Circuit Court for Prince George's County
Case No. CAL22-16942

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2271

September Term, 2023

U.S. RIGHT TO KNOW

v.

UNIVERSITY OF MARYLAND,
COLLEGE PARK

Wells, C.J.,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: September 22, 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 MD. RULE 1-104(a)(2)(B).

The MPIA contemplates a collaborative, iterative process to narrow a request for the benefit of all concerned. In this case, there was no iterative process by which to reduce the size and expense of the production.

BACKGROUND

In August 2021, U.S. Right to Know, a nonprofit group that investigates and reports on potential threats to public health, the environment, and the food system,[1] submitted a three-part public records request under the MPIA to UMD. U.S. Right to Know alleges that these records will expose UMD Professor Dennis vanEngelsdorp's ties to the pesticide industry.[2] UMD fulfilled parts one and three of the request without charge. There was, however, a fundamental misunderstanding between the parties on part two of the request. In part two, U.S. Right to Know asked for "[a]ll e-mail correspondence to or from Dr. vanEngelsdorp, including [cc:], [bcc:], and attachments that include the domains, keywords, key phrases or e-mail addresses" of organizations associated with the pesticide industry. U.S. Right to Know thought that its request did not include "widely available materials." Specifically, U.S. Right to Know asked that UMD "narrow the search results to exclude publications, published papers, magazine, newspaper and academic articles, organizational newsletters, or other widely available materials." UMD was apparently unaware of this limitation, however, and its search turned up 39,110 responsive materials,

[1] *About U.S. Right to Know*, U.S. RIGHT TO KNOW, https://perma.cc/BC29-GH9W (last visited Sept. 11, 2025).

[2] Dr. vanEngelsdorp is an associate professor at UMD specializing in honey bees and pollinator health. *Dennis vanEngelsdorp*, UNIV. MD. COLL. AGRIC. & NAT. RES., https://perma.cc/9J5N-UXN4 (last visited Sept. 11, 2025).

many of which were widely available. UMD assessed a fee of $96,575.99 for the production and suggested that U.S. Right to Know narrow the scope of its request to reduce costs. U.S. Right to Know did not respond to this request, because it thought its search was already narrow. Rather than discuss the scope of the documents with UMD, U.S. Right to Know submitted a request for a full fee waiver. MD. CODE, GEN. PROVIS. ("GP") § 4-206(e) (allowing the custodian to waive a fee if the requestor asks for a waiver, and the custodian decides that the waiver is in the public interest). UMD denied the request to waive the $96,575.99 fee, finding that the 39,110 responsive materials, including those that were widely available, "d[id] not relate to a matter of general public concern[,] … serve[d] no meaningful public benefit[,] … d[id] not shed light on the operations of government or [UMD's] performance of its public duties[,]" nor was disclosure likely to "significantly contribute to an understanding of government operations or activities." Critically, the custodian's denial of U.S Right to Know's fee waiver request was based on the cost to review the 39,110 responsive materials, including substantial numbers of widely available materials. U.S. Right to Know filed a complaint against UMD in the Circuit Court for Prince George's County, followed by a motion for summary judgment, claiming that the denial of the waiver was arbitrary and capricious. UMD responded with a cross-motion for summary judgment, claiming that the denial of the

waiver was not arbitrary and capricious. The circuit court, as noted above, granted UMD's motion. U.S. Right to Know appeals. [3]

DISCUSSION

Before we review the decision of the circuit court, we recount the structure and purpose of the MPIA. *Id.* §§ 4-101-601.

> The General Assembly enacted the MPIA to "provide the public the right to inspect the records of the State government or of a political subdivision within the State." People and entities can request records under the Act for all kinds of purposes—private, financial, personal, or public. Consistent with this transparency law's "broad remedial purpose," our Supreme Court has emphasized repeatedly that "the provisions of the [MPIA] are to be liberally construed" to maximize transparency and minimize the delay and cost incurred by an MPIA applicant. … So at its core, the MPIA is a disclosure statute that is meant to ensure that the government is accountable to its citizens, and the disclosure the Act requires is a public service that the Act directs government agencies to provide.

[3] This Court requested supplemental briefings from the parties on any policy issues that can or should be considered by the custodian of records in determining whether to grant a waiver on the basis that it would be in the public interest. We specifically asked the parties to consider issues regarding governmental transparency, the role of and function of public universities and their professors, the existence and availability of alternative sources of information, the existence and scope of academic freedom, and the concern that a request for public records and the associated request for a fee waiver might be sought for improper purposes including harassment, "doxing," or to impair academic freedom. We thank the parties for their submissions. Although we don't reach those issues here, we believe that these considerations may be relevant in both the assessing of MPIA requests and fee waivers. Claudia Polsky, *Open Records, Shuttered Labs: Ending Political Harassment of Public University Researchers*, 66 UCLA L. REV. 208, 212-219 (2019) (contrasting the government transparency goals that are the foundation of open records laws with the intrusive effect that records requests may have on academia).

Cox v. ACLU of Maryland, 263 Md. App. 110, 126 (2024) (alteration in original) (citations omitted).

Embedded in the MPIA is an intention that the applicants and custodians "engage in collaborative efforts when the path to fulfillment of a records request presents obstacles." *Balt. Police Dep't v. Open Just. Balt.*, 485 Md. 605, 625 (2023). When possible, "an agency should in good faith provide some reasonable assistance to the requestor in refining the request for the records the requestor seeks." *Glass v. Anne Arundel Cnty.*, 453 Md. 201, 232 (2017). Thus, "in practice, a productive response to an MPIA request is an iterative process in which the agency reports on the type and scope of the files it holds and the requestor refines the request to reduce the labor (and expense) of searching those records." *Open Justice Balt.*, 485 Md. at 625 (cleaned up) (quoting *Glass*, 453 Md. at 233). By working together, the agency and the requestor fulfill the purpose and policy of the MPIA. *Open Justice Balt.*, 485 Md. at 625. The MPIA requires a *reasonable* search, which is "measured against the specificity of the request and the willingness of the requestor to focus a request to improve the efficiency of the search." *Glass*, 453 Md. at 233. As this Court recently said, "the requestor and the custodian are encouraged to work together to reduce, where appropriate, any extraneous paper that the custodian must produce (and for which the requestor must pay)." *Sugarloaf All., Inc., v. Frederick Cnty.*, 265 Md. App. 199, 242 (2025). The official custodian of the agency may charge a reasonable fee for the search, preparation, and reproduction of a public record if the fee bears a reasonable relationship to the actual costs of fulfilling the request. GP § 4-206(a)(3), (b)(1). The custodian may waive the fee if the requestor asks for a waiver and the custodian determines that the waiver

is in the public interest. *Id.* § 4-206(e). Unless a court can determine that the parties engaged in the iterative process, however, it cannot assess the reasonableness of the search and fees nor whether the fees should be waived.

Here, U.S. Right to Know requested a waiver of a $96,575.99 fee for 39,110 responsive materials, many of which were widely available. U.S. Right to Know argues that the number of responsive materials does not reflect the scope of its requested search. U.S. Right to Know also denies that any invitation to collaborate was made, although it is clear from the custodian's letter to U.S. Right to Know that UMD made an offer. The MPIA requires a *good faith effort* from both the agency and the requestor to improve the efficiency of a search, *before* involving the courts. *Open Just. Balt.*, 485 Md. at 625; *Glass*, 453 Md. at 233.

The iterative process here had a false start. UMD offered to narrow the scope of the search, which turned up 39,110 responsive materials, many of which were widely available. U.S. Right to Know, believing that the scope was already narrow, did not engage with the offer. Rather than make a reasonable effort to collaborate, as required by the MPIA, U.S. Right to Know filed suit against UMD. The iterative process was abandoned before it began. This is contrary to the purpose of the MPIA and the intention of the General Assembly when it developed the process for requesting public records and fee waivers. Engaging in the cooperative, iterative process ensures that the scope of the search is tailored to the demands of the request and will no doubt eliminate irrelevant documents, like the widely available materials, thus lowering the cost of production. This is beneficial to all. Because the parties did not engage in the iterative process, the circuit court could not decide

about the reasonableness of the search, review the assessment of fees, or the fee waiver request. Because we hold that the parties did not engage in the requisite iterative process prior to consideration of the fee and a fee waiver, we reverse the grant of summary judgment and remand to the circuit court to dismiss the case as premature so that the parties can engage in the iterative process as intended by the General Assembly.[4]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS REVERSED AND REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO DISMISS THE CASE TO ALLOW THE PARTIES TO ENGAGE IN THE ITERATIVE PROCESS DESCRIBED IN THIS OPINION. COSTS TO BE EQUALLY DIVIDED BETWEEN THE PARTIES.

[4] We note that in 2015, the General Assembly established the Ombudsman's Office to facilitate collaboration between the requestor and the custodian of the records. Thus, if initial collaborative efforts between an applicant and a custodian concerning a requested fee waiver are not successful, the parties may attempt to resolve their dispute with the assistance of the Ombudsman. GP § 4-1B-04(a)(6); *Open Just. Balt.*, 485 Md. at 624. While working with the Ombudsman is not required, perhaps the parties here could engage with the Office to ensure the scope of the search matches the request.