

Circuit Court for Washington County  
Case No.: C-21-CV-21-000097

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1325

September Term, 2024

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IN THE MATTER OF JUSTIN HOLDER

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Reed,  
Kehoe, S.  
Harrell, Glenn T., Jr.  
(Senior Judge, Specially Assigned)  
JJ.

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Opinion by Reed, J.

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Filed: May 13, 2026

\*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 Rule 1-104(a)(2)(B).

Appellant, Justin Holder, filed a complaint in the Circuit Court for Washington County against the Washington County Board of County Commissioners, former county attorney, Kirk. C. Downey, and former assistant county attorney, B. Andrew Bright (collectively, appellees or “the County”), alleging violations of the Maryland Public Information Act (“MPIA”), Md. Code Ann., General Provisions Article (“GP”) § 4-101 *et seq.* Following a four-day bench trial, the circuit court ruled in favor of the County. Mr. Holder noted the instant appeal and presents several questions for our review, which we consolidate and recast into one: Did the court err in entering judgment in favor of the County?<sup>1</sup> For the reasons we shall discuss below, we affirm the judgment of the circuit court.

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<sup>1</sup> The questions as presented in Mr. Holder’s brief are:

1. Did the Circuit Court commit reversible error in excusing Appellees’ ‘mere delay,’ in producing documents to Holder?
2. Did the Circuit Court commit reversible error in finding that Holder’s claims were mooted by the Appellees’ belated production of documents?
3. Did the Circuit Court commit reversible error in finding that the State of Maryland, not Appellees, was the appropriate party?
4. Did the Circuit Court commit reversible error in finding that Holder may have a claim of negligence instead of a claim under the Act?
5. Did the Circuit Court commit reversible error in failing to decide whether the Morral/Michael E-mails withheld from Holder until August 2021 were exculpatory materials under the *Brady* doctrine?
6. Did the Circuit Court commit reversible error in entering judgment for Appellees on Count IV of Holder’s First Amended Complaint?

(continued)

## BACKGROUND

On August 3, 2020, Mr. Holder sent an MPIA request to the County requesting “all email correspondence from the following email address ‘Morral7@msn.com’ and any sheriff, deputy, county official [sic] from May 19<sup>th</sup> to present[.]”<sup>2</sup> The County conducted a search and identified sixteen documents responsive to Mr. Holder’s request, each involving then Deputy State’s Attorney, Joseph Michael.<sup>3</sup> Mr. Michael advised the County that the documents were not subject to disclosure under the MPIA because they were related to an “[o]ngoing investigation and pending charges.” Accordingly, on August 4, 2020, the County denied Mr. Holder’s request, noting as follows:

Your request is denied. Pursuant to Gen’l Prov. Art. § 4-351, a custodian may deny inspection, by a person in interest, of records of investigations

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7. Did the Circuit Court commit reversible error by admitting Appellees’ Exhibit 12 into evidence under the exceptional and rarely used residual hearsay exception and without making the factual findings required by *State v. Walker*, 345 Md. 293 (1997)?

8. Did the Circuit Court commit reversible error by failing to decide Holder’s contentions that Appellees’ denial of his MPIA requests unlawfully failed to: articulate a sufficient basis for that denial, redact and produce responsive documents, and/or sever and produce responsive documents?

9. Is Holder, as the rightful prevailing party on all or any of his claims, entitled to be awarded his reasonable counsel fees and other litigation costs pursuant to the Act?

<sup>2</sup> The record reflects that the email address “morral7@msn.com” belongs to a neighbor of Mr. Holder’s, Christine Morral. Ms. Morral and Mr. Holder have had a contentious and at times litigious relationship.

<sup>3</sup> During the pendency of the instant litigation, Joseph Michael was appointed to sit as a judge for the Circuit Court for Washington County.

conducted by a State’s Attorney. The State’s Attorney’s Office has advised that the records you have requested are, in fact, records of an ongoing investigation and involve current prosecution. Therefore, I must deny your request.

At the time, the State’s Attorney’s Office was investigating and prosecuting several matters involving Mr. Holder, including matters involving Mr. Holder’s alleged encroachment onto state property and complaints made by and against his neighbors, including Christine Morral.

In October of 2020 Mr. Holder renewed his request, which was again denied by the County because “[t]he State’s Attorney’s Office has advised that the records you have requested are, in fact, records of a still ongoing investigation and involve current prosecution.” In January of 2021, Mr. Holder renewed his MPIA request again, asserting that the documents requested contained exculpatory evidence relating to investigations or actions then pending against him, and accordingly, that he was entitled to the documents requested under *Brady v. Maryland*, 373 U.S. 83 (1963). The County once more denied Mr. Holder’s request, noting that the County was not part of “the prosecution team” relating to actions pending against him, and that “the obligations of *Brady v. Maryland* must be honored by the State’s Attorney’s Office.”

In March of 2021, Mr. Holder filed a complaint against the County in the Circuit Court for Washington County alleging violations under the MPIA. Several months later, Mr. Holder plead guilty to one count of disorderly conduct in the criminal case then pending against him. The State’s Attorney’s Office thereafter informed the County that it

had concluded its charge against Mr. Holder. Accordingly, on August 23, 2021 and August 31, 2021, the County produced responsive records to Mr. Holder.<sup>4</sup>

The parties engaged in discovery. In March of 2022, the County provided Mr. Holder with answers to interrogatories indicating that there were four emails between Mr. Bright and Mr. Michael relating to the litigation. In May of 2022, Mr. Holder sent the County an additional MPIA request seeking those emails. The County denied Mr. Holder’s request, explaining that the emails were subject to “attorney-client privilege and/or work product doctrine.” Mr. Holder disputed that the emails between Mr. Bright and Mr. Michael were privileged and renewed his requests on June 16 and June 30, 2022.

On August 1, 2022, Mr. Holder filed a four-count first amended complaint. In count I, he alleged that the County’s failure to identify the applicable provision of GP § 4-351 for initially denying his request and the County’s delay in providing emails between Ms. Morral and Mr. Michael violated the MPIA. In count II, he contended that an email from Ms. Morral to the Town of Keedysville, the Washington County sheriff, and a Washington County colonel, which was produced to him on August 23, was “inappropriately commingled with other emails between Ms. Morral and [Mr. Michael] in order to shield it from disclosure.” In count III, he asserted that the County unlawfully withheld an email forwarded to an employee of the Washington County Sheriff’s Office, Barry Levey. Lastly, in count IV, he contended that the County unlawfully withheld emails between Mr. Bright and Mr. Michael.

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<sup>4</sup> The August 31 production included an email which was “inadvertently omitted” on August 23.

On August 4, 2022, the County produced the emails between Mr. Bright and Mr. Michael to Mr. Holder.

A four-day bench trial took place beginning in October of 2023. At trial, the County asserted that each document requested – except for the email sought in count III – had been produced. Specifically, the County maintained that although the documents requested in count I and II were originally denied due in part to the pending charges against Mr. Holder, that the documents were produced after the charges against Mr. Holder had resolved. As to count IV, the County acknowledged that the documents were produced four days late, but asserted that they were nonetheless produced.

Finally, as to the email requested in count III, counsel for Mr. Holder introduced a copy of the email into evidence and noted that it had several attachments.<sup>5</sup> When asked if he still had the email, Mr. Levey testified that it was “deleted in wide sweeping deletions that [he has] to do for housekeeping[.]” Joshua O’Neal, Washington County’s Board of County Commissioner’s Chief Technical Officer, testified that a search of Mr. Levey’s email for the period requested yielded over 45,000 results. Mr. O’Neal testified, however, that emails are not “separately backed up” and that deleted emails “disappear[] from the system within 30 days.”

Ultimately, the court ruled in favor of the County, noting that the “bottom line” was that the evidence indicated that “there is not failure to obtain documents but a delay in

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<sup>5</sup> The County asserts, and Mr. Holder does not dispute, that Mr. Holder had “previously received [the email] from another government entity through a separate MPIA request.”

obtaining documents.” The court concluded that as to count I, that the records requested were “records of [the] State’s Attorney’s Office” and that “the County, aside from not being the appropriate party if any, has proven its decision/defenses regarding these documents and did not act willfully and intentionally[.]” Further, the court concluded that as to Mr. Holder’s claims that the documents contained exculpatory material under *Brady*, that “*Brady* would apply to the State’s Attorney’s Office but not to the County.”

As to count II, the court noted that Mr. Holder “acknowledges that these documents were produced but should have been produced sooner” and concluded that “the delay in production does not warrant adverse action against the [County].” As to count III, the court concluded that “the County convincingly defended this claim with evidence that those attachments could not be identified among the tens of thousands of emails in its records, and, therefore, could not be produced.” As to count IV, the court noted that the records “were subject of discovery requests but were transformed by [Mr. Holder] into a[n] MPIA claim rather than discovery dispute.” The court determined that “[d]iscovery disputes... are not appropriate for the claim under the [MPIA]” and that the County “produced convincing evidence that the documents were not intentionally withheld – understandable here with a Plaintiff excessively litigious under the MPIA in this and other claims.” Finally, the court denied Mr. Holder’s request for damages, noting that “mere delay is [in]sufficient for statutory damages” and that Mr. Holder “has not proven actual damages.”

After an unsuccessful motion to alter or amend the judgment, Mr. Holder noted the instant appeal. In his appellate brief, he presents several questions for our review, primarily

relating to counts I and IV, which we address in turn. Additional facts will be provided as necessary.

### STANDARD OF REVIEW

This Court reviews “a circuit court decision reviewing an agency’s response to a Public Information Act request to determine whether that court had an adequate factual basis for the decision it rendered and whether the decision the court reached was clearly erroneous.” *Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 266 (2014). This Court has held that a finding is “not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.” *Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020) (quoting *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019)). “However, no deference is owed to [the circuit court’s] assessment of the law.” *Glass v. Anne Arundel Cnty.*, 453 Md. 201, 231 (2017).

### DISCUSSION

#### I. Count I

##### *a. Records of the State’s Attorney’s Office*

Mr. Holder asserts that the court erred in determining that the County was not the proper party for the claims asserted in count I. He contends that the court’s conclusion that the State’s Attorney’s Office would have been the appropriate party is contrary to the fact that the County responded to Mr. Holder’s requests and the fact that “the State’s Attorney repeatedly told [Mr.] Holder to make MPIA requests to the County – not the State.” The County responds that it is “not responsible for the mistakes of law or fact of the State’s Attorney’s Office” and that “there can be no dispute that the records that Mr. Holder sought

were records of the State’s Attorney’s Office[.]” Further, citing to *Glass*, the County maintains that “with absolutely no legal obligation to do so, [they] acted in good faith to help the State’s Attorney’s Office facilitate Mr. Holder’s requests.”

The MPIA provides that a custodian “shall grant or deny the application promptly, but not more than 30 days after receiving the application.” GP § 4-203(a)(1). A “custodian” is defined by the MPIA as “the official custodian” or “any other authorized individual who has physical custody and control of a public record.” GP § 4-101(d). Here, it is undisputed that the County had possession of the records sought.<sup>6</sup> What is less clear is whether the County had “control” over those records.

The term control is not defined within the MPIA. The Maryland Supreme Court’s decision in *Glass*, however, reveals several relevant factors. In *Glass*, the Court considered whether Anne Arundel County’s Police Department’s records manager, Christine Ryder, remained the custodian of “archived emails stored at [Anne Arundel County’s Office of Information Technology (OIT),]” and concluded that she did. *Glass*, 453 Md. at 235-36. In support, the Court noted that “[t]he Police Department created those emails and apparently retained the ability to access them at OIT[,]” and further, that “Ms. Ryder and other officials at the Police Department were responsible for making decisions about whether to release or withhold records.” *Id.* at 236. Additionally, the court noted that “nothing indicates that OIT had the authority or—more importantly—the *ability* to make

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<sup>6</sup> As counsel for the County explained at trial, “like many smaller jurisdictions, [] there are state agencies that are on the [C]ounty’s IT server[,] and the sheriff’s office and the State’s Attorney’s Office are two of those.”

decisions concerning inspection of the records.” *Id.* at 235 (emphasis in original). In sum, relying upon the facts that the police department created the documents, retained the ability to access them, and had the authority or ability to make decisions concerning their inspection, the Court concluded that Ms. Ryder was the custodian of the records.

Here, although the record indicates that the State’s Attorney’s Office stored the emails requested on the County’s server, the record is devoid of evidence that the County had control of the records. Instead, the facts indicate that the State’s Attorney’s Office controlled the records: the State’s Attorney’s Office (or its employees) created the records, maintained the ability to access them through the County, and had the authority or ability to make decisions concerning their inspection. Indeed, the County’s responses to Mr. Holder’s requests indicated its lack of control over the records: its initial response noted that “[t]he State’s Attorney’s Office has advised that the records you have requested are, in fact, records of an ongoing investigation[,]” and a later response reiterated that “[t]he State’s Attorney’s Office has advised that the records you have requested are, in fact, records of a still ongoing investigation...” Further, at trial, Mr. Bright, the former assistant county attorney, testified that he intended to send the records to Mr. Holder if the State’s Attorney’s Office “did not have an objection[,]” and that after the State’s Attorney’s Office determined that the records were exempt from disclosure, that he did not have “the authority to conduct an independent investigation of the sheriff or the State’s Attorney[.]”

In sum, we too are unpersuaded that the County is the custodian of the State’s Attorney’s Office’s records. Although the County had possession of the records, the County did not create the records and there is no indication in the record that the County

had the authority or ability to make decisions concerning their inspection; indeed there is evidence, regarding the latter, to the contrary. Accordingly, the circuit court properly determined that the County “had no interest in the dispute and [was] not a proper party[.]”<sup>7</sup>

***b. Brady Violations***

Mr. Holder asserts that the court committed reversible error by failing to rule “whether or not [the emails requested in count I] were *Brady* materials.” The County responds that the court “correctly determined that whether certain responsive records constituted *Brady* material was not within [the County’s] purview.”

“[T]he right to information under *Brady v. Maryland* is a trial right” which guarantees “a criminal defendant who stands trial the right to receive material exculpatory and impeachment evidence in the possession of the State.” *Byrd v. State*, 471 Md. 359, 372 (2020). In accordance therewith, *Brady* imposes several duties upon an individual prosecutor – including the duty to “learn of any favorable evidence known to the others acting on the government’s behalf” and the duty to “disclose information possessed by other prosecutors in the same office.” *Lomax v. State*, 258 Md. App. 386, 411-12 (2023) (internal quotation marks and citations omitted).

Mr. Holder cites no support for his contention that *Brady* imposes obligations on state actors beyond the prosecutor(s) in a criminal prosecution, and we are not aware of any. Even assuming, *arguendo*, that the documents did contain exculpatory material to a

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<sup>7</sup> We note that GP § 4-202(c) requires an individual who is not the custodian of records to provide notice of that fact to an individual requesting records under the MPIA. Mr. Holder does not assert that the County failed to provide the notice required under GP § 4-202(c), so we do not consider that provision here.

criminal action against Mr. Holder, the County’s delay in providing the documents to Mr. Holder pursuant to a MPIA request would not amount to a *Brady* violation. “‘To establish a *Brady* violation, the defendant must establish (1) that the prosecutor suppressed or withheld evidence that is (2) favorable to the defense—either because it is exculpatory, provides a basis for mitigation of sentence, or because it provides grounds for impeaching a witness—and (3) that the suppressed evidence is material.’” *Lomax*, 258 Md. App. at 412 (quoting *Ware v. State*, 348 Md. at 38). Whether a prosecutor suppressed material evidence in a separate criminal proceeding is plainly not at issue in this appeal. Similarly, the circuit court did not err in failing to opine upon whether certain documents sought and produced in response to Mr. Holder’s MPIA request would have constituted *Brady* materials in a separate criminal proceeding.

*c. Sufficiency of the County’s Denials*

Finally, Mr. Holder asserts that the court “failed to address [his] principal arguments attacking the propriety of the [County’s] unlawful denial under an unidentified subsection of GP § 4-351 [] without any meaningful explanation[.]” Further, he adds that the court failed to address his arguments that the County could have severed or redacted the documents to produce non-exempt materials. The County responds that it “did not have the knowledge or authority to make redaction or severability decisions for the State’s Attorney’s Office” and further, that the court was not required to analyze GP § 4-351 because “it is undisputed that Mr. Holder received all records that were responsive to his request.”

As an initial matter, because, as we discussed *supra*, the County was not the custodian of the State’s Attorney’s Office’s records, and there is no indication that the County had the authority to make inspection decisions regarding the records, we disagree that the County erred in failing to redact or sever the records. However, even if the County had been the custodian of the records, we disagree that Mr. Holder’s contentions indicate any error on behalf of the circuit court.

The MPIA provides that, upon receipt of an application for inspection by a person in interest, a custodian may deny inspection if it 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.

GP § 4-351(b).

Here, the record demonstrates that the County initially denied Mr. Holder’s request for the documents under GP § 4-351, noting that the documents requested were records of an “ongoing investigation and involve current prosecution.” Although Mr. Holder contends that the County’s response relied upon “an unidentified subsection of GP § 4-351[,]” the County’s response implicates at least two provisions under GP § 4-351(b) – GP § 4-351(b)(1) (inspection would “interfere with a valid and proper law enforcement

proceeding”) and GP § 4-351(b)(6) (inspection would “prejudice an investigation”). Mr. Holder does not dispute the court’s holding that “at the time of [Mr. Holder’s] request for State’s Attorney documents there was as to them then legitimate criminal investigation by the State’s Attorney’s Office relating to those records[.]”

Instead, Mr. Holder asserts that the court erred because, in his words, “if a record contains exempt and non-exempt material, the custodian must permit inspection of the non-exempt portion of a record by redacting the exempt material[.]” citing to GP § 4-203(c). Mr. Holder is correct that GP § 4-203(c)(1)(ii) provides that “[a] custodian who denies the application shall... allow inspection of any part of the record that is subject to inspection.” However, each of the records have been produced, and Mr. Holder points to no “part of the record” that should have been “subject to inspection” under GP § 4-203(c)(1)(ii). Further, Mr. Holder relies upon GP § 4-203(c)(1)(i)(2) to assert that the County erred in failing to provide “an explanation of why redacting information would not address the reasons for the denial[.]” That provision applies to inspections that are denied as “contrary to the public interest” under GP § 4-343, and no records were denied as contrary to the public interest under these facts. Accordingly, even if the County was the custodian of the records, we see no error in the court’s consideration of the sufficiency of the County’s denials based upon these facts.

## **II. Count IV**

### ***a. Documents Identified in Discovery***

Mr. Holder asserts that the court’s ruling regarding his MPIA request for documents identified through discovery erred for several reasons, including that the court “fail[ed] to

appreciate” that Mr. Holder “made a MPIA request (not just a discovery request)[,]” and that the County “failed to produce the documents within the required timeframe set forth in the [MPIA.]” The County responds that the court’s ruling is “amply supported” and should be affirmed.

We disagree that the court failed to consider the fact that Mr. Holder made a MPIA request separate from his discovery request. Instead, the court plainly noted that that Mr. Holder had made “a PIA claim” for the documents sought, which had been previously identified in discovery, but that “the appropriate response” would have been a discovery dispute, which “has potentially its own remedies if a court finds that discovery has not been properly provided.”

Mr. Holder does not dispute the court’s finding regarding the appropriate means to challenge whether the documents were discoverable, and instead, reiterates that under the MPIA, he received the documents “59 days” late. Mr. Holder’s contention ignores the fact that the MPIA request was made during, and pursuant to, ongoing discovery between the parties. Documents sought by a litigant during ongoing discovery, including documents identified through answers to interrogatories, may be requested under Maryland Rule 2-422. To the extent that there is a resulting failure of discovery, litigants may file motions to compel discovery and/or for sanctions pursuant to Maryland Rules 2-432 and 2-433. Accordingly, the court did not err in concluding that the appropriate response would have been to pursue the documents through discovery and/or discovery dispute. “[T]he Public Information Act ‘was not intended to be a device to enlarge the scope of discovery beyond that provided by the Maryland Rules....’” *Off. of Att’y Gen. v. Gallagher*, 359 Md. 341, 348

(2000) (quoting *Faulk v. State’s Att’y for Harford Cnty.*, 299 Md. 493, 510 (1984)). Accordingly, we are unpersuaded that the court erred in finding that the County’s delay in providing the documents did not violate the MPIA.

***b. Exhibit Twelve***

Mr. Holder asserts that during trial, the court erred in admitting an exhibit offered by the County under the residual hearsay exception. In support, he asserts that the court failed to consider the relevant residual hearsay exception conditions. The County responds that the document was neither hearsay nor inappropriately admitted, but that even if it was, any resulting error was harmless.

Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Md. Rule 5-801(c). It is not admissible “[e]xcept as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes[.]” Md. Rule 5-802. There are several exceptions to the rule against hearsay evidence, including what is referred to as the residual hearsay exception. Md. Rule 5-803.

Five conditions are required for evidence to be admissible under the residual hearsay exception: (1) “there must be ‘exceptional circumstances;’” (2) “the statement must not be specifically covered by any of the other exceptions;” (3) “it must have ‘equivalent circumstantial guarantees of trustworthiness;’” (4) “the court must determine that (i) the statement is offered as evidence of a material fact, (ii) the statement is more probative on the point for which it is offered than any other evidence which the proponent can produce through reasonable efforts, and (iii) the general purposes of the rules and interests of justice

will best be served by admission of the statement into evidence;” and lastly, (5) “the proponent of the statement has given the requisite advance notice of its intention to use the statement.” *Nixon v. State*, 140 Md. App. 170, 183 (2001) (quoting *State v. Walker*, 345 Md. 293, 318-19 (1997)). *See also* Md. Rule 5-803(b)(24).

We agree with Mr. Holder that the exhibit constituted hearsay evidence. The exhibit – the County’s exhibit twelve – is a July 2022 email from counsel for the County, Kevin Karpinski, to counsel for Mr. Holder, Jacob Weddle. In the email, Mr. Karpinski advised that he would be unavailable for several days due to unrelated urgent matters. The exhibit was offered to support the County’s position that the delay in providing the emails requested in count IV was an inadvertent error by counsel. It was plainly hearsay: it was an out of court statement offered to prove the truth of the matter asserted, *i.e.*, that the County’s failure to timely produce those emails was inadvertent. Although the court admitted the exhibit as a “general exception to hearsay[,]” the court failed to address any of the five conditions necessary to do so under Md. Rule 5-803(b)(24). *Nixon*, 140 Md. App. at 183. Accordingly, the admission of exhibit twelve was erroneous.

However, any “[e]rror in admitting [alleged] hearsay is subject to a harmless error review.” *Frobouck v. State*, 212 Md. App. 262, 283-84 (2013) (quoting *Webster v. State*, 151 Md. App. 527, 553 (2003)). “The harmless error rule ‘embod[ies] the principle that courts should exercise judgment in preference to the automatic reversal for ‘error’ and ignore errors that do not affect the essential fairness of the trial.’” *Id.* (quoting *Barksdale v. Wilkowsky*, 419 Md. 649, 657-58 (2011)).

We hold that the court’s error in admitting exhibit twelve did not affect the essential fairness of the trial. The court’s ultimate conclusion regarding count IV found no violation of the MPIA for several reasons, including that the County “produced convincing evidence that the documents were not intentionally withheld[,]” that an MPIA request was not the “appropriate response” to a discovery dispute, and that the facts indicate that Mr. Holder had been “excessively litigious under the MPIA in this and other claims.” Mr. Holder does not dispute the court’s finding that the proper manner to request the documents identified through discovery was through discovery, nor does he challenge the court’s finding that he had been excessively litigious. Accordingly, the court’s error in admitting the County’s exhibit twelve under the residual hearsay exception was harmless.

### **III. Remaining Contentions**

#### ***a. Delayed Production of Documents***

Mr. Holder asserts that the court erred in “rationaliz[ing the County’s] bright-line violations of the [MPIA] by concluding that ‘mere delay’ in producing the documents is permissible.” Further, he contends that the court erred in “refusing to find ‘mere delay’ sufficient for statutory damages” and in “concluding that ‘mere delay [is] not the equivalent to a failure to disclose[.]’” The County responds that the circuit court properly “examined each alleged delayed disclosure” before concluding that damages were inappropriate.

As noted *supra*, the MPIA provides that a custodian of records shall grant or deny an application to inspect public records “promptly, but not more than 30 days after receiving the application.” GP § 4-203(a)(1). Denials of applications to inspect public records shall be in writing and shall include several details, including the reason and

authority for the denial. GP § 4-203(c)(1). Further, “whenever a person or governmental unit is denied inspection of a public record ... the person or governmental unit may file a complaint with the circuit court.” GP § 4-362(a)(1). Government entities may be liable for statutory and actual damages if:

[T]he court finds that any defendant knowingly and willfully failed to: (i) disclose or fully to disclose a public record that the complainant was entitled to inspect under this title; or (ii) provide a copy, printout, or photograph of a public record that the complainant requested under § 4-205 of this title.

GP § 4-362(d).

Contrary to Mr. Holder’s assertions, the court did not find that delay was “permissible” under the MPIA. Instead, the court found that based upon the facts before it, the County’s delay was insufficient “for statutory damages.” The court acknowledged that “delay in production can be a violation of the MPIA” but explained that it was “focuse[d] on the bottom line of the issue of damages” because under the facts before it, even if delayed, “the documents were received[.]” Looking at each of the four counts in Mr. Holder’s first amended complaint, the court concluded that the County’s reasons for delay in providing the documents requested did “not warrant damages[.]” Finally, the court added that “much, if not all, of the time relevant to this case occurred during the Covid-19 pandemic when government operations were quite limited, thus reasonably adding to delays in production.”

Mr. Holder contends that “[t]he court’s findings that [the County’s] production was ‘delayed’ by COVID-19 is clearly erroneous.” We disagree that the court erred in finding that the pandemic contributed to the County’s delay in providing the documents requested.

At trial, the pandemic was mentioned several times. Mr. Holder himself acknowledged that the State’s Attorney’s Office was, at one point, “closed... during COVID at that time” and Mr. Michael testified that Mr. Holder’s actions “were a burr under the saddle of our operation, during a pandemic[.]” Accordingly, we cannot say that there was no competent or material evidence in the record to support the court’s conclusion that the timing of Mr. Holder’s requests reasonably added to delays in production. *Gizzo*, 245 Md. App. at 200.

***b. Moot Document Requests***

Mr. Holder asserts that “the trial court’s ruling that appellees’ belated production moots [his] claims is erroneous as a matter of law[.]” The County responds that the court “never found that the production of responsive records mooted his claims[.]” only that “a portion of [Mr. Holder’s] desired relief is moot[.]” We agree with the County. The record reflects that the court found that Mr. Holder’s “request for documents was moot as to those documents[.]” not that Mr. Holder’s claims were moot. Indeed, contrary to finding Mr. Holder’s claims moot, after concluding that the documents had been produced, the court considered Mr. Holder’s requests for actual damages, statutory damages, and attorney’s fees before finding that Mr. Holder failed to prove any actual damages and that Mr. Holder was not entitled to statutory damages or attorney’s fees.

***c. The Court’s Commentary on Negligence***

Mr. Holder asserts that the court erred in “discounting [his] claims under the [MPIA] because he may have been able to recover under a negligence theory.” The County responds that the court “carefully and meticulously considered and rejected each of Mr. Holder’s MPIA’ claims” that Mr. Holder’s claims “entirely misconstrues” the court’s

findings. We, too, are unpersuaded that the circuit court “discounted” any of Mr. Holder’s claims. The record reflects that the court carefully considered Mr. Holder’s claims over the course of a four-day trial, where the court heard testimony of several witnesses and considered various exhibits and ultimately determined that Mr. Holder had received all available documents and that he was not entitled to damages or attorney’s fees. We are unpersuaded that the court’s commentary regarding whether Mr. Holder would have prevailed on a negligence claim amounted to reversible error.<sup>8</sup>

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

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<sup>8</sup> Mr. Holder asserts no argument in support of his ninth question presented regarding whether the court erred in declining his request for counsel fees and litigation costs. Accordingly, we do not consider that issue. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) (“[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.”).