

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1577

September Term, 2014

JAMERSON TILLMAN, et al.

v.

SHAWNE WADDY, et al.

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Woodward, J.

Filed: August 7, 2015

* 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 2013, appellants, Jamerson and James Tillman, filed a Maryland Public Information Act (“MPIA”) request with appellee, Lieutenant Shawné Waddy, the Records Custodian for the Prince George’s County Police Department (“the Department”),¹ seeking investigative reports and other information regarding their 2000 arrests for narcotics trafficking offenses. Appellants also sought information regarding two other individuals, Andrew Allen Robinson and Lyle Kent Wade, who were arrested during the course of the Department’s investigation of appellants. Appellee provided appellants with some of the information regarding the Department’s investigation of appellants, but referred appellants to the U.S. Attorney’s Office to obtain the case file. Appellee denied appellants’ requests regarding Robinson and Wade, because neither appellant was “a person in interest” within the meaning of the MPIA.

Appellants filed a petition for judicial review in the Circuit Court for Prince George’s County. The circuit court denied appellants’ petition.

On appeal, appellants present three questions, which we have rephrased and condensed into one:²

¹ The case is captioned on appeal as though there are multiple appellees, but it appears from the record that Lt. Shawné Waddy is the only appellee. The original Complaint for Judicial Review names the Office of the State’s Attorney for Prince George’s County as a defendant in addition to Lt. Waddy, and the State’s opposition names the Prince George’s County Police Department as the only defendant.

² Appellants’ questions, as originally presented in their brief, are:

1. Whether § 10-618(f)(1) authorized PGPD to withhold closed investigatory files when it neither offered a legal reason for nondisclosure nor claimed, pursuant to § 10-618(a), disclosure would be contrary to the public interest?

Did the circuit court err in denying appellants' request under the MPIA for access to the investigatory case files regarding persons other than appellants, as well as records regarding appellants in the possession of the U.S. Attorney's Office?

For the reasons stated below, we answer this question in the negative and, accordingly, shall affirm the judgment of the circuit court.

FACTUAL BACKGROUND

In March 2000, as a result of a narcotics investigation by the Department and the United States Drug Enforcement Agency ("DEA"), appellants were arrested on federal narcotics trafficking offenses. Appellants were convicted and sentenced to federal prison, where they remain as of the date of this appeal. On July 5, 2013, appellants sent a letter to appellee requesting information under the MPIA. *See* Md. Code (2014), §§ 4-103, -201 of the General Provisions Article ("GP").³ Specifically, appellants requested

-
2. Are Tillmans "persons in interest" of those public records in the investigatory files of others but which accuse them of crimes and detail surveillance activity targeting them, so that PGPD erroneously reviewed requests for those records under § 10-618(f)(1)?
 3. Did § 10-614(a)(3) of the MPIA authorize PGPD to refer Tillmans to a federal agency for possible retrieval of the investigatory file it, as the official custodian, is responsible for maintaining?

³ At the time this appeal was filed, the Maryland Public Information Act ("MPIA") was located in Title 10 of the State Government Article ("SG"). However, effective October 1, 2014, the MPIA was recodified in Title 4 of the General Provisions Article. 2014 Md. Laws ch. 94. All references to the MPIA in this opinion are to the current version of (continued...)

copies of the entire investigatory file concerning [appellants] and compiled by the Prince George's County (P.G. County) Police Department from January 2000 to April 2000.

This MPIA request includes, but i[s] not limited to:

- 1) Any statement(s) given by Andrew Allen Robinson and taken by detectives Harold Black # 1996 and Crystle Mills # 1971;
- 2) investigatory notes related to the detectives' alleged February 17, 2000 surveillance of Jamerson Tillman and James Tillman;
- 3) investigatory and/or surveillance reports related to Jamerson Tillman's and James Tillman's activities on March 9, 2000;
- 4) any statement(s) given, written, or prepared by detectives Harold Black # 1996, Crystle Mills # 1971, Shawn Scarlata # 1931, or any other officer related to the March 9, 2000 arrest of Lyle Kent Wade;
- 5) any statement(s) given, written, or prepared by any P.G. County officer concerning the March 10, 2000 arrests of Jamerson Tillman and James Tillman; and
- 6) any other public record (as defined in SG § 10-611(g)(1)) involving the investigation and arrests of Jamerson Tillman and James Tillman.

On August 4, 2013, Jamerson Tillman sent a second MPIA request to appellee, requesting

a copy of [the Department's] entire investigatory/case file relating to the February 10, 2000 arrest and subsequent prosecution of Andrew Allen Robinson in case number CT 00-0316A.

³(...continued)
the statute, which is substantively unchanged. *See Revisor's Notes*, Md. Code (2014), §§ 4-101 *et seq.* of the General Provisions Article ("GP").

The instant request includes, but is not limited to:

- 1) The report and criminal complaint filed in connection with Robinson's arrest;
- 2) statement(s) subsequently given by and to detectives Crystle Mills # 1971 and Harold Black # 1996 of the Prince George's County Police Department;
- 3) statement(s) Robinson sought to suppress in case number CT 00-0316A; and
- 4) any other public record (as defined in SG § 10-611(g)(1)) in the Prince George's County Police Department's possession and in any way connected to case number CT 00-0316A or Robinson's February 10, 2000 arrest.

In a letter dated October 15, 2013, appellee responded to appellants' requests:

The Police Department is in receipt of . . . your July 5th request for a copy of the entire investigatory file concerning you and your brother, James Tillman, from January 2000 to April 2000. As a courtesy to you, enclosed are the investigative notes, investigator reports, and search warrant related to your request. These aforementioned documents are all of the records currently in the possession of the [Department]. You may be able to obtain the case file by directing your request to: U.S. Attorney's Office, 6406 Ivy Lane, Suite 800, Greenbelt, MD 20770. Please note that the enclosed records have been redacted pursuant to Annotated Code of Maryland, State Government Article, § 10-618(f)(2)(iii).

You have also requested access to the investigatory case file related to the prosecution of Andrew Robinson in case number CT 00-0316A. This request is denied pursuant to the Annotated Code of Maryland, State Government Article, §10-618(f)(1), as you are not a person in interest. In your letter dated July 5, 2013, you requested "any statements given, written, or prepared by detectives Harold Black #1996, Crystle Mills #1971, Shawn Scarlata #1931, or any other officer related to [the] March 9, 2000 arrest of Lyle Kent Wade[.]" [T]his request is also denied pursuant to the Annotated Code

of Maryland, State Government Article, § 10-618(f)(1), as you are not a person in interest.

On December 19, 2013, appellants filed a petition for judicial review in circuit court. Appellants argued that appellee’s denial of records regarding Robinson and Wade was improper because (1) appellee failed to provide any reason to justify non-disclosure; and (2) “the cases of those individuals are so inextricably linked to that of [appellants]” that appellants are persons in interests. Appellants also argued that appellee is the “official custodian” of the public records and, therefore, should not have directed appellants to a federal agency.

On January 23, 2014, the Department filed an opposition to appellant’s petition. The Department responded that appellee was permitted under GP § 4-351(a)(2)⁴ to deny requests for inspection of investigative files compiled for law enforcement purposes, and that appellants were not afforded additional access under GP § 4-351(b) because they were not persons in interest. Moreover, the Department argued that, because it did not possess the complete case file, appellee was entitled to refer appellants to the possible location of the physical file at the U.S. Attorney’s Office pursuant to GP § 4-202(c).⁵

⁴ Formerly SG § 10-618(f)(1)(ii).

⁵ Formerly SG § 10-614(a)(3).

The circuit court held a hearing on April 4, 2014. Appellants did not appear for the hearing. The Department appeared at the hearing through counsel. The entirety of the hearing consisted of the following argument by the Department:

Your Honor, we are here on [appellants'] petition for judicial review, our response to their MPIA request. We appropriately complied with the MPIA. We gave them the documents that we had in our possession and referred them, pursuant to the MPIA, to the U.S. Attorney's office who possibly may have had the case, and that is spelled out in 10-614(a) through (2)(i) that allows us to give that direction if we think that there's another custodian. We also indicated to them that—probably denied their request for two other investigative files because we're allowed to do that under the MPIA request if we feel that under public interest, there's a proper denial.

We further explained to them that [they] were not persons of interest in those files. Your Honor, we would submit on our opposition to the petition, judicial review and ask that the case be dismissed.

The trial court took the matter under advisement. On April 24, 2014, the court entered an order affirming “the decision made by the Prince George's County Office of Law.”

On May 7, 2014, appellants filed a motion to alter or amend judgment, which was denied on July 11, 2014, after no one appeared for a hearing.⁶ Appellants filed a timely notice of appeal on August 7, 2014.⁷

⁶ Appellants do not address or make any arguments regarding the denial of the motion to alter or amend.

⁷ We recognize that appellants' motion to alter or amend judgment was filed on May 7, 2014, two days after the deadline for filing such motion under Rule 2-534. As a result, the 30-day appeal period for the April 24 order was not extended, and appellants' (continued...)

DISCUSSION

Investigatory Records of Robinson and Wade

Appellants argue that they are entitled to the investigatory records of Robinson and Wade because they are “persons in interest” pursuant to GP § 4-351.⁸ According to appellants, the Department’s investigation of appellants stemmed from Robinson’s statements to police implicating appellants in drug trafficking activities, which led to the Department’s investigation into Wade. Appellants argue that the Department did not offer legally sufficient reasons to justify its refusal to grant appellants access to Robinson and Wade’s investigatory files.

Appellee responds that the circuit court correctly ruled that appellee properly denied appellants’ request under GP § 4-351(a), because the MPIA permits a custodian to deny the inspection of a record of a police department investigation when it is contrary to the public interest. Appellee further argues that it was not required to meet a heightened burden in order to deny access to Robinson and Wade’s records, because appellants are not persons in interest.

⁷(...continued)

failure to file an appeal within that period limits our review to the trial court’s denial of the motion to alter or amend under an abuse of discretion standard. Nevertheless, because appellants certified that they mailed the motion to alter or amend on April 30, 2014, and because there was a potential for delay in the delivery of mail sent from a federal prison in West Virginia, we elect to review the merits of appellee’s actions under the MPIA.

⁸ Formerly SG § 10-618(f).

The MPIA expressly 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). The Court of Appeals has made clear that “the provisions of the [MPIA] reflect the legislative intent that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government.” *Office of Attorney Gen. v. Gallagher*, 359 Md. 341, 343 (2000) (citations and internal quotation marks omitted). However, certain exceptions to the general rule favoring disclosure are codified within the MPIA. *See* GP § 4-301 *et seq.*

Relevant to the instant appeal, GP § 4-343⁹ provides that, “[u]nless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part of the record, as provided in this part.”

Additionally, GP § 4-351 provides that:

- (a) *In general.* — **Subject to subsection (b) of this section, a custodian may deny inspection of:**
- (1) **records of investigations conducted by the Attorney General, a State’s Attorney, a municipal or county attorney, a police department, or a sheriff;**
 - (2) **an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or**

⁹ Formerly SG § 10-618(a).

- (3) records that contain intelligence information or security procedures of the Attorney General, a State’s Attorney, a municipal or county attorney, a police department, a State or local correctional facility, or a sheriff.

(b) *Circumstances under which denial permissible.* — A custodian may deny inspection by a person in interest only to the extent that the inspection would:

- (1) interfere with a valid and proper law enforcement proceeding;
- (2) deprive another person of a right to a fair trial or an impartial adjudication;
- (3) constitute an unwarranted invasion of personal privacy;
- (4) disclose the identity of a confidential source;
- (5) disclose an investigative technique or procedure;
- (6) prejudice an investigation; or
- (7) endanger the life or physical safety of an individual.

(Bold emphasis added).

The Court of Appeals has explained that, under GP § 4-351(a), “a custodian is permitted to deny inspection of records of investigations conducted by certain enumerated agencies. There is no provision, certainly not an express one, requiring the custodian to give any explanation for the denial or, in some way, to offer a justification for the decision.”

Office of State Prosecutor v. Judicial Watch, Inc., 356 Md. 118, 136 (1999) (citation

omitted). If, however, the requesting individual is a person in interest, GP § 4-351(b) “contemplates inspection unless disclosure would have the enumerated consequences; hence, it implicitly requires, in that circumstance, some explanation or justification for the decision to deny inspection.” *Id.* Thus, unless the requesting individual is a person in interest, a custodian may deny inspection of an investigatory file or records of investigation by a police department without further explanation.

GP § 4-101(e)(1) defines a “person in interest” as “a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit.” The Court of Appeals has held that a “person in interest” does not include a person who “triggered” a law enforcement investigation, but rather is limited to the subject of any such investigation. *See Md. Dep’t of State Police v. Dashiell*, ____ Md. ____, ____, No. 84, September Term 2014 (filed June 25, 2015), slip op. at 28 (holding that a complainant accusing a police officer of improper conduct was not a “person in interest,” because the complainant was not the target of the investigation); *Mayor & City Council of Balt. v. Md. Comm. Against the Gun Ban*, 329 Md. 78, 92-94 (1993) (holding that a political committee seeking records of an internal investigation of police officers’ conduct was not a “person in interest,” because it was not the subject of the investigation).

In the instant case, appellants requested “[a]ny statement(s) given by Andrew Allen Robinson,” “any statement(s) given, written, or prepared by detectives Harold Black [], Crystle Mills [], Shawn Scarlata, [], or any other officer related to the March 9, 2000 arrest

of Lyle Kent Wade,” and the “entire investigatory/case file relating to the February 10, 2000 arrest and subsequent prosecution of Andrew Allen Robinson.” Appellants were not the subjects of investigation for the investigations of Robinson and Wade, so they are not entitled to the “heightened showing” required to deny inspection to a person in interest. *See Dashiell v. Md. State Police Dep’t*, 219 Md. App. 647, 660 (2014), *vacated on other grounds*, _____ Md. at _____.

Authorization to Refer Appellants to the U.S. Attorney’s Office

Appellants argue that the MPIA does not authorize appellee to refer them to the U.S. Attorney’s Office, because appellee is the official custodian and is responsible for maintaining those public records at issue. Appellee responds that he was authorized to refer appellants to the U.S. Attorney’s Office pursuant to GP § 4-202(c),¹⁰ because the investigation of appellants involved a later federal prosecution by that office. We agree with appellee.

GP § 4-202(a) provides that a person who wishes to inspect a public record must submit a written application to the custodian.

If the individual to whom the application is submitted is not the custodian of the public record, within 10 working days after receiving the application, the individual shall give the applicant:

- (1) notice of that fact; and
- (2) if known:

¹⁰ Formerly SG § 10-614(a)(3).

- (i) the name of the custodian; and
- (ii) the location or possible location of the public record.

GP § 4-202(c).¹¹ “Custodian” is defined as “the official custodian; or [] any other authorized individual who has physical custody and control of a public record.” GP § 4-101(c). An “official custodian” is “an officer or employee of the State or of a political subdivision who is responsible for keeping a public record, whether or not the officer or employee has physical custody and control of the public record.” GP § 4-101(d).

In the instant case, appellee informed appellants in the denial letter that the documents enclosed “are all of the records currently in the possession of the [Department]. You may be able to obtain the case file by directing your request to: U.S. Attorney’s Office, 6406 Ivy Lane, Suite 800, Greenbelt, MD 20770.” GP § 4-202(c) authorizes appellee to refer appellants to another custodian of record “if the individual to whom the application is submitted is not the custodian.” Appellants were charged with and prosecuted for federal narcotics offenses by the federal prosecutor. Appellee is not the custodian of a federal case file, and the Department does not have possession of the records in that file.

Appellants rely on the Court of Appeals’ decision in *Ireland v. Shearin*, 417 Md. 401 (2010), to argue that appellee was the “official custodian” and “should have retrieved

¹¹ Appellant does not argue that appellee failed to comply within the statutorily required time period.

[appellants'] investigatory file for disclosure to them.” In *Ireland*, a prison inmate requested records from the prison warden under the MPIA. *Id.* at 405. The warden’s office referred Ireland to specific departments within the correctional facility. *Id.* The Court held that, because the warden was the custodian of the requested documents, it was his burden to collect the requested records, and thus he was not authorized to direct Ireland to other departments within his own agency. *Id.* at 410.

Ireland is distinguishable from the instant case, because the Court of Appeals in *Ireland* held that the warden was not authorized under GP § 4-202 to pass along to the requestor the burden of collecting records of which the warden was custodian. *See id.* Conversely, in the instant case, appellee directed appellants to a federal agency that was probably the custodian of the case file regarding the federal prosecution of appellants.

**JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY AFFIRMED;
APPELLANTS TO PAY COSTS.**