UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1233

September Term, 2014

SKYLOR HARMON

v.

WORCESTER COUNTY SHERIFF'S OFFICE

Meredith,
Nazarian,
Thieme, Raymond G.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 17, 2016

In 2013, Skylor Harmon, an inmate at the North Branch Correctional Institution, submitted a request under the Maryland Public Information Act (the "PIA"), Md. Code (2014, 2015 Supp.), Title 4 of the General Provisions Article ("GP"), to the chief deputy of the Worcester County Sheriff's Office (the "WSCO"). Although the WSCO initially acknowledged receipt of Mr. Harmon's PIA application, it did not respond further until 2014, after Mr. Harmon followed up. The WSCO denied production because the documents had been produced in discovery years earlier, during Mr. Harmon's trial, but produced the documents after Mr. Harmon filed a complaint in the Circuit Court for Worcester County. The court dismissed Mr. Harmon's complaint as moot after Mr. Harmon received the documents. We vacate the judgment in part and remand for consideration of Mr. Harmon's claim for actual damages.

I. BACKGROUND

On January 6, 2012, Mr. Harmon was sentenced to life in prison for first-degree murder and related offenses. From jail, he requested documents and records under the PIA from the Sheriff's office that investigated his case:

> This request extends to documents and information in the custody and/or control of the Office of the State's Attorney for Worcester County, and any others whom either regularly report, or in regard to this particular case, have reported to any person, agent, employee, or member of the Office of the State's Attorney for Worcester County.
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> * * *
>
> I hereby request: That I shall be provided copies of the following public records pertaining to the investigation and adjudication of: Police complaint/control[] No. # 10-0107[:]

(I) Any and all interviews with law enforcement of any eyewitness to the incident complained of in the above listed complaint;
(II) Reports by any and all experts regardless of discipline, whom examined, recorded, and/or reported on the crime scene;
(III) Custody log(s) depicting the nature of materials collected, and the chain of custody pertaining to each item or substance collected;
(IV) The qualifications and performance reviews for any and all expert witnesses whom handled or conducted any analysis of the evidence collected from the crime scene.

The PIA request was directed to "Mr. Dodds," the WCSO's former chief deputy, as the custodian of the records. The WCSO received Mr. Harmon's PIA request on February 15, 2013, and on April 8, 2013, Chief Deputy J. Dale Smack III responded in a letter stating, in full, "Please be advised that I am in receipt of your request. Your information will be reviewed and I will be in touch."

After hearing nothing, Mr. Harmon followed up by letter to Chief Deputy Smack on January 17, 2014. The Chief Deputy responded, in a letter dated January 22, stating, "Upon review, I learned that copies of all case files, investigative files and trial paperwork were provided to your attorney on your behalf, prior to your trial here in Worcester County. It would be my recommendation that you contact your attorney and retrieve these files."

Mr. Harmon filed a complaint for judicial review of an agency decision in the Circuit Court for Worcester County on February 26, 2014, naming the WCSO as the sole defendant, and directing service of the complaint to Chief Deputy Smack. The complaint asked the court to convene an expedited hearing, to enjoin WCSO from denying the MPIA request, to order production of the requested documents, to declare that the WCSO

knowingly and willfully violated the PIA, to inspect *in camera* any records that the WCSO alleges or might allege are exempt from production requirements, to award actual and punitive damages up to $9,000, to find the WCSO guilty of a misdemeanor, and to impose criminal fines. The complaint was served on the WCSO on March 11, 2014.

On February 27, 2014, Mr. Harmon asked the court to issue a summons for Chief Deputy Smack. This summons was served on Chief Deputy Smack on April 8, 2014, along with a copy of the complaint. In a letter filed April 28, 2014 in the circuit court, and copying Mr. Harmon, Chief Deputy Smack responded to the summons that he had made copies of all requested documents and would mail them to Mr. Harmon during the week of April 28 – May 2, 2014.

Mr. Harmon filed a motion for default judgment on May 2, 2014, stating that "[a]s of today, 4-24-2014, the defendants have failed to serve an answer[] or otherwise plead within the time allotted . . . and thus, ha[ve] defaulted," and requesting the same relief listed in the complaint. On July 8, Chief Deputy Smack filed a letter with the circuit court declaring that the requested documents were mailed to Mr. Harmon "during the month of May 2014." In an order dated July 10, the court dismissed as moot Mr. Harmon's complaint and motion for default judgment. Mr. Harmon filed a timely notice of appeal.

II. DISCUSSION

"The public's right to information about government activities lies at the heart of a democratic government. Maryland's [PIA] grants the people of this State a broad right of access to public records while protecting legitimate government interests and the privacy rights of individual citizens." *ACLU Found. of Md. v. Leopold*, 223 Md. App. 97, 109

(2015) (quoting Office of the Attorney General, Maryland Public Information Act Manual, Preface (13th ed., October 2014)). The procedure for submitting a PIA request and for seeking judicial review of a request is outlined in *Ireland v. Shearin*:

> Maryland's PIA states that a "custodian shall [allow] a person . . . to inspect any public record[1] at any reasonable time" except as otherwise provided by law. [GP § 4-201(a)].[2]
>
> An individual asserts this right to access by submitting a written application to the custodian of records, unless an exception applies. [GP § 4-202(a)]. The recipient of the application must verify (1) that he or she is in fact a custodian of the record, [GP § 4-202(c)], and (2) that the document in question exists, [GP § 4-202(d)]. If these two requirements are met, the custodian of records must then either grant or deny the application within thirty days of receiving the initial application. [GP § 4-203(a)]. A grant of the application requires the custodian of records to produce the public record within 30 days of receipt of the application. [GP § 4-203(b)]. On the other hand, a denial requires the custodian of records to immediately notify the applicant and, within ten business days, provide a written statement to the applicant giving the legal reasons for the agency's failure to disclose and advising the applicant of his or her right for review of the denial. [GP § 4-203(c)].
>
> The PIA permits applicants to broadly seek judicial review whenever they are denied inspection of a public record by filing a complaint in the appropriate circuit court jurisdiction. [GP § 4-362(a)]. We have reiterated on numerous occasions that the PIA reflects the need for wide-ranging

[1] A "public record" is "the original or any copy of any documentary material that . . . is made by a unit or instrumentality of the State or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business[.]" GP § 4-101(h)(1)-(1)(i).

[2] Prior to its 2014 incorporation into the General Provisions Article, the PIA was housed in Md. Code (1984, 2009 Repl. Vol.), Title 10 of the State Government Article ("SG").

> access to public records, and therefore, the statute should be construed in favor of disclosure for the benefit of the requesting party. *See, e.g.*, *Hammen v. Balt. Cty. Police Dep't*, 373 Md. 440, 457 (2003) ("[T]he provisions of the [PIA] 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.") . . . .

417 Md. 401, 407-08 (2010) (footnote omitted). We ask two questions when reviewing a circuit court's decision involving a claim under the PIA: (1) whether the trial court had an adequate factual basis for its decision, and (2) whether the court's decision, based on that factual basis, was clearly erroneous. *Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 266 (2014) (citing *Haigley v. Dep't of Health & Mental Hygiene*, 128 Md. App. 194, 210 (1999)).

The decision before us is the circuit court's decision that Mr. Harmon's claims became moot by the WSCO's eventual production of the documents he requested. Citing *Ireland*, Mr. Harmon contends that "a complaint is not moot despite grant of inspection because the appellant sought actual and punitive damages as well." *Ireland*, 417 Md. at 406 ("A case is moot when 'there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy.'" (quoting *Hammen v. Balt. Cty. Police Dep't*, 373 Md. 440, 449 (2003))). The WSCO responds with the same argument that the Court of Appeals rejected in *Ireland,* that the WSCO's eventual production of the requested documents rendered Mr. Harmon's claim moot. *See id.* at 406 (disagreeing with the position that the case is moot since the custodian had permitted the appellant to inspect all requested documents). The WSCO attempts to distinguish this case from *Ireland* by positing that the circuit court actually considered the

issue of damages, decided that Mr. Harmon didn't deserve an award, and effectively denied Mr. Harmon's claim for damages by declaring the entire case moot.

We start with the PIA request itself, which the WSCO received on February 15, 2013. The WSCO had thirty days to grant or deny (or temporarily deny, *see* GP § 4-358) the application. GP § 4-203(a). When denying an application, the custodian must follow GP § 4-203(c):

> *Procedure for denial*:
>
> A custodian who denies the application shall:
> (1) immediately notify the applicant;
> (2) within 10 working days, give the applicant a written statement that gives:
> (i) the reasons for the denial;
> (ii) the legal authority for the denial; and
> (iii) notice of the remedies under this title for review of the denial; and
> (3) allow inspection of any part of the record that is subject to inspection and is reasonably severable.

The WSCO's response to Mr. Harmon's request did not comply with this statute. The WSCO didn't respond at all until well past the thirty-day deadline, on April 8, 2013, and the response simply acknowledged receiving the request. Another eight months passed before the WSCO formally denied the application, and only then after Mr. Harmon sent another letter. And the WSCO's denial letter didn't cite any authority for the denial and failed to notify Mr. Harmon of available remedies. The WSCO produced the documents to him shortly after Mr. Harmon filed his petition for judicial review. Whether his filing caused the WSCO to rethink its denial or merely correlates with that decision doesn't really matter.

All that said, we agree with the WSCO that the production rendered moot the claims in Mr. Harmon's complaint that sought production of documents as relief. Whether or not he's entitled to damages or any other remedy, though, is a different question. Under GP § 4-362(d), a "governmental unit is liable to the complainant for actual damages that the court considers appropriate if the court finds by clear and convincing evidence that any defendant knowingly and willfully failed to" produce the requested documents. We express no views on whether the WSCO's handling of Mr. Harmon's request rises to, or anywhere near, this standard. But the question wasn't moot when the WSCO produced the documents, and we disagree that the circuit court's decision addressed it, implicitly or otherwise.

The WSCO argues that the court resolved the damages question in the WSCO's favor. It starts by arguing that the WSCO "did not intend to deny [Mr. Harmon] production of the records," but thought that it wasn't required to produce them in response to this request because the records had been produced in discovery in Mr. Harmon's criminal trial. But then the WSCO makes a leap: it assumes that by finding Mr. Harmon's claims moot, the circuit court must have agreed that "the WSCO had a reasonable basis for initially denying the request (the records had already been produced to [Mr. Harmon]'s counsel)," and therefore that the WSCO did not knowingly or willfully violate the PIA because they were mistaken.

These last two points don't follow from the first, and although Mr. Harmon's burden is a stiff one, the court never found one way or the other whether he met it. By finding the claims moot, the court expressly, and by definition, *declined* to address their merits. *See*

In re Adoption of Cross H., 431 Md. 371, 372 (2013) ("The majority declines to reach the merits of this issue, concluding that the matter is moot."). The court's order says nothing about whether the WSCO's initial response violated the PIA and, if so, whether its decision not to produce the requested documents represented a willful or deliberate violation. *See* GP § 4-362(d)(1). Nor has the WSCO cited any authority for the proposition that producing documents to the requesting party's attorney in another proceeding (and assuming that this assertion, contained only in letters from the WSCO rather than affidavits) satisfies the WSCO's obligations under the PIA. Section 4-351(b) lists reasons under which a custodian may deny inspection of documents or records held by a sheriff's office or related department pertaining to an investigation; having already produced the requested documents to a party's trial counsel is not among them.[3]

[3] GP § 4-351(b) allows denial "*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."

(Emphasis added.)

It is for the circuit court in the first instance to determine whether Mr. Harmon has satisfied his burden of proving actual damages[4] in connection with the WSCO's responses to his PIA request, and we hold that his claim for damages was not rendered moot by the WSCO's belated production of the documents he requested. We vacate the portion of the circuit court's judgment finding his damages claim moot and remand for further proceedings to address them, and otherwise affirm.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

[4] Mr. Harmon also requested that the court assign punitive damages and render judgment based on criminal law violations. The PIA only provides for actual damages, which Mr. Harmon will have the burden of proving to a reasonable certainty, *see Leopold*, 223 Md. App. at 123 (discussing the purview of "actual damages" awarded for PIA violations), not punitive damages. Further, this is a civil action, and criminal sanctions are not among the relief Mr. Harmon is entitled to seek in this action.