

Circuit Court for Allegany County
Case No. 01-C-17-045986

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 232

September Term, 2018

JEAN GERMAIN

v.

FRANK B. BISHOP, JR., ET AL.

Berger,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 6, 2019

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In the Circuit Court for Allegany County, Jean Bernard Germain, appellant, an inmate at the North Branch Correctional Institution (“NBCI”) in Cumberland, filed a complaint against NBCI Warden Frank B. Bishop, Jr., and NBCI’s public information officer (“the PIO”), Robert Herbold, appellees, alleging that they had wrongfully denied his request for three categories of public information pursuant to the Maryland Public Information Act (“MPIA”), Md. Code Ann. (2014), sections 4-101 – 4-601 of the General Provisions Article. The circuit court granted summary judgment in favor of Warden Bishop and the PIO. On appeal, Mr. Germain challenges the grant of summary judgment as to two of his requests for information. Perceiving no error, we shall affirm.

As pertinent, in September 2017, Mr. Germain wrote to Warden Bishop to request “[a]ll Dietary Menus from January 1, 2017, to the [p]resent and any future menus” and “[t]he identity of each tier camera[.]” He alleged that the latter information was necessary for an inmate grievance he was pursuing. He “anticipate[d] that [he would] want copies of all the records sought” and “[d]ue to . . . indigency,” requested a waiver of the fees associated with production of the documents.

Eight days later, the PIO responded. Relative to the first request, he stated that there were 37 pages of responsive documents and that it would take three hours to “identify, copy, and process the request.” The PIO had determined that Mr. Germain had “a negative balance of \$4011.85 in [his] institutional account.” After considering Mr. Germain’s “inability to pay the estimated fees and other relevant factors,” the PIO found that it would not be in the public interest to waive the fees.

Relative to the tier cameras, the PIO denied the request outright on the basis that the “location of tier cameras [was] security sensitive” and was exempted from disclosure pursuant to General Provisions section 4-351(a)(3).

In the circuit court and before this Court, Mr. Germain argues that by not providing a fee estimate for production of the dietary menus, the PIO “essentially denied the request without providing . . . the reasons for the denial.” We disagree. Within his discretion, the PIO denied Mr. Germain’s fee waiver request.¹ Because the only source of funds available for Mr. Germain to pay the fees was his institutional account, which was over \$4,000 in arrears, it was not unreasonable for the PIO to conclude that he could not otherwise afford to pay for the requested records.² If and when Mr. Germain has funds available in his institutional account, he may request a fee estimate for the 37 pages of responsive documents and, if acceptable to him, the PIO may deduct from his account a reasonable fee consistent with the MPIA. *See* Gen. Prov. § 4-206(b) (permitting the official custodian to charge a “reasonable fee for . . . the search for, preparation of, and reproduction of a public record”); Gen. Prov. § 4-206(c) (“official custodian may not

¹ Mr. Germain does not dispute that the PIO had discretion to deny the fee waiver request, nor does he argue that the PIO abused that discretion. *See* Gen. Prov. § 4-206(e) (vesting discretion in custodian to decide whether to waive fees).

² In an affidavit submitted to the circuit court in support of the motion for summary judgment, the PIO averred that Mr. Germain’s negative balance resulted, in part, from prior MPIA requests for a “significant volume of documents” that had been fulfilled without requiring him to pay the fees in advance.

charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection”).

We also affirm the grant of summary judgment relative to Mr. Germain’s request for the “identity of each tier camera[.]” Pursuant to General Provisions sections 4-343 and 4-351(a)(3), a custodian may deny inspection of a record as “contrary to the public interest” if the record contains “intelligence information or security procedures of . . . a State or local correctional facility.” The PIO’s response adequately explained that the location of security cameras within a correctional institution related to the “security procedures” at NBCI and was not disclosable. Mr. Germain maintains that the denial of the request was legally deficient because it failed to specify the “circumstances under which denial [was] permissible” pursuant to subsection (b) of that statute. *See* Gen. Prov. § 4-351(b) (“A custodian may deny inspection by a person in interest only to the extent that the inspection would” meet one of seven enumerated criteria). Subsection (b) only applies to requests for information made by a “person in interest,” which means “a person or governmental unit that is the subject of a public record[.]” Gen. Prov. § 4-101(g)(1). Mr. Germain was not the subject of any public record pertaining to the tier cameras at NBCI and thus, no further information was required under subsection (b).

**JUDGMENT OF THE CIRCUIT COURT
FOR ALLEGANY COUNTY AFFIRMED.
COSTS TO BE PAID BY THE
APPELLANT.**