, interpretations of the federal statute are ordinarily persuasive."

161 Md. App. at 513 (quoting *Faulk v. State's Att'y for Harford Cty.*, 299 Md. 493, 506 (1984)).

understandable the issues involved in the claim of exemption without presenting so much detail as to compromise the privileged material[.]" *Id*. (quoting *Vaughn*, 484 F.2d at 826). It warned that "generalities and conclusory testimony that one or more exemptions apply do not satisfy the burden to explain the withholding of documents[.]" *Id*. at 781.

Turning to the privilege for agency memoranda, the Court explained that although a document might otherwise qualify for the privilege, "withholding it might serve no public interest so that it is to be produced. For example, the document may relate to agency action taken so long ago that disclosing it no longer makes any difference." *Id.* at 772. The Court rebuked the government's assertion of general public interest claims to support nondisclosure, noting that the public interest "underlies each legally recognized privilege and, if the privilege applies, it would be at best difficult to say that an agency decision to withhold was contrary to the public interest." *Id.* 776. Nor is it sufficient to simply "describe documents as being reports on matters observed and on matters perceived[,]" as this type of report "does not describe the documents as presenting predecisional advice to the decision maker." *Id.* at 786. According to the Court of Appeals, trial courts that accept generalized evidence to prove the agency memoranda exception "appl[y] the exemption too broadly." *Id.* at 781. It reasoned that "[b]ecause generalities and conclusory testimony that one or more exemptions apply do not satisfy the burden to explain the withholding of documents, the County's argument is at bottom an attempt to shift the burden of proof in violation of the [MPIA]." *Id.*; *see also Amster,* 453 Md. at 85-86 (reaffirming *Cranford,* the Court of Appeals held that a conclusory affidavit "does not carry the County's burden to justify nondisclosure.").

Ultimately, regarding the agency memoranda exemption, the Court determined that the county "failed to show what decision had to be made and by whom, or to identify what portions of which documents, if any, presented predecisional deliberative matter of a nonfactual nature." *Cranford*, 300 Md. at 791. Although Montgomery County had also asserted that privileges other than the agency memoranda exemption applied, the Court of Appeals held that the legal arguments on those issues were not sufficiently developed in the County's briefing and "suffer[ed] from the same lack of factual record underpinning" as the county's main argument. *Id.* The Court of Appeals remanded the case, deferring to the circuit court and its discretion whether to conduct an *in camera* review or use some other means to determine if the agency's claimed exemption(s) applied. *Id.*

Although *Cranford* focused mainly on the MPIA exception for agency memoranda, its principles apply equally to the investigatory-records exception. In *Blythe v. State*, Judge Moylan, writing for this Court, explained in great detail the particularized *ad hoc* showing an agency must make to justify withholding documents under the investigatory-records exception if the investigation is no longer ongoing. 161 Md. App. at 561. Judge Moylan reviewed the teachings of *Cranford* and reaffirmed that the "burden of particularization," in terms of identifying which portions of a record are exempt, falls on the government. *Id.* at 524 (citing *Cranford*, 300 Md. at 778). When the government claims that disclosing an investigatory record would be contrary to the public interest, he continued, "the custodian still bears the burdens of both 1) exploring the feasibility of severing the record into disclosable and non-disclosable parts; and 2) demonstrating, with particularity and not in purely conclusory terms, precisely why the disclosure 'would be

contrary to the public interest.'" *Id.* at 527. Although courts may permit the government to make a more conclusory showing when an investigation is ongoing, however, "[t]he right to rely on the generic justification for non-disclosure has a limited shelf life." *Id.* at 551. Once an investigation has concluded, the government may no longer simply "rely upon a generic showing that disclosure would interfere with a valid law enforcement proceeding[]" but rather must "make a particularized *ad hoc* justification for an exemption from disclosure[.]" *Id.* at 561. *See also Prince George's Cty. v. Wash. Post Co.*, 149 Md. App. 289, 333 (2003) (reasoning that, although the MPIA does not differentiate between open and closed investigations, it "might permit that distinction in determining whether inspection would be contrary to the public interest" (internal quotation marks omitted)).

In this case, the circuit court relied on Capt. Passman's affidavit, which stated, "Of the 903 files *I believe* that approximately 748 contain intra-office investigative reports, *but I cannot be positive without reviewing every individual file*." (Emphasis added). He then claimed that investigations are conducted confidentially, with only six persons in the Department having access to the database on which the IA reports are stored and made a generalized claim that disclosure would have a chilling effect on witnesses coming forward for future investigations. Finally, he warned that Mr. Glass could cross-reference other sources of public information to identify officers even if their names were redacted.

Applying the principles of *Cranford* and its progeny to the facts of this case, we hold that Capt. Passman's affidavit was overly conclusory and that the County failed to satisfy its burden of particularizing which sections of the IA reports were exempt under

which provisions of the MPIA, *see, e.g., Amster*, 453 Md. at 85-86; *Cranford*, 300 Md. at 781; *Blythe*, 161 Md. App. at 524. The County also failed to demonstrate that severability was not practical to justify the nondisclosure of the entirety of each of the 748 records. *Cranford*, 300 Md. at 774.

With respect to particularization, Mr. Glass' MPIA requests in this case sought IA reports spanning nearly a decade. These records undoubtedly apply to all sorts of investigations targeting numerous individuals, many of whom may no longer be with the Department, and identify various witnesses, some of whom may not be "chilled" by the disclosure of their complaints. These investigations likely also reached different outcomes—whether sustained or non-sustained—and resulted in different levels of punishment. The calculus that goes into the public interest inquiry varies both by the age of these documents, whether they pertain to ongoing investigations, and the dispositions in each case. *See, e.g.*, *Montgomery Cty. v. Shropshire*, 420 Md. 362, 381 (2011) (reasoning that the public interest in confidentiality increases when an IA investigation clears the officer(s) of wrongdoing). Capt. Passman's affidavit made clear that he did not review each record individually and did not suggest that he even reviewed samples of several categories of records. Instead, he offered a broad claim that the release of *any* IA reports would have a chilling effect on future investigations. This Court and the Court of Appeals have found such generic claims of a potential chilling effect to be insufficient on numerous occasions. *See, e.g., Univ. Sys. of Md. v. Balt. Sun Co.*, 381 Md. 79, 98-99 (2004) (rejecting an argument premised on a "supposed[] 'chilling effect"); *Kirwan v. The Diamondback*, 352 Md. 74, 87-89 (1998); *Prince George's Cty. v. Wash. Post*, *supra*, 149

Md. App. at 317 (same); *Haigley v. Dep't of Health & Mental Hygiene*, 128 Md. App. 194, 227-28 (1999) (same). Here, the County did not present justifications sufficiently particularized such that a trial court could determine that the public interest weighs in favor of nondisclosure of all 748 IA reports.

Regarding severability, Capt. Passman stated simply, "Factual material is not readily separable from the findings and conclusions." That may be so. But again, the record is insufficient to satisfy the County's burden. A single sentence in an affidavit is simply not enough to justify refusing to sever and disclose any portion of 10 years' worth of IA reports—particularly given the basic format of the IA Reports:

> To
> From
> Subject
> Complainant
> Accused
> Complaint
> Date of Incident
> Witnesses
> Synopsis
> Investigation (including summaries of witness statements)
> Investigative Findings
> Conclusion and Recommendations

The record does not contain a sample of these reports (nor does the record indicate that one was presented to the court), and therefore, we cannot say for sure that these reports are severable. The format, as identified in sample executive summary, suggests that information is entered in a way that seems to separate factual information from conclusions and recommendations. Given that the MPIA is interpreted to favor severability, *Washington Post*, 360 Md. at 544-45, we hold that Capt. Passman's affidavit failed to

satisfy the County's burden of demonstrating that the information in the IA reports was not severable. Therefore, it was improper for the circuit court to enter summary judgment in the County's favor.

Accordingly, we must remand the case to the circuit court for further proceedings. Although Mr. Glass asks us to order that the circuit court conduct an *in camera* review or order the County to compile a *Vaughn* index, we defer to the discretion of the trial court to determine which tools at its disposal it should use to determine whether the information in *all* of the IA reports is exempt and not severable from the non-exempt information.[19] *See Cranford*, 300 Md. at 780; *see also see also Stephenson v. I.R.S.*, 629 F.2d 1140, 1145-46 (5th Cir. 1980) (reasoning that the trial court has flexibility to determine which method—"such as sanitized indexing, random or representative sampling in camera with record seal

[19] We note that courts have approved the use of sampling procedures in cases like this where "the number of documents is excessive[.]" *Meeropol v. Meese*, 790 F.2d 942, 958 (D.C Cir. 1986) (citation omitted). As then-Judge Ruth Bader Ginsburg explained for the D.C. Circuit, reviewing a "well-chosen" sample, "a court can, with some confidence, 'extrapolate its conclusions from the representative sample to the larger group of withheld materials.'" *Bonner v. U.S. Dep't of State*, 928 F.2d 1148, 1151 (D.C. Cir. 1991) (citation omitted). Because sampling "involves a trade-off between the high degree of confidence that comes from examining every item for which exemption is claims[] and the limitations of time and resources[,]" however, the court must take care to ensure the set of documents it reviews "is sufficiently representative, and [] the documents in the sample are treated in a consistent manner." *Id.*; *see also Jones v. F.B.I.*, 41 F.3d 238, 244 (6th Cir. 1994) (reasoning that a sample of five percent of the total responsive documents was "a more than adequate sample" and, along with *in camera* review, provided "sufficient information" to determine whether the government properly withheld documents); *Vaughn v. Rosen*, 523 F.2d 1136, 1139–40 (D.C. Cir. 1975) (noting that, on remand, the parties stipulated that nine sample reports were representative of the 2,448 responsive documents). To the extent that appropriate sampling in this case may involve dividing the records into several groups and sampling from those, one obvious division may be between IA reports concerning investigations that are closed versus those that are pending. *See Prince George's Cty. v. Wash. Post Co.*, 149 Md. App. at 333.

for review, oral testimony or combinations thereof"—it may use to assure itself that the government has an adequate factual basis to withhold records from disclosure).

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY VACATED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS ASSESSED TO ANNE ARUNDEL COUNTY.