

Circuit Court for Wicomico County  
Case No: C-22-CV-20-000226

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 470

September Term, 2021

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IN THE MATTER OF RICHARD MOISE

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Nazarian,  
Leahy,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: April 6, 2022

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In May 2020, Richard D. Moise, appellant, submitted a Public Information Act Request (“PIA Request”) to the City of Salisbury Police Department (“the Department”), appellee, seeking investigatory documents related to a criminal case file. Upon receiving no response to the PIA Request, Mr. Moise filed a petition for judicial review in the Circuit Court for Wicomico County. In his petition, Mr. Moise alleged that the Department had failed to respond to his PIA Request and, as relief, requested “actual damages and statutory damages of \$1,000” and that the “records sought be released to him.”

The Department, in response, replied that its failure to answer the PIA Request was inadvertent. The Department acknowledged that it had received the request and, consistent with its “standard protocol,” had forwarded it to the City of Salisbury’s Public Information Officer (“PIO”). However, due to restrictions implemented in response to the COVID-19 pandemic, “the PIO and the rest of the City of Salisbury administrative staff were not working within the Government Office Building” and the policy for handling public information requests was changed so that “each City department [was responsible for] handling its own requests to speed up the processing.” The Department further asserted that, as a result of these changes, Mr. Moise’s PIA Request “inadvertently sat in the office and did not get sent to the City’s legal department for processing.” Additionally, the Department acknowledged receipt of a second public information request in July of 2020, sent from a legal representative for Mr. Moise, requesting the same investigatory file. The Department had, in a timely fashion, complied with this request and sent the requested documents to Mr. Moise’s legal representative directly.

It appears that the matter was set in for a hearing on October 30, 2020, but Mr. Moise “refused to be transported” from the North Branch Correctional Institute for the proceedings. The court entered an order directing the Department to “deliver the same documents provided to [Mr. Moise’s] legal representative in August of 2020” to Mr. Moise. Accordingly, the Department mailed the documents to Mr. Moise on November 2, 2020.

On November 6, 2020, Mr. Moise filed a “Motion for Summary Judgment,” contending that, because the Department acknowledged that it had failed to initially respond to Mr. Moise’s PIA Request, he was entitled to statutory damages and actual damages. He also asked that the documents requested in his PIA Request be produced, which suggests that he had not yet received the Department’s November 2, 2020 disclosure. No written opposition was filed by the Department.

On April 7, 2021, the court held a hearing on the “Motion for Summary Judgment,” in which Mr. Moise appeared remotely via zoom, and the court denied the relief sought by Mr. Moise. A transcript of this hearing has not been provided for the Court’s consideration on appeal. Mr. Moise noted a timely appeal from the court’s denial order. On appeal, he contends that the circuit court erred in denying his motion for summary judgment.

For the following reasons, we shall dismiss Mr. Moise’s appeal.

#### **DISCUSSION**

The record on appeal does not contain the transcript of the April 7, 2021 proceedings in the circuit court. Pursuant to Maryland Rule 8-411, it was Mr. Moise’s responsibility to provide any transcripts necessary for the Court’s consideration on appeal. It appears that Mr. Moise was aware of his responsibility to obtain the transcript, as he requested a waiver

of transcript fees during the pendency of this appeal.<sup>1</sup> Moreover, on September 7, 2021, after failing to timely obtain the transcript for inclusion into the record, Mr. Moise was granted an extension to do so and notified that if the April 7, 2021 transcript was necessary for the Court’s consideration, that he must “take all steps necessary to have the relevant transcript[] filed on or before October 22, 2021.” Mr. Moise failed to do so.

Without the April 7, 2021 transcript, we are unable to discern whether the circuit court treated his titled “Motion for Summary Judgment” as a motion for reconsideration, as it was filed after the court’s October 30, 2020 disposition of the PIA Request, or as a motion for summary judgment with respect to his claim for monetary damages. The Court cannot ascertain whether testimony was taken with respect to the damages claim and, if testimony was taken, what was stated. Moreover, the Court cannot ascertain the circuit court’s basis for the denial of Mr. Moise’s motion. Without this information, we are unable to exercise review of the circuit court’s decision. For the foregoing reasons, pursuant to Maryland Rule 8-602(c)(4), we dismiss this appeal for Mr. Moise’s failure to obtain the necessary transcript for the Court’s consideration.

Even were we to exercise review on the record that is before the Court, it does not appear that the circuit court erred as alleged. Pursuant to § 4-362 of the General Provisions Article, a “governmental unit is liable to the complainant for statutory damages and actual damages that the court considers appropriate if the court finds that [it] knowingly and willfully failed to...disclose or fully to disclose a public record that the complainant was

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<sup>1</sup> Mr. Moise’s request was denied because the “Court [did] not have the authority to grant the requested relief.”

entitled to inspect.” The record does not contain any evidence that the Department’s initial failure to disclose the requested documents was done knowingly or willfully. Rather, the record reflects that the Department’s initial failure to produce the documents was inadvertent, brought on by the quick onset of protocol changes necessitated by a global pandemic.

**APPEAL DISMISSED. COSTS TO  
BE PAID BY APPELLANT.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0470s21cn.pdf>