UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0185

September Term, 2015

GARY ALAN GLASS

v.

ANNE ARUNDEL COUNTY, ET AL.

Krauser, C.J.,
Nazarian,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 9, 2016

What began as a traffic stop has turned into a five-year (and counting) litigation saga. This appeal arises from Gary Glass's second lawsuit over records he sought and claims have been withheld wrongfully from him. He challenges the Circuit Court for Anne Arundel County's decision, after a trial, largely denying his claims that several defendants violated the Maryland Public Information Act ("PIA"), Md. Code (2014, 2015 Repl. Vol.), § 4-101 *et seq.* of the General Provisions Article ("GP"). Although the circuit court found that the County, in its efforts to respond to Mr. Glass's PIA requests, violated the PIA in two regards, the court held generally that the County complied with the PIA. The court also found that Mr. Glass had failed to demonstrate any actual damages. Mr. Glass appeals several of the court's findings and rulings, and the County cross-appeals the circuit court's findings that it violated the PIA. Because we conclude that the trial court erred when it found that the County violated the PIA in the first place, we reverse the decisions of the circuit court in which it ruled against the County, and we remand for entry of judgment in favor of the County.

I. BACKGROUND

On September 4, 2010, Mr. Glass was driving near Davidsonville, on a two-lane road, when he was pulled over by an off-duty police officer, Mark Collier, who cited him for following Officer Collier's (unmarked) car too closely. The two dispute what happened during the stop, and Mr. Glass ultimately filed a federal lawsuit alleging that Officer Collier violated his constitutional rights in the course of the traffic stop. *See Glass v. Anne Arundel Cty.*, 38 F. Supp. 3d 705 (2014). This appeal has nothing to do with the stop itself, but

flows instead from Mr. Glass's efforts to obtain information and documents from the County.

After the traffic stop, Mr. Glass made a formal complaint to the Anne Arundel County Police Department (the "Department"), specifically to Lieutenant James Scott Davis, the Commander of the Internal Affairs Division ("IAD"). Corporal Alfred Barcenas led the investigation and interviewed Mr. Glass. On March 18, 2011, Mr. Glass submitted a PIA request to the Police Department (the "2011 Request") in which he sought records relating to the traffic stop, including the record of his complaint made to IAD. (We do not see a copy of the 2011 Request in the Record Extract, which spans over 500 pages, has no table of contents, and follows no logical order.)

On April 14, 2011, the County replied and stated that some records had already been provided to Mr. Glass. And because of a Police Department policy to exempt IAD records from disclosure to third parties absent a court order, the County withheld all IAD files. Mr. Glass filed suit against the County, Police Chief James Teare, the Department, and County Attorney Jonathan Hodgson seeking the IAD files. The defendants moved for summary judgment, and in December 2011, the circuit court granted the motion, reasoning that the records in the internal affairs file were personnel records properly withheld from disclosure under the PIA. We affirmed in an unreported opinion. *Glass v. Anne Arundel Co.*, No. 2306, September Term 2011 (filed May 28, 2013) ("*Glass I*").

In the meantime, Mr. Glass filed a second, and broader, PIA request on February 22, 2012 (the "2012 Request"). He sought:

> [a]ny and all records of the police department . . . on Gary A. Glass. This includes but is not limited to all notes, teletype, electronic messaging, report, statements, recordings of any kind, radio transmissions on any and all frequencies, background searches, credit searches, record searches, federal record searches, other state record search or surveillance activity, wiretapping, transcripts, and minutes to meeting, etc.

In response, Christine Ryder, the "Police Records Manager," emailed Police Department personnel and sought any responsive records. She also contacted the administrative secretary to the then-Police Chief, John Teare, and met with Lieutenant Davis and Corporal Barcenas in March 2012. Lieutenant Davis instructed Corporal Barcenas to have the Department's Office of Information Technology ("OIT") search its email archives to retrieve deleted emails using the terms "Gary Glass" and "Glass." On March 21, 2012, Ms. Ryder produced some records, and also asked Mr. Glass to give her any information that would "assist in identifying specific records" because the paper files she had located were not searchable by name. She followed up on May 9, 2012 and revealed that OIT's search had yielded numerous potentially responsive documents:

> [OIT] has now produced copies of all email correspondence exchanged within the Police Department containing "Glass"—a total of approximately 7,500 communications. A search for the string "Gary Glass" specifically narrows response to approximately 1,000 communications. [¶] At this time, we cannot determine how many of the 7,500 records are responsive to your request without individual inspection of each.

Ms. Ryder explained, though, that the 1,000 email documents would need to be reviewed for attorney-client privilege, and she estimated the charge to conduct that review would come to more than $500. Mr. Glass contacted the County Attorney, Jonathan

Hodgson, and complained that Ms. Ryder's response did not comply with the PIA because it was not necessary for her to review the referenced documents before producing them. Mr. Hodgson replied on May 31, 2012 that Ms. Ryder's response was reasonable and compliant with the PIA.

On June 12, 2012, Mr. Glass filed suit against Ms. Ryder, in her capacity as the Police Department Custodian of Records, and the County. On January 24, 2013, the circuit court ordered the County to produce "all non-privileged documents contained on the USB memory stick of the [OIT] email search, and a privilege log of every document withheld."

At some point in February 2013, the County produced approximately 8,000 emails. Even so, on February 20, 2013, Mr. Glass filed a third PIA request (the "2013 Request"), in which he sought an update of all records "compiled from February 23, 2012 to present," that referred to "Gary Glass." In this request, he purported to lay out the manner in which the Custodian of Records should search for emails, and he asked that the custodian refrain from sending "'broadcast' emails to the entire police department. . . . I am asking for you to search for existing records, not to create many new records about me or conduct investigations of me." On March 7, 2013, Ms. Ryder responded that no responsive records were found.

After more back-and-forth and discovery disputes, on January 23, 2014, the circuit court granted Mr. Glass's partial order for summary judgment and signed four separate orders relating to the County's production obligations:

- The court ordered the County to produce a *Vaughn* index[1] of materials in the IAD file from September 14, 2010 through December 22, 2011;

- The court issued a declaratory judgment stating that the County violated the PIA "by failing to disclose when requested in 2012 and 2013 the severable materials" from that file, and ordering the County to produce those materials after redacting all attorney-client privileged or attorney work-product protected information;

- The court issued a declaratory judgment stating that the County violated the PIA by failing to disclose recordings of phone calls to 911 on the day of the traffic stop, and ordered their production; and

- The court issued a declaratory judgment that the County violated the PIA when it failed to disclose emails pertaining to Mr. Glass or the incident dated between September 14, 2010 and November 21, 2011, and ordered their production.

In May 2014, the court ordered the County to conduct yet another search for archived emails, and the County's compliance led to the disclosure of over 100 additional emails.

[1] A *Vaughn* index plays the same role in public disclosure cases that a privilege log plays in civil discovery:

> The reference is to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), in which the Circuit Court of Appeals for the District of Columbia required the responding party to provide a list of documents in possession, setting forth the date, author, general subject matter and claim of privilege for each document claimed to be exempt from discovery.

Office of State Prosecutor v. Judicial Watch, Inc., 356 Md. 118, 121 n.1 (1999).

Mr. Glass's complaint proceeded to a bench trial in January 2015. On April 8, 2015, the court issued a written opinion and order in which it found that no party violated the PIA in responding to the 2011 and 2013 Requests, but that in the course of responding to the 2012 Request, Ms. Ryder *had* violated the PIA by failing to request documents in the relevant date range from Chief Teare's office. The court made a similar finding with respect to the County's search for emails. The court went on, though, to find that Mr. Glass was required to prove actual damages and that he had failed to do so.[2]

The court also issued a declaratory judgment in which it declared that:[3]

> 1. Defendants did not knowingly and willfully violate the [PIA] in their responses to [Mr. Glass's] 2012 and 2013 requests for contents of the IAD file;
>
> 2. Defendants knowingly and willfully violated the [PIA] in their search for records in Chief Teare's office in response to [Mr. Glass's] 2012 request;
>
> 3. Defendants knowingly and willfully violated the [PIA] in failing to correct the court-ordered email search after they were on notice that a discrepancy existed;
>
> 4. [Mr. Glass] did not adequately prove the claimed damages; [and]
>
> 5. The Court awards no damages.

Mr. Glass filed a timely notice of appeal, and the County cross-appealed.

---

[2] The court suggested that it might award attorney's fees to Mr. Glass under GP § 4-362(f), but that it would address the question in a separate proceeding, and that issue is not before us.

[3] The court also issued a declaratory judgment with respect to Mr. Glass's Motion to Redact Emails, but no party has appealed that.

II. DISCUSSION

Mr. Glass won the battle—the circuit court did find that the County and Ms. Ryder "knowingly and willfully" violated the PIA—but he'll lose the war.[4] Putting aside that the circuit court found that he had failed to establish any recoverable damages, the County cross-appeals the circuit court's findings of violations,[5] and as we explain below, we agree

[4] Mr. Glass phrased the issues as follows in his brief:

> I. Did the circuit court abuse its discretion by not ordering a new search for the requested public records pertaining to [Mr. Glass]?
>
> II. Was the circuit court's failure to award any damages the product of legal error?
>
> III. Did the circuit court commit legal error by requiring specific intent as a condition for liability for actual damages under the [PIA]?
>
> IV. Did the circuit court commit legal error and make clearly erroneous findings about Appellees' refusal to sever non-exempt materials from the records held in internal affairs files?
>
> V. Did the circuit court abuse its discretion when it prevented [Mr. Glass] from deposing or calling at trial the attorney who is a key witness?

[5] The County phrased the issues on cross-appeal as follows:

> 1. Did the Circuit Court err when it found that the Appellees/Cross-Appellants violated the [PIA] for not severing and producing contents of an internal affairs file?
>
> 2. Did the Circuit Court err when it found that the Appellees/Cross-Appellants violated the [PIA] for not producing email search results that were in the custody of another department? (continued…)

with the County that the circuit court erred when it found several violations on the part of Ms. Ryder and, by extension, the County. That holding has the effect of making moot Mr. Glass's appeal, so we need not address his points of error relating to the "knowing and willful" standard under the PIA and what damages one must establish to recover.

A. The Circuit Court Did Not Err When It Declined To Order A New Record Search To Correct Errors In The First Search.

We do address, preliminarily, Mr. Glass's argument that the circuit court abused its discretion when it failed to order a new search for records in the office of the Chief of Police, and "refused to correct known errors in their email search." That's not the right standard here. Findings of fact in PIA cases are no different than factual findings in any other context, and we reverse them only if they are clearly erroneous. Md. Rule 8-131(c) ("When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses."); *Haigley v. Dep't of Health & Mental Hygiene*, 128 Md. App. 194, 210 (1999) (explaining that because the purpose of the PIA is "'virtually identical' to that of [FOIA], and . . . interpretations of the federal statute are ordinarily persuasive," "we [have] adopted 'the standard of review applied by federal

---

3. Did the Circuit Court err when it found that the Appellees/Cross-Appellants had knowingly and willfully violated the [PIA] for not providing a date range to search for records in the Chief's Office?

courts of appeals involving claims under the FOIA, which is (1) whether the trial court had an adequate factual basis for the decision rendered and (2) whether upon this basis the decision reached was clearly erroneous.'" (citing *Gallagher v. Office of The Attorney General*, 127 Md. App. 572, 584 (1999)). Section 4-362 of the PIA requires (by use of the word "shall") the court to schedule any hearing on a PIA complaint as expeditiously as possible, GP § 4-362(c)(1), after which the court can (by use of the word "may") take a variety of actions:

> (3) The court may:
>
> > (i) enjoin the State, a political subdivision, or a unit, an official, or an employee of the State or of a political subdivision from:
> >
> > 1. withholding the public record; or
> >
> > 2. withholding a copy, printout, or photograph of the public record;
> >
> > (ii) issue an order for the production of the public record or a copy, printout, or photograph of the public record that was withheld from the complainant; and
> >
> > (iii) for noncompliance with the order, punish the responsible employee for contempt.

Id. Note, though, that the circuit court was not *required* to order any particular corrective action, or any at all.

The circuit court presided over more than one hearing and took evidence, after which it made findings of fact (on more than one occasion) about whether the breadth of the County's search was reasonable. And contrary to Mr. Glass's claims, the circuit court *did* find that the searches conducted were, for the most part, reasonable, and offered a clear

rationale for its decision (on April 22, 2014) to deny Mr. Glass's motion to compel the County to conduct another search with added new search terms:

> [T]here has to be some point at which the County does not have to keep answering your requests, because otherwise, it's almost like harassment. And I'm not saying that your client is acting in bad faith; that's not what I'm saying. *But there[] has to be some point at which they don't have to continue this.*
>
> If the County does the four new search terms that you're saying, and if I ordered that, that would be it. I'm not going to allow you to . . . come back and say that the County is going to have to use the new search term. . . . [¶] But if they use these search terms—*because I'm making a finding that their searches are reasonable under the law.* It doesn't appear to me from what I've heard today that they're using absurd terms that are not going to ever turn up anything that Mr. Glass is looking for, and frankly, I think if they use these four, I will—I will order them to do that, but that's—that's going to be it. *I'm not going to order them to do any subsequent searches.*

(Emphasis added.) Then, in its order following the 2015 hearing, the court specifically found that the County "complied with the [prior] Orders, disclosing over 100 additional emails in May 2014."

As we explain below, we are reversing, for other reasons, the circuit court's findings in the April 8, 2015 Order that the County committed knowing and willful violations of the PIA. But we disagree with Mr. Glass's contention that the court was *required* to order relief in the wake of those findings. The court agreed in the April 8, 2015 Order that the County had violated the court's January 24, 2014 Order both with respect to severing documents from the protected IAD file and with respect to impermissibly narrowing the date range in one search. But by the time of that order, those failings had already been cured (at least from a compliance perspective) by the court's orders back in 2014, and the

court's finding that the failure to comply was knowing and willful bore only on the question of damages by the time of the 2015 trial. (We address that finding further below as well.)

The same is true with regard to records Mr. Glass sought from the office of the Chief of Police. The circuit court could readily have considered Mr. Glass's request for damages for past violations without compelling a follow-up search. By the time Mr. Glass's claims reached trial, the PIA requests that were the subject of this lawsuit had been litigated repeatedly, and (as the circuit court noted earlier in the year) it was not clearly erroneous for the court to find that further searches would yield asymptotically diminishing returns.

B. The Circuit Court Erred When It Held That The County Should Have Produced Part Of The IAD Documents.

This particular part of the discussion gets complicated, largely because *both* parties are appealing *different* decisions of the circuit court relating to the severability of IAD documents, and because the law has evolved during the life of this case.

We held in *Glass I* that the County had not violated the PIA when it declined to disclose records from the IAD file on the grounds that they were personnel records exempt from disclosure. *Glass I*, slip op. at 13. Thereafter, the circuit court granted summary judgment to the defendants, stating that "[a]ll responsive material requested by Plaintiff has been adequately searched for and produced, with the exceptions of records excluded from disclosure under the [PIA]." But then Mr. Glass filed a second civil action (the one on appeal here), and in January 2014 moved for partial summary judgment, arguing that a then-recent case from the Court of Appeals, *Md. Dep't of State Police v. Md. State Conference of NAACP Branches*, 430 Md. 179 (2013), authorized agencies to apply the

rule of severability to personnel records, including internal affairs files. On January 24, 2014, the circuit court granted Mr. Glass's motion and ruled that the defendants had violated the PIA when they failed to disclose severable materials "when requested in 2012 and 2013." The County appeals that decision.

Mr. Glass appeals a different decision: in the April 8, 2015 Order, the circuit court found that the County had knowingly and willfully violated the PIA when it denied him inspection of the IAD records, reasoning that the evidence did not support the requisite finding of bad faith:

> The evidence was not clear and convincing that the County and Ms. Ryder intentionally violated the law or disregarded a known legal duty as they were following their interpretation of the [PIA] *and a long-standing policy of treating such records as confidential and exempt from inspection* that had just been upheld by this Court and later the Court of Special Appeals [in *Glass I*]. At the time [Mr. Glass's] second request was made and Ms. Ryder responded to such request, Ms. Ryder and Lieutenant Davis understood that under the [PIA], [Mr. Glass] was not entitled to such records. This conduct does not amount to clear and convincing evidence of a knowing and willful violation.

(Emphasis added.)

Since the circuit court's April 8, 2015 order, the landscape has changed yet again. In *Maryland Dep't of State Police v. Dashiell*, 443 Md. 435 (2015), the Court of Appeals held that an internal affairs record was protected entirely from disclosure, and was incapable of being severed:

> [T]he internal affairs records of an investigation into the conduct of a specifically identified state trooper is a "personnel record" . . . and, in this case, not capable sufficiently of

> redaction such as to render it "sanitized" for possible disclosure, were disclosure necessary.

Id. at 439. Ms. Dashiell had sought production of records after the allegations in her complaint against a police officer were sustained. *Id.* at 437. The Court went through the case law that had developed up to that time regarding disclosure of investigatory records, beginning with *Montgomery Cty. v. Shropshire*, 420 Md. 362 (2011), in which the Court had held that "internal affairs investigatory records" constituted "personnel records" under the PIA. *Id.* at 383. But at the time *Shropshire* was decided, the Court had granted *certioriari* in, but not yet decided, *Maryland Dep't of State Police v. Maryland State Conference of NAACP Branches*, 430 Md. 179 (2013). In *NAACP Branches*, the Court held that the circuit court had properly ordered the release of certain records of internal investigations in an underlying dispute between the State Police and the NAACP that involved allegations of racial profiling. The Court reasoned that the names of individual troopers, complainants, and other identifying information could be redacted so that there was no "'individual' identified in the redacted records." *Id.* at 195.

Dashiell ultimately concluded that Ms. Dashiell was not entitled to the records pertaining to the "specifically identified officer" against whom she had made the complaint. There was no doubt in the Court's mind that the internal affairs records were specific to the officer involved, and therefore were "personnel records" under the statute. 443 Md. at 458. That fact distinguished the case from *NAACP Branches*: in *Dashiell*, because the file pertained only to a lone officer, "even were redaction possible (which is highly unlikely), [it] would be related to a specific identified individual," *id.* at 459,

whereas the requester in NAACP Branches sought records with a common substantive theme that could (and did) come from the files of different individuals. And although *Dashiell* involved a complaint whose allegations had been sustained—the officer *was* found to have committed the offense with which he was charged—the content or outcome didn't alter the PIA analysis. *Id.* at 459-60.

Back to this case, where we start with the standard of review. Although we only review factual findings of the circuit court for clear error, *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 683-84 (2007), the circuit court's decisions involve interpretations of the law that are reviewable *de novo*. Md. Rule 8-131(c). "'[W]here the order involves an interpretation and application of Maryland statutory and case law, we must determine whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review.'" *Jackson v. 2109 Brandywine, LLC*, 180 Md. App. 535, 567 (2008) (quoting *Walter v. Gunter*, 367 Md. 386, 392 (2002)). Whatever the state of the law might have been in January 2014, when *NAACP Branches* arguably permitted the severability that the circuit court ultimately ordered here, by 2015, *Dashiell* changed the law, and agencies such as the County now can withhold a file altogether when, as here, the requester seeks a specific officer's file or records. Given the uncertainty and fluidity of the law on this point, then, we find that the circuit court erred finding that the County knowingly and willfully violated the PIA when it withheld the IAD file. As the Court of Appeals explained in *Dashiell*, when addressing the question of *in camera* review and whether the documents could be redacted, "[t]he requested records constitute 'personnel records' pursuant to

section 10-616(i) [of the PIA] and *in camera* review cannot alter that decision, nor may redaction be effective under the circumstances." *Id.* at 460.[6]

C. The Court Erred When It Found That The County Violated The PIA When It Failed To Disclose Emails Within A Certain Date Range Based On The OIT Search.

Next, the County contends that the circuit court erred when it found in the January 24, 2014 Order that the County violated the PIA when it failed to disclose emails between September 14, 2010 and November 21, 2011 pertaining to Mr. Glass or the traffic stop. *First*, based on the parties' representations, the circuit court at the hearing did not rely on Ms. Ryder's affidavit, in which she stated that "the emails were in the custody of a separate and distinct department"—to wit, OIT. But Mr. Glass didn't counter that affidavit, and we see no basis on which the circuit court could have grounded a decision to discount it or on which it could have found that OIT documents fell within the custody and control of Ms. Ryder or her office. *See Ireland v. Shearin*, 417 Md. 401 (2010).

In *Ireland*, the Court of Appeals addressed an agency's obligation to produce documents from more than one nominal source: "Regardless of whether collection from another department within [the custodian's] own agency would have been more expeditious or appropriate, the burden to collect and assemble the requested records falls squarely on the State rather than the applicant." *Id.* at 410. Although the documents from

[6] Mr. Glass seems to be arguing that the *character* of the IAD file changed because the County "filled their IAD files with about 115 individual records, many of which pertain to Glass and do not refer at all to Officer Collier or his conduct." Even if we assumed that that were true, though, the file is still Officer Collier's file and identifiable as such.

OIT were provided by Ms. Ryder as a "courtesy" to Mr. Glass, we don't see any basis on which the circuit court could have found that OIT was a part of Ms. Ryder's department—which would have prohibited her, as "the higher-level official," from trying "to kick the PIA responsibility down the chain of command," *ACLU Found. of Maryland v. Leopold*, 223 Md. App. 97, 125 (2015).

Second, our review of the record reveals no actual withholding in the first place: although Ms. Ryder was the records manager for the Police Department, her March 21, 2012 response to Mr. Glass simply stated that she had "initiated an inquiry" with OIT to search archived emails, and later she let him know that these documents were available *if Mr. Glass paid a fee.* She did not withhold the documents—Mr. Glass filed suit in response to that letter. So it seems that the court skipped a step, and leapt over the fact that there never was a specific denial of Mr. Glass's request, except by the time suit had been filed and the parties were in discovery.

D. The Circuit Court Erred When It Found That Ms. Ryder Violated The PIA By Failing To Follow Up With The Office Of The Chief Of Police.

The County also appeals the circuit court's finding, in the April 8, 2015 Order, that Ms. Ryder knowingly and willfully violated the PIA when she did not provide a date range to guide the Chief's office's search. We agree with the County that this finding was error, and seems to flow from the confusion generated by the array of filings made by Mr. Glass. Indeed, Mr. Glass did not time-limit his request for documents in the first place—he asked in the 2012 Request for *all* documents relating to him, and this request precipitated Ms.

Ryder's correspondence with the Office of the Chief of Police. It was only in February 2013, when the parties were already in litigation, that he narrowed the date of his request.

Based on the timing of Ms. Ryder's request to the office of the Chief of Police, we see no evidence on which the trial court could base a finding of a knowing and willful PIA violation. A failure to keep up with Mr. Glass's requests, yes. But an intentional withholding, no, and we reverse the circuit court's finding that the Ms. Ryder violated the PIA.

E. The Circuit Court Did Not Abuse Its Discretion When It Prevented Mr. Glass From Calling Julia Sweeney.

Mr. Glass's *final* argument attacks the circuit court's decision to prohibit him from deposing or calling Julia Sweeney to testify. He claims that the trial court abused its discretion in two respects: *first*, because the County did not meet its burden to establish "good cause" for the court to prevent Mr. Glass from obtaining her testimony, and *second*, because the County waived its attorney-client privilege when it raised the defense of reliance on Ms. Sweeney's advice. The County responds that the subpoenas were properly quashed as there were protective orders in place, the County withdrew its good faith reliance defense, and Ms. Sweeney could not waive the privilege in any event. We review the decision, as a discovery order, for an abuse of discretion, and reverse "only where no reasonable person would take the view adopted by the trial court . . . or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court. . ." *Indep. Newspapers, Inc. v. Brodie*, 407 Md. 415, 440 (2009) (citation and internal quotation omitted).

Mr. Glass asserts that Ms. Sweeney served as "PIA Coordinator" for the Police Department, and that she served as "decision-maker for non-routine denials" such as the decisions about his requests. From there, he reasons that "[f]acts known to [Ms.] Sweeney in that decision-maker role are not shielded by attorney work-product or attorney-client privilege" (citing *E.I. DuPont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 411-413, 423, 436 (1998)).

But Mr. Glass ignores the most important fact about the circuit court's order—it was grounded in the entry of a *prior* protective order. On May 30, 2013, the circuit court had already entered a protective order with respect to certain interrogatory answers seeking Ms. Sweeney's involvement, and on July 22, 2013, the court granted the County's Motion for Protective Order and quashed the subpoena seeking her deposition. Mr. Glass gave the circuit court no basis at trial on which to reverse these rulings, and the court correctly pointed out that, as a matter of logic, it would have made no sense to rule at trial that the protective order was no longer in effect. Mr. Glass's counsel's argument in response that "once a matter goes to trial everything is back on the table" would render any protective order completely meaningless, as a party could simply "give" on trying to obtain information in discovery, and then relitigate any protective order for purposes of trial.

We also disagree that the County waived the privilege when it raised the defense of good faith reliance on Ms. Sweeney's advice; in fact, counsel for Mr. Glass specifically held the County to a *release* of that defense at the same stage in the trial. When the court pointed out that the County couldn't raise the good faith reliance defense as its only defense, counsel for the County stated, "I will not argue it," and counsel for Mr. Glass

responded, "Thank you, then. We'll accept that offer." So although Mr. Glass argues here that "the circuit court erroneously allowed [the County] to unring the waiver bell," a closer review of the trial shows, not to get too confusing, that *Mr. Glass* waived the right to inquire further of Ms. Sweeney, given his own acceptance (through counsel) of the County's withdraw of the defense.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED IN PART AND REVERSED IN PART AND REMANDED FOR ENTRY OF A DECLARATORY JUDGMENT IN FAVOR OF THE CROSS-APPELLANTS. COSTS TO BE PAID BY APPELLANT.