Circuit Court for Anne Arundel County
Consolidated Case Nos. C-02-CV-18-000096
and C-02-CV-18-000092

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2302

September Term, 2018

THE ESTATE OF KATHERINE S. MORRIS, ET AL.

v.

ANNE ARUNDEL COUNTY, MARYLAND

Fader, C.J.,
Leahy,
Wright, Alexander
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: January 16, 2020

This appeal has its origins in two lawsuits filed in the Circuit Court for Anne Arundel County by appellants, the Estate of Katherine Sarah Morris ("the Estate") and Marguerite R. Morris ("Ms. Morris"), individually and as personal representative of the Estate,[1] alleging that Anne Arundel County, Maryland ("the County"), appellee, failed to permit inspection of certain records pursuant to the Maryland Public Information Act ("MPIA").[2] On January 16, 2018, appellants filed two complaints, case numbers C-02-CV-18-000096 and C-02-CV-18-000092, against the Anne Arundel County Police Department, Anne Arundel County Government, and the State of Maryland. Two months later, they filed amended complaints in which they removed the original defendants and named the County as the sole defendant. Each of the amended complaints set forth a single count for failure to permit inspection of records pertaining to the police investigation into the death of Ms. Morris's daughter, Katherine Sarah Morris. Eventually, the cases were consolidated and proceeded under case number C-02-CV-18-000096. The cases involved two requests for the release of information under the MPIA, one filed on November 18, 2015, and the other filed on June 22, 2013.

In each case, the County filed a motion to dismiss or, in the alternative, motion for summary judgment. A motions hearing was held on June 4, 2018. In a written

[1] Ms. Morris, individually and as the personal representative of the Estate, proceeded below, as she does on appeal, in proper person.

[2] The MPIA is codified at § 4-101 *et seq*. of the General Provisions Article of the Maryland Code. Prior to 2014, the MPIA was codified at § 10-611 *et seq*. of the State Government Article of the Maryland Code.

memorandum and opinion, the court granted the County's motions and dismissed the cases with prejudice. This timely appeal followed. (Docket entries)

QUESTIONS PRESENTED

Appellant presents nine questions,[3] which we have condensed and rephrased as follows:

[3] The questions presented by appellant were as follows:

1. Was the [Circuit Court's] dismissal of the Appellant's Motions based solely on the Appellees employee's affidavits which denied the Appellant the ability to cross examine legally correct or arbitrary and capricious?

2. Was the Circuit Court correct in refusing to consider the [Appellants'] allegations that the grand jury subpoenas issued were not part of a grand jury proceedings but were an abuse of power for there was no grand jury on a closed suicide case?

3. Where the Appellants presented evidence that the AACM had ostentatiously assigned inaccurate verbiage without merit?

4. Was the Circuit Court correct in dismissing the complaint when there existed a disputed fact existed so therefore the complaint should not have been dismissed?

5. Have the AACM acted in good faith as required to fully accept the entirety of the case being done away with on the strength of an employee's affidavit when those employees could only testify to a moment in time and not the full scope of the inquiry?

6. Was the Circuit [Court's] declaration/assessment that the raw data files contained on a crashed hard drive were destroyed a proper assessment or a disputed fact needing further assessment?

7. Did the circuit court fully access the fullness of the legal irregularities raised in the [appellant's] complaint which was sufficiently plead?

8. Were courtroom statements made by the Circuit Court judge reflective of a propensity to believe the police accepting carte blanche all things presented

I. Did the circuit court err in finding that there was no genuine dispute of material fact, and that the County was entitled to judgment as a matter of law, with respect to the County's search for and production of emails?

II. Did the circuit court err in finding that there was no genuine dispute of material fact, and that the County was entitled to judgment as a matter of law, with respect to the County's decision to withhold production of certain grand jury records and records from the Office of the Chief Medical Examiner?

III. Did the circuit court err in finding that there was no genuine dispute of material fact, and that the County was entitled to judgment as a matter of law, with regard to the MPIA request for iPhone data?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

This case arises out of the tragic death of Ms. Morris's daughter, Katherine Sarah Morris, on May 6, 2012. The Anne Arundel County Police Department conducted an investigation into the circumstances of her death and concluded that the cause of death was suicide. Ms. Morris disputed that finding and asserted that the cause of death was homicide.

A. MPIA Request for Emails and Police Investigation Records

In the belief that the police failed to properly investigate her daughter's death, and that the death was the result of a homicide, on November 18, 2015, Ms. Morris, individually and as the personal representative of her daughter's estate, filed a request with the Anne

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by the Appellees for a bias based decision in spite of evidence to the contrary?

9. Had the Circuit Court erred in its interpretation of the laws pertaining to FOI as related to the Appellants complaint when it applied the standard of " . . as long as the affidavits or declarations are sufficiently detailed, non-conclusory, and submitted in good faith, and as long as a plaintiff has no significant basis for questioning their reliability."?

Arundel County Police Department for the release of documents and records under the MPIA, including emails related to the investigation dating back to May 6, 2012. By letter dated December 7, 2015, Christine Ryder, the records manager for the Anne Arundel County Police Department, advised Ms. Morris that several items in her MPIA request were denied because they did not seek documentary material, but all other responsive records would be provided.

Steven Bass, a senior systems administrator with the Anne Arundel County Office of Information Technology's Server Team, initiated a search of all County employee email accounts from May 5, 2012 to November 23, 2015. He searched for email files containing the terms "Katherine Morris" or "Marguerite Morris." According to Mr. Bass, at the time of his search, the County's server retained emails for two years before purging them, unless the email was subject to a litigation hold. Mr. Bass's search did not reveal any emails from 2012, but all other email results were made available to Ms. Ryder.

Thereafter, Ms. Ryder sent a second letter to Ms. Morris informing her of Mr. Bass's search for email records and the estimated fees to process her request. After Ms. Morris paid the fee, Ms. Ryder reviewed the emails to determine whether any would need to be withheld under an exemption from the MPIA. Ultimately, no emails were withheld and they were provided to Ms. Morris.

Also in response to Ms. Morris's MPIA request, Ms. Ryder produced records from the physical files of the Anne Arundel County Police Department. By letter dated February 3, 2016, Ms. Ryder advised Ms. Morris that the following records were being withheld from production: (1) seven records containing attorney-client privileged material,

confidential work product, and deliberative process material; (2) eight records pertaining to grand jury subpoena material; and, (3) records from the Office of the Chief Medical Examiner. Subsequently, on May 8, 2018, Assistant County Attorney Kemp Hammond wrote to Ms. Morris and advised that the County was waiving the attorney-client, work product, and deliberative process privileges previously asserted by Ms. Ryder. Mr. Hammond provided an index containing further information and descriptions of the documents that were withheld with respect to the grand jury subpoenas and records from the Office of the Chief Medical Examiner.

B. MPIA Request for Cellphone Data

On June 22, 2013, Ms. Morris filed a request for the release of information under the MPIA that sought, among other things, the data from her daughter's cell phone and iPod as well as certain video surveillance records. The Anne Arundel County Police Department responded to that request on July 16, 2013, and made the requested documents that were in its possession available to Ms. Morris.

On July 8, 2015, Ms. Morris requested Anne Arundel County Police Chief Timothy Altomare to provide the raw data from her daughter's cell phone. In response, the police department provided Ms. Morris with records including a copy of a Cellebrite report pertaining to her daughter's cell phone, but the County did not have in its possession the data originally downloaded from the decedent's cell phone.

The failure to have the data originally downloaded from the decedent's cell phone was explained in an affidavit submitted by former Anne Arundel County Police Detective Scott Seegers, which was attached to the County's motion to dismiss the complaints. In

his affidavit, Mr. Seegers stated that sometime between the decedent's death and June 2012, as part of the police investigation into the decedent's death, he performed digital forensics with regard to the decedent's iPhone. Mr. Seegers connected the decedent's cell phone to a computer in the police department's digital forensics lab and downloaded data from the phone to the computer's hard drive. Once the data was downloaded to the computer, Mr. Seegers used Cellebrite, a digital forensics software tool, to generate a report, which was saved as a PDF document and copied onto a CD. According to Mr. Seegers, no copy was made "of the data downloaded from Katherine Morris' iPhone as such data was too large to fit onto a CD and not useful in the investigation once the Cellebrite report was generated." After the data was downloaded from the iPhone, it remained on the hard drive. However, sometime between June 2012 and April 2013, the hard drive "crashed" and, as a result, was "unrecoverable and could not be accessed or retrieved."

C. Dismissal of the Amended Complaints

In her amended complaints, Ms. Morris alleged, among other things, that the County violated the MPIA by failing to respond to her requests within 30 days, failing to provide emails from 2012, deliberately allowing documents to be destroyed, failing to provide information obtained via grand jury subpoenas, and failing to provide information and data, including metadata, from the decedent's cell phone.

In its motions to dismiss both cases, the County asserted that it had produced all records within its possession or control that were not privileged, that at the time of Ms. Morris's June 22, 2013 MPIA request it did not have in its possession the data originally

downloaded from the decedent's cell phone, and that it had responded fully to Ms. Morris's requests.

After a hearing, the circuit court agreed with the County. With respect to appellants' November 18, 2015, MPIA request for emails from 2012, the court concluded that appellants failed to provide any "countervailing evidence of a genuine dispute as to the adequacy of the search" conducted by Mr. Bass, and that "[a]ny records which did exist from 2012 which were purged were done so consistent with County policy." As for the index provided by the County detailing the grand jury records and records from the Office of the Chief Medical Examiner that were withheld from production, the court determined that the denial of inspection was proper under Maryland law.

With respect to the request for data from the decedent's iPhone, the court credited Detective Scott Seegers' affidavit, in which he explained that the hard drive that originally contained the requested data crashed prior to appellants' MPIA request and that the data was not recoverable and could not be accessed or retrieved from County records. The court concluded that the County did not violate the MPIA simply because it no longer had possession of the raw data at the time the MPIA request was made.

Lastly, the court declined to address appellants' arguments that the County failed to respond to the MPIA requests in a timely manner, notify them of the lack of 2012 emails in a timely manner, and provide documents on a CD, because appellants' "received all information requested not otherwise protected and no claim upon which relief can be granted remains[.]"

STANDARD OF REVIEW

Maryland Rule 2-322(c) provides, in relevant part, that "[i]f, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment[.]" In the instant case, the court considered the affidavits of Christine Ryder, the custodian of records for the Anne Arundel County Police Department, Steven Bass, a senior systems administrator for the Anne Arundel County Office of Information Technology's Server Team, and Scott Seegers, a former detective with the Anne Arundel County Police Department, all of which were attached to the County's motions to dismiss, or in the alternative, motions for summary judgment. Thus, we shall treat the circuit court's rulings on the County's motions as the granting of summary judgment.

Summary judgment may be granted when "there is no genuine dispute as to any material fact" and the moving party "is entitled to judgment as a matter of law." Md. Rule 2-501(f). A circuit court's decision to grant summary judgment is reviewed *de novo*. *Vito v. Grueff*, 453 Md. 88, 104 (2017). "When reviewing a grant of summary judgment, we determine 'whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.'" *Blackburn Ltd. P'ship v. Paul*, 438 Md. 100, 107 (2014) (quoting *Myers v. Kayhoe*, 391 Md. 188, 203 (2006)). "The 'moving party must set forth sufficient grounds for summary judgment,' . . . and the movant is responsible for informing the circuit court of the basis for its motion and for identifying deficiencies in the pleadings and record which demonstrate the absence

of a genuine issue of fact.'" *Mohammad v. Toyota Motor Sales, U.S.A., Inc.*, 179 Md. App. 693, 703 (2008) (quoting *Davis v. Goodman*, 117 Md. App. 378, 392 (1997)). Once "the moving party has produced sufficient evidence in support of summary judgment, the non-movant 'must demonstrate that there is a genuine dispute of material fact by presenting facts that would be admissible in evidence.'" *Clark v. O'Malley*, 434 Md. 171, 194 (2013) (quoting *Gross v. Sussex, Inc.*, 332 Md. 247, 255 (1993)). We consider "'the record in the light most favorable to the non-moving party and construe[] any reasonable inferences that may be drawn from the facts against the moving party.'" *Blackburn Ltd. P'ship*, 438 Md. at 107-08 (quoting *Myers*, 391 Md. at 203). "A plaintiff's claim must be supported by more than a scintilla of evidence[,] as there must be evidence upon which [a] jury could reasonably find for the plaintiff." *Id.* (internal quotations omitted).

THE MPIA

The MPIA 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." Md. Code (2014), § 4-103(a) of the General Provisions Article ("GP").[4] It reflects the legislative intent to ensure that Maryland citizens "be accorded wide-ranging access to public information concerning the operation of their government." *Maryland Dep't of State Police v. Maryland State Conference of NAACP Branches*, 430 Md. 179, 190 (2013) (citation and internal quotation marks omitted). Thus, the "well-established general

[4] The MPIA is similar, although not identical to the federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Maryland appellate courts have frequently relied upon case law under FOIA in deciding similar issues under the MPIA. *See, e.g., Fioretti v. Maryland State Board of Dental Examiners*, 351 Md. 66, 76 (1998).

principles governing the interpretation and application of the [MPIA] create a public policy and a general presumption in favor of disclosure of government public documents." *Id.* (citation and internal quotation marks omitted). Nevertheless, the MPIA includes exemptions to this general rule. In *Glass v. Anne Arundel County*, 453 Md. 201 (2017), the Court of Appeals noted that the exceptions fall into the following four basic categories:

> *(1) Disclosure Controlled by Other Law*. The [MPIA] generally defers to the dictates of other laws that control disclosure of a particular public record. Thus, if another law – e.g., constitutional provision, statute, common law privilege – forbids disclosure of a record, or gives the agency discretion not to disclose the record, that other law controls disclosure of the record. *See* GP § 4-301. For example, a record of a communication covered by attorney-client privilege would not be disclosed in response to a[n] [MPIA] request, unless the client waived the privilege. GP § 4-301(1).
>
> *(2) Mandatory Exceptions.* The [MPIA] itself forbids disclosure of certain specified categories of records. *See* GP § 4-304 *et seq.* Similarly, the statute forbids an agency from disclosing certain types of information that may appear in a record, even if other parts of the record are open to inspection. *See* GP § 4-328 *et seq.* These exceptions to the [MPIA]'s general rule of disclosure are often called mandatory exceptions. An example of a mandatory exception for entire records, pertinent to this case, is the exception for personnel records of public employees. GP § 4-311. An example of a mandatory exception for information (that may be only a portion of a record) is the exception for confidential commercial information. GP § 4-335.
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> *(3) Discretionary Exceptions*. The [MPIA] specifies other categories of records or information that an agency may withhold from public inspection if it believes that disclosure "would be contrary to the public interest." GP § 4-343 *et seq.* For example, a custodian may deny inspection of interagency or intra-agency letters and memoranda that contain pre-decisional deliberations. GP § 4-344. Another example is a record of an investigation conducted by police or prosecutors as well as "an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose." GP § 4-351(a). These exceptions to the [MPIA]'s general rule in favor of disclosure are often referred to as discretionary exceptions. They are "discretionary" not in the sense that the agency may withhold or disclose as it pleases, but in the sense that the agency must make a judgment whether

> the statutory standard for withholding a record – that is, disclosure "would be contrary to the public interest" – is met.
>
> *(4) Catch-all Exception by Court Order*. Finally, even when disclosure of a record is not controlled by other law or precluded by one of the [MPIA]'s mandatory or discretionary exceptions, an agency may – subject to certain procedural requirements – temporarily deny inspection of the record if the official custodian believes that inspection would cause "substantial injury to the public interest." GP § 4-358(a). The agency must promptly seek a court order in order to continue to withhold the record. *See Glenn v. Department of Health and Mental Hygiene*, 446 Md. 378, 132 A.3d 245 (2016).

Glass, 453 Md. at 209-10 (footnotes omitted).

DISCUSSION

I.

We shall begin our analysis by examining appellants' contention that the circuit court erred in finding that there was no genuine dispute of material fact, and the County was entitled to judgment as a matter of law, with respect to the search for and production of emails. In responding to an MPIA request, the adequacy of an agency's search for responsive records is measured by whether it was reasonably calculated to uncover responsive records, not by whether it located every possible responsive record. *Glass*, 453 Md. at 212 (citing *Ethyl Corp. v. EPA*, 25 F.3d 1241, 1246-47 (4th Cir. 1994)); s*ee also Parker v. United States Immigration and Customs Enforcement*, 238 F. Supp. 3d 89, 101 (D.D.C. 2017) ("The search need not encompass every record system, but must be a good faith, reasonable search of those systems of records likely to possess the requested records." (internal quotations omitted)). Commenting on the adequacy of the records search and an affidavit describing the search with respect to a federal Freedom of Information Act request, the United States District Court wrote in *Parker*:

> The agency must document its search by providing a reasonably detailed affidavit describing the scope of that search. Such an affidavit must be detailed enough to allow the district court to determine if the search was adequate and will typically contain the search terms and the type of search performed. Agency affidavits enjoy a presumption of good faith, which will withstand purely speculative claims about the existence and discoverability of other documents. If the agency has produced such a reasonably detailed affidavit describing its search, the burden shifts to the FOIA requester to produce countervailing evidence of a genuine dispute of material fact as to the adequacy of the search.

Parker, 238 F. Supp. 3d at 101-02 (internal quotations and citations omitted).

In the case at hand, the affidavits of Mr. Bass and Ms. Ryder that were attached to the County's motion to dismiss were uncontroverted. There was no disputed fact with respect to the adequacy of the search for email records. Mr. Bass's affidavit made clear that he searched all of the County employee email accounts from May 5, 2012 to November 23, 2015 that contained the terms "Katherine Morris" or "Marguerite Morris." The circuit court properly concluded that the search was reasonable based on the nature of Ms. Morris's November 2015 MPIA request. Ms. Ryder's affidavit made clear that all emails resulting from Mr. Bass's search were provided to Ms. Morris and that none were withheld. The County presented uncontradicted evidence that the emails from 2012 were purged in a manner consistent with County policy and no longer existed at the time Mr. Bass's search was conducted. The record makes clear that there was no countervailing evidence and no genuine dispute of material fact as to the adequacy of the search for records. The affidavits provided factual support for the circuit court's conclusion that there was no "genuine dispute as to the adequacy of the search" and that "the search and production of emails [was] in compliance with MPIA."

II.

With respect to records from the police investigation into Katherine Morris's death, Ms. Ryder's affidavit established that she produced to appellants all of the records pertaining to the investigation with the exception of records falling into three categories: grand jury subpoenas, records from the Office of the Chief Medical Examiner, and records containing attorney-client privileged material, confidential work-product material, and deliberative process material. As for the third category, the County ultimately waived its assertions of privilege and provided appellants with those documents.

With respect to the grand jury records and the records from the Office of the Chief Medical Examiner, the County properly denied appellants' MPIA requests. Again, the affidavit of Ms. Ryder was uncontroverted. Pursuant to GP § 4-301(a), "a custodian shall deny inspection of a public record or any part of a public record if by law, the public record is privileged or confidential." Section 8-507 of the Courts and Judicial Proceedings Article of the Maryland Code provides that "[a] person may not disclose any content of a grand jury proceeding." Contrary to appellants' contention, because the production or inspection of the grand jury records was not permitted by law, the County's decision to withhold the material was proper.

Similarly, with respect to the records of the Office of the Chief Medical Examiner, COMAR 10.35.01.14(E) provides that "an individual, other than the custodian of the records of the Office of the Chief Medical Examiner or a designee, may not copy or distribute a copy of the official report of the Office of the Chief Medical Examiner." For that reason, the County properly withheld the requested records. As there was no genuine

dispute of material fact and the County was entitled to judgment as a matter of law, the court did not err in granting judgment in favor of the County with respect to appellants' request for documents relating to the police investigation into the death of Katherine Morris.

III.

We next consider appellants' contention that there was a genuine dispute of material fact with respect to the raw data files from decedent's iPhone. The County supported its motion to dismiss or, in the alternative for summary judgment, with an affidavit from former detective Scott Seegers, who performed digital forensics on Katherine Morris's iPhone. Mr. Seegers made clear that the data downloaded from the cell phone no longer existed because the hard drive on which it had been stored crashed sometime prior to Ms. Morris's June 2013 MPIA request. Appellants failed to provide any evidence to the contrary and there was absolutely no evidence to suggest that the data was intentionally destroyed. The record established that the County produced all that it could with respect to the iPhone data. We know of no authority prohibiting the destruction of records prior to the receipt of a request under MPIA. *See Chambers v. U.S. Dep't of Interior*, 568 F.3d 998, 1004 (D.C. Cir. 2009) (an agency does not violate FOIA by destroying records prior to receiving a FOIA request). Thus, the circuit court did not err in concluding that the County provided all of the iPhone information that was in existence at the

time of Ms. Morris's MPIA request. Contrary to appellants' contention, there was no disputed fact on this issue that would even suggest a different conclusion.

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