

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1491

September Term, 2016

DONTAE SPIVEY

v.

JOHN WOLFE, WARDEN

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

JJ.

PER CURIAM

Filed: March 5, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In December 2013, Dontae Spivey, appellant, an inmate at the Jessup Correctional Institution (“JCI”), requested that John Wolfe, appellee, the warden of JCI, provide recordings of phone calls he made to his attorney – Rachel Kamins – on certain dates because he believed the recordings of the calls would support his version of events that caused a dispute between Kamins and him, which led to a search of his cell and the confiscation of legal papers belonging to another inmate. Appellee denied the request, citing the non-existence of recordings of the calls. On June 17, 2015, appellant, filed a complaint pursuant to the Maryland Public Information Act (“MPIA”), Maryland Code (2014), General Provisions (“GP”), § 4-101, *et seq.*¹ Following a hearing on September 2, 2016, the Circuit Court for Anne Arundel County denied appellant’s petition, citing the fact that no recordings of the phone calls existed. Appellant noted this appeal, maintaining that the court erred in denying his MPIA request. For the reasons stated below, we affirm.

The evidence at the hearing indicated that the records do not exist. A representative of the company who manages the prison’s telephone system testified that there were no recordings of the requested calls. The court viewed screenshots of appellant’s completed calls to Kamins’s number – listing the date, time, and duration of the calls – but there were no recordings. In situations where the custodian of records determines that the record does

¹ We note that at the time appellant filed his initial requests with appellee, the MPIA was codified at Maryland Code (1984, 2009 Repl. Vol.), State Government Article (“SGA”), § 10-611, *et seq.* We will cite to the MPIA as it appeared at the time appellant filed his complaint in the circuit court.

not exist, GP § 4-202(d) requires the custodian to notify the applicant that the record does not exist. Appellee notified appellant of this fact.²

We fail to see how the court could have ruled for appellant, given the non-existence of the records he sought. “Obviously, a custodian cannot properly be ordered to produce records under the [MPIA] when those records simply do not exist.” *Office of the Governor v. Wash. Post Co.*, 360 Md. 520, 540 (2000). To the extent that appellant seeks damages for the destruction of records, the circuit court properly denied relief because the records never existed in the first place.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

² Indeed, appellee informed appellant on December 16, 2013, that telephone calls between attorneys and their clients are not recorded.