Circuit Court for Baltimore City
Case No.: C-24-CV-24-000368

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1398

September Term, 2024

IN THE MATTER OF WILLIAM HERNANDEZ

Wells, C.J.,
Berger,
Eyler, James R.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Wells, C.J.

Filed: September 19, 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).

After appellant, William Hernandez, filed a Public Information Act request with the Baltimore City State's Attorney's Office ("BCSAO"), the Public Information Act Compliance Board ("Board") determined that Mr. Hernandez's request, along with several other requests, were vexatious and made in bad faith and concluded that the BCSAO could ignore the requests. Mr. Hernandez filed a petition for judicial review, and the Circuit Court for Baltimore City affirmed the Board's determination. Mr. Hernandez noted this appeal and asks "[w]hether the trial court erred in affirming the decision of the [Board]." For the reasons set forth below, we answer that question in the negative and affirm.

BACKGROUND

This appeal arises from over seventy Public Information Act ("PIA") requests the BCSAO received in less than four months, each of which sought records relating to a criminal matter involving James Alford and/or Louis Leibowitz, individuals who are not parties to this appeal. The appellant, Mr. Hernandez, made one such request on October 23, 2023. But the requests began on August 12, 2023 and continued into December, 2023. The pertinent facts are as follows.

On August 12, 2023, James Alford requested records relating to a criminal complaint he filed against Louis Leibowitz, a former domestic partner. Mr. Alford's request sought, in part, information relating to:

> [C]ase 4B02440449, the Maryland vs Louis Leibowitz. [Assistant State's Attorney] Kathleen Copsey indicated that on 10/4/2022, an att[]o[r]ney from the domestic violence unit made an entry in the domestic violence unit[]s files that indicated that I, James Alford, had called up the unit and indicated that I did not want to proceed with this case.

> This information is false, and I would like the records pertaining to this entry, and the name of the attorney that made this entry.
>
> Additionally, I would like information related to several application[s] for statement of charges that were passed up from the commissioner's office to the Baltimore City State's Attorney's office. These were applications that I filed that have gone 'missing.'

Two days later, Mr. Alford made two more requests relating to the same issues, citing a second case number (we will refer to these collectively as the "District Court matters"),[1] including "Maryland subpoenas that were filed and domesticated in the State of California, and any other subpoenas that may have been related to me[.]"[2]

On August 15, 2023, Marke Cross, an Assistant State's Attorney with the BCSAO, sent correspondence to Mr. Alford notifying him that it may take more than ten days to produce the requested records. That day, the BCSAO received four additional PIA requests, between 9:01 PM and 11:39 PM, seeking documents relating to the District Court matters. However, this time the requestor was not Mr. Alford, but four different and purportedly new requestors, identified only as "CB," "Fialon," "Thuy Nguyen," and "SM."

The next day, between 5:30 PM and 8:45 PM, the BCSAO received three additional requests relating to the District Court matters, again from entirely "new" requestors –

[1] There is limited information regarding the details of the District Court matters in the record before us. The BCSAO asserts, and Mr. Hernandez does not dispute, that the criminal complaint filed by Mr. Alford against Mr. Leibowitz resulted in four criminal cases against Mr. Leibowitz; each of which either resulted in entries of nolle prosequi or a judgment of acquittal.

[2] In that request, Mr. Alford explained that the subpoenas were issued "on behalf of the State of Maryland for [the District Court matters]."

"Matt," "[M]addy," and "Tod." These requests from individuals purportedly other than Mr. Alford, but relating to Mr. Alford or the District Court matters, continued. By September 17, 2023, the BCSAO had received another 25 requests, including from seven purportedly new requestors – "[P]ierre [N]icolas," "Brad," "Lionel Rodriguez," "Lindsey Larkin," "Brie," "Phil Garcia," and a name written with the Arabic alphabet.

Mr. Cross responded to the requests through September of 2023, including providing responsive documents where available. However, the requests continued and became increasingly hostile and laced with profanity. While we need not recount each here, an e-mail from "Tod" is illustrative:

> For starters, you might want to update your fucking [Maryland PIA] contact roster and ensure that your agencies' own employees are trained enough to know to forward [Maryland PIA] requests to you before you start bitching and moaning about "duplicative and vexatious" requests. That's literally a training issue that is your problem, not mine. That's also one of the duties of an [Maryland PIA] officer, so you really might want to get working on that.
>
> Secondly, it really shouldn't take beyond the permissible 30 days to locate a piece of paper. If you are deliberately withholding information to cover the asses of people in your office, then maybe you should start looking for a new job. The fact that your own agency has put you in a position where you have to engage in delay tactics and intentionally withholding information to cover for the very blatant misconduct in your office should probably be an indicator that the BCSAO is not the job for you. Unless you're trash and have no standards, but that's your call to make, not mine.

"Tod" asserted therein that he was copying Mr. Alford "for his situational awareness." Separate requests referred to Mr. Cross as "Markie," called Mr. Cross's responses "nonsensical" or "creepy," accused him or the BCSAO of misconduct, "intentionally

provid[ing] false information" or being "incompetent," and sent memes mocking Mr. Cross.

On October 2, 2023, the BCSAO contacted the Public Access Ombudsman to initiate mediation regarding the (at that time) over 50 requests it had received regarding the District Court matters, asserting that the "57 record requests sent from various email accounts are frivolous, vexatious, and made in bad faith[.]"

Meanwhile, the requests continued and at times referenced assertions recently made by other requestors.[3] For example, on October 6, 2023, Mr. Alford emailed Mr. Cross regarding a conversation Mr. Alford had with another Assistant State's Attorney, Ms. Tacka, that morning. That afternoon, a new requestor, "Adam Barry," made a PIA request wherein he too referenced the conversation that Mr. Alford had with Ms. Tacka that day. On October 16, 2023, one requestor, "Rachel Garcia," sent an email to Mr. Cross asserting that she had "referred this matter to the [Office of the State Prosecutor.]"**]** The next day, "Tod" requested communication regarding "Marke Cross communicating that he had been reported to the Office of the State Prosecutor[.]"

The requests often also shared similar terminology. Two of the requestors, "SM" and "Maddy," requested records relating to a charging document that a BCSAO Assistant State's Attorney purportedly "intercepted." Separately, "Tod" and "SM" both requested

[3] After the BCSAO initiated mediation with the Ombudsman, it received requests relating to the District Court matters from several new requestors, including Mr. Hernandez and requestors who identified themselves as the following: "Rachel Garcia," "Alex Zeigler," "T," "Blandine," "Marc Crosetti," "J D," "Adam Barry," "A R," and "Paola Martinez."

records of Assistant State's Attorneys "attempt[ing] to weaponize" certain matters. Three separate requestors, "Fialon," "CB," and "Lionel Rodriguez," requested records relating to Assistant State's Attorneys' "aiding" and "abetting" Mr. Leibowitz.

The BCSAO received Mr. Hernandez's request just after midnight on October 23, 2023. Like the other requests, Mr. Hernandez's request sought documents relating to the District Court matters:

> [A]ll internal emails the balitmore [sic] city states attorneys office has about matters either directly or indirectly related to an individual named "Louis Leibowitz" and his attorney "Arnold Abraham" using counterfeit subpoenas on a balitmore [sic] city district court form DC-004 (Rev. 7/01/2015) in the year 2022, from the period of approximately August 2022 until December 2022, years after the forms had been retired and decommissioned by the maryland judiciary.

Mr. Cross responded that Mr. Hernandez's request has "been identified as part of a larger group of requests that appear to be frivolous, vexatious, or made in bad faith" and that accordingly, the "request will be referred to the Ombudsman for mediation[.]" Mr. Hernandez responded that the BCSAO was "arbitrarily and capriciously withholding access" to the requested records and that "[i]t is my understanding you are retaliating against several individuals for having referred you to both the Attorney Grievance Commission and the Office of the State Prosecutor." Mr. Cross responded that Mr. Hernandez's request had not been denied but referred to the Ombudsman for mediation.

Mediation, however, was unsuccessful. On November 7, 2023, the Ombudsman issued a final determination terminating mediation "due to the Ombudsman's receipt of an email from an account . . . that is involved in the matter" and explaining that "[i]n the

Ombudsman's view, the email she received threatens, at least by implication, to place her as a neutral mediator in a position that either is, or at a minimum may reasonably appear to be, adverse to a party to the mediation."

After the Ombudsman deemed the matter unresolved, the BCSAO filed a complaint with the Board. There were, at that point, over seventy Alford-related requests from over twenty different e-mail accounts. The BCSAO asserted that each of the requests were frivolous, vexatious, or made in bad faith. In its complaint, the BCSAO noted how each of the requests was for records stemming from cases involving Mr. Alford; the requests used identical or similar terminology; many of the requestors did not provide full names; each of the requestors declined requests for phone calls (with the exception of two applicants who provided a phone number belonging to Mr. Alford, and then refused to participate after the BCSAO noted that the number belonged to Mr. Alford); and it is "highly unusual for nolle prosequi cases to generate this much public interest."

The Board sought a response from each requestor and received several responses, nearly all asserting, "in some fashion, that their PIA requests were not frivolous, vexatious, or in bad faith, and that no one compelled them to make the request." Mr. Hernandez sent several e-mails in response, asserting "this is absolutely ridiculous"; "Corrupt Government Fail (TM), brought to you by Maryland"; "[i]t's disgusting the Ombudsman and Compliance Board even entertained BCSAO's bullshit though"; and "this 'complaint' is totally bogus, the BCSAO's story changes every day and it's clear they are hiding

misconduct and public corruption, no one compelled me to file a PIA request, and it was absolutely made in good faith."

On March 29, 2024, the Board issued a twenty-six-page opinion detailing the requests and determining that "based on the unique and unusual facts of the entire record," the requests could be considered together and that they "are indeed vexatious and made in bad faith" pursuant to Md. Code Annotated, General Provisions ("GP") § 4-1A-04(b) (2024). Specifically, the Board determined that based upon the timing and the content of the requests, "circumstantial evidence abounds" that "Mr. Alford is either operating all of these email accounts himself or encouraging others to make these requests (or some combination of both)." The Board pointed to several facts, including that many requests contain "mirror-like text"; "very specific details of the underlying matters between Mr. Alford and Mr. Leibowitz, and the BCSAO's handling of them"; and "specific dates when documents were filed or emailed to specific prosecutors, and the dates when certain things were said or done in court."

While noting that "[n]o Maryland court has interpreted or otherwise applied the language used in GP § 4-1A-04(b) [including the terms frivolous, vexatious, and in bad faith] in the context of the PIA," the Board noted that it was "guided broadly by how these terms are commonly understood." After conducting a thorough analysis, in which it considered dictionary definitions and common law definitions of the terms in other legal contexts, including in *MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279 (2021) (bad faith) and *Atty. Grievance Comm'n v.*

Rheinstein, 446 Md. 648 (2002) (vexatious behavior), the Board determined that the requests were both vexatious and made in bad faith. Finally, the Board considered the BCSAO's "efforts to cooperate" with the applicants pursuant to GP § 4-1A-04(b)(3), and noted that:

> Despite the early onslaught of these requests—indeed, the BCSAO received thirty-nine Alford-related requests in the span of about a month—the BCSAO attempted to respond in the manner required by the PIA. The BCSAO issued more than thirty substantive response letters, several other ten-day letters, and otherwise responded to the requesters' emails. The BCSAO also tried on numerous occasions to arrange phone calls at times that would be convenient for the requesters, but all of those efforts were uniformly rebuffed.

Ultimately, the Board concluded that the BCSAO could ignore the requests as provided in GP § 4-1A-04(b)(3)(i).

On March 30, 2024, Mr. Hernandez filed a petition for judicial review. On September 4, 2024, the circuit court for Baltimore City held a hearing, after which it affirmed the decision of the Board. Mr. Hernandez then filed this appeal.

STANDARD OF REVIEW

"In an appeal of the circuit court's review of an agency action, an appellate court reviews the agency's action itself rather than the decision of the circuit court." *Matter of Cricket Wireless, LLC*, 259 Md. App. 44, 66 (2023) (quoting *Maryland Small MS4 Coal. v. Md. Dep't of the Env't*, 250 Md. App. 388, 411 (2021) (further citation omitted)); *see also Matter of Homick*, 256 Md. App. 297, 307 (2022) ("When reviewing a decision by an administrative agency, this Court 'looks through' the decision of the circuit court, applying the same standards of review to determine whether the agency itself erred."). In other

words, "[w]e do not consider the circuit court's findings of fact and conclusions of law." *Concerned Citizens of Cloverly v. Montgomery Cnty. Plan. Bd.*, 254 Md. App. 575, 599 (2022).

Instead, "in reviewing a decision of an agency, our role 'is precisely the same as that of the circuit court.'" *Mid-Atl. Power Supply Ass'n v. Md. Pub. Serv. Comm'n*, 143 Md. App. 419, 432 (2002) (quoting *Dep't of Health and Mental Hygiene v. Shrieves*, 100 Md. App. 283, 304-04 (1994)). In accordance therewith, we review the agency decision for whether it was "arbitrary and capricious." *Montgomery Park, LLC v. Maryland Dep't of Gen. Servs.*, 254 Md. App. 73, 100 (2022), *aff'd*, 482 Md. 706 (2023) (quotation marks omitted). The arbitrary and capricious standard is "highly contextual, but generally the question is whether the agency exercised its discretion 'unreasonably or without a rational basis.'" *Cricket Wireless*, 259 Md. App. at 67 (quoting *Md. Dep't of the Env't v. Carroll County*, 465 Md. 169, 202 (2019)). Stated differently, "we give deference to the agency's findings of fact, the inferences it draws from those facts, and its application of the relevant law to those factual findings." *Cricket Wireless*, 259 Md. App. at 67.

DISCUSSION

I. Relevant PIA Provisions

The PIA provides individuals "access to information about the affairs of government and the official acts of public officials and employees." GP § 4-103(a). In the event of a dispute regarding a request for public information, the Public Access Ombudsman ("Ombudsman") "shall make reasonable attempts to resolve disputes between applicants

and custodians relating to requests for public records[.]" GP §§ 4-1B-01, 4-1B-04. If the Ombudsman issues a final determination that the dispute was not resolved, "[a]ny applicant [for public records], the applicant's designated representative, or a custodian may file a written complaint with the Board seeking a written decision and order from the Board[.]" GP § 4-1A-05.

Accordingly, the Board has authority to review various complaints relating to requests under the PIA, including a complaint "from any custodian alleging that an applicant's request or pattern of requests is frivolous, vexatious, or in bad faith[.]" GP § 4-1A-04(b)(1). Furthermore,

> [i]f the Board finds that the applicant's request is frivolous, vexatious, or in bad faith, based on the totality of the circumstances including the number and scope of the applicant's past requests and the custodian's responses to past requests and efforts to cooperate with the applicant, issue an order authorizing the custodian to: (i) ignore the request that is the subject of the custodian's complaint; or (ii) respond to a less burdensome version of the request within a reasonable time frame, as determined by the Board.

GP § 4-1A-04(b)(3). Finally, "an applicant, a complainant, or a custodian may appeal to the circuit court a decision issued by the State Public Information Act Compliance Board as provided under § 4-1A-10 of this title." GP § 4-362(a)(2).

II. Analysis

Mr. Hernandez asserts that the circuit court erred in affirming the Board's decision for two reasons. *First*, he asserts that the Board erred in "consider[ing] multiple individuals when making its determination to deny Public Information Act requests[.]" *Second*, he asserts that the circuit court "imposed a standard that goes against the foundation of the

Public Information Act" when the trial court asserted, at the petition for judicial review hearing, that "five requests could be vexatious."[4] The BCSAO responds that the Board's decision to consider multiple requests, and its conclusion that the requests were vexatious and made in bad faith, are supported by substantial evidence in the record. We consider both of Mr. Hernandez's contentions in turn.

A. The Board Did Not Err in Considering Multiple Requests When Making its Determination.

Mr. Hernandez contends that the circuit court erred when it determined that the Board "may consider the requests of multiple individuals when determining whether a public information request is vexatious or in bad faith." In support, he contends that GP § 4-1A-04(b)(3) "refers only to an applicant in the singular" and accordingly, "each applicant's actions, whether it's one request or whether it's a series of requests, must be considered in isolation[.]" The BCSAO responds that Mr. Hernandez's interpretation of the PIA is not supported by the statutory scheme, including Title I of the General Provisions Article, which provides that "[t]he singular includes the plural and the plural includes the singular." GP § 1-202.

Mr. Hernandez does not dispute BCSAO's application or interpretation of GP § 1-202. Nor does he provide any support for his assertion that "each applicant's actions . . .

[4] We note that although Mr. Hernandez's initial appellate brief was filed through counsel, he filed, *pro se*, a reply brief raising several issues not raised in his initial brief. We do not consider those issues. *See Gazunis v. Foster*, 400 Md. 541, 554 (2007) ("[A]ppellate courts ordinarily do not consider issues that are raised for the first time in a party's reply brief.").

must be considered in isolation." Notably, adopting Mr. Hernandez's position would require us to disregard not only GP § 1-202, but the Board's factual findings—which Mr. Hernandez does not challenge—regarding the unusual commonality of the requests, including the timing of the requests, their shared subject matter (in the Board's words, requests focused on "a small universe of specific records"), the similar language used in the requests, references to other requestors or matters raised by other requestors in the requests, and the fact that each requestor declined an opportunity to discuss their request(s) by phone. We see no reason to disregard these facts here.

In sum, the Board considered the "pattern of requests" in determining whether the requests were frivolous, vexatious, or in bad faith as expressly provided in GP § 4-1A-04(b)(1), and we cannot say that consideration of more than one "applicant's" requests was unreasonable or without a rational basis under these facts. *See also Walker v. State*, 224 Md. App. 659, 664 (2015) (determining, pursuant to GP § 1-202, that "[t]he term 'statute' includes 'statutes'").

B. The Circuit Court's Assertion that "five requests could be vexatious" is Not Grounds for Reversal.

Mr. Hernandez contends that the circuit court erred when it determined that the Board "met the 'frivolous, vexatious, or in bad faith' standard[.]" However, the argument he advances in support of his contention is not a challenge to any of the Board's factual or legal conclusions, but to the trial court's assertion at the hearing on his petition for judicial review that "[p]erhaps five requests could be vexatious." Specifically, he asserts that the "trial court imposed a standard that goes against the foundation of the Public Information

Act" by opining that five requests could be vexatious, and "[i]f the standard imposed by the trial court were to stand, any case of public interest would result in the denial of PIA requests." The BCSAO responds that the Board's conclusions that the requests were vexatious and made in bad faith are supported by the record.

As an initial matter, we note that it is the decision of the Board—not the circuit court—that is relevant to our determination on appeal. *Cricket Wireless*, 259 Md. App. at 66. Here, the Board issued a twenty-six-page opinion, detailing over ten pages of facts, before concluding that the requests were vexatious and made in bad faith. Mr. Hernandez, however, does not challenge any of the Board's factual or legal findings. Indeed, he does not contend that the Board's determination of the meaning of "vexatious" or "bad faith" within the PIA was in error, nor does he argue that the Board acted unreasonably or without a rational basis in determining that the requests were vexatious and made in bad faith.

Instead, he asserts broadly that the Board had "no basis against [his] individual request[.]" In support, he contends that because he made a "simple PIA request" and that the request was, in his words, "legitimate and made in good faith[,]" the Board erroneously denied his request. However, as we discussed in the previous section of this opinion, we disagree that the Board erred in considering multiple requests together given the unusual facts in the record before us.

Furthermore, although Mr. Hernandez asserts that his request was legitimate and made in good faith, he cites no support—factual or legal—for his contention. Nor does he provide any argument in support of his position. *See* Md. Rule 8-504(a)(6) (providing that

an appellate brief must contain an "[a]rgument in support of the party's position on each issue"); *see also Klauenberg v. State*, 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal."); *DiPino v. Davis*, 354 Md. 18, 56 (1999) ("[I]f a point germane to the appeal is not adequately raised in a party's brief, the court may, and ordinarily should, decline to address it."). Accordingly, we are unpersuaded that the Board acted arbitrarily or capriciously in the matter before us.

Finally, although we are mindful that we "look[] through" the decision of the circuit court when reviewing an administrative agency decision, assuming for argument's sake that Mr. Hernandez's challenge to the circuit court's assertion was properly before us, we disagree that the statement would amount to reversible error. *Matter of Homick*, 256 Md. App. at 307. The trial court did not "impose[] a standard" on the number of requests that must be made before finding that the PIA requests had been made vexatiously. To the contrary, the court noted that while "[p]erhaps five requests could be vexatious," ultimately, "there is no magic number." In any event, the court noted that in the record before it, there were far more than five requests—over seventy—and the Board's decision that the requests were vexatious and made in bad faith was "well supported by substantial evidence[.]" We see no reason to disturb the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.