

Circuit Court for Montgomery County
Case No: 472632

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2457

September Term, 2019

JAAMI ALI

v.

MONTGOMERY COUNTY POLICE
DEPARTMENT

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 8, 2021

*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.

Jaami Ali, appellant, submitted a petition in the Circuit Court for Montgomery County, seeking judicial review of a decision by the Montgomery County Police Department (“the Department”), appellee, denying her request, pursuant to the Maryland Public Information Act (“MPIA”), to inspect certain documents in its possession. Following a motion to dismiss filed by the Department, which contended that the requested records had been provided to Ms. Ali, the circuit court dismissed Ms. Ali’s petition with prejudice. A timely appeal followed.

For the following reasons, we shall vacate the order of dismissal entered by the circuit court and remand for further proceedings consistent with this opinion.

BACKGROUND

On May 1, 2018, Ms. Ali submitted an MPIA request to the Montgomery County Office of Public Information (“the County”), specifically seeking “records from February 2017 through September 2017 from [the] Montgomery County [Government] itself” and from the “DOT Permitting Office and the Bethesda Police [D]epartment” which referenced her name and the “Targeted Individual Awareness Campaign.” On May 21, 2018, the County provided Ms. Ali with “a link to documents responsive to [her] MPIA request.”

The record reflects that a series of e-mail communications were exchanged between Ms. Ali and the County between June and October of 2018 regarding the scope of the County’s document production.¹ According to the communications contained in the

¹ Several of the email communications between the parties were submitted with and exhibits to Ms. Ali’s petition for judicial review. We note, however, that some of these communications were not included in the record for our review.

record, Ms. Ali made a subsequent request for information concerning three police officers identified in the County’s production. Specifically, Ms. Ali requested:

[T]he office, civil service title and unit of the individual persons whom were cc’d on the email. What were their job titles or roles at the time of email production[?]

Also if the unit has an alpha numeric code assigned to it, I would like to know what the extended name is and what it stands for.

I would also like to know what was the job title and division of the people whom were notified of the protest at Lockheed and Marriott at the time of notification[.]

After receiving a response from the County, Ms. Ali further specified that she sought the following information:

This is an additional response to the email you sent yesterday (6-27-18)[.] I used the link that you provided and I could not find the names of the individuals in that [database]. I could not find, Breness Smith; David Papalia; and Sean Reilly. Are these individuals still employed with Montgomery County? If these individuals are still employed with the county can you help me search for them, because I [cannot] find them. I will pay for the search.

In response to Ms. Ali’s request for the job title and unit of “Breness Smith; David Papalia; and Sean Reilly,” the County, citing § 4-351(a)(3)² of the General Provisions Article, denied “inspection of records in its possession responsive to this request as those records contain[ed] intelligence information of the police department.” Citing § 4-343³

² § 4-351(a)(3) of the General Provisions Article provides, in pertinent part, that the custodian of records may deny inspection of “records that contain intelligence information or security procedures of...a police department....”

³ This section provides that “Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to
(continued . . .)

and § 4-351(b)(5)⁴ of the General Provisions Article, the County found that disclosure of these documents would “be contrary to the public interest because it would disclose investigative techniques and procedures of the police.”

In addition to her request for information about the officers, Ms. Ali sought “a communication...missing from the set of documents” which was sent on April 3, 2017 to Sean Reilly. In response, the County replied that it had “searched for the specific email listed” and that it was “no longer in County systems.”

Between June 28, 2018 and October 1, 2018, it is evident that there were additional communications between Ms. Ali and the County. However, these communications are not included in the record for our review. For example, on October 1, 2018, the County replied via email to Ms. Ali stating “that there [was] *no policy/procedure statement* dealing with the subject of public protests” in its possession, but the record does not contain the message which precipitated this response by the County. The October 1 correspondence also reasserted its denial of records with respect to the three officers and notified Ms. Ali that it would be “closing [its] filed on [her] PIA requests.”

Ms. Ali filed a complaint seeking judicial review in the Circuit Court for Montgomery County, naming the Department as the respondent. In her petition, Ms. Ali sought “judicial review to overturn the administrative decision from Montgomery County

the public interest, the custodian may deny inspection by the applicant of that part of the record, as provided in this part.”

⁴ § 4-351(b)(5) of the General Provisions Article provides, in pertinent part, that the custodian of records may deny inspection by a “person in interest only to the extent that the inspection would...disclose an investigative technique or procedure.”

Police dated June 26th, 2018 and October 1st, 2018.” With her complaint, in pertinent part, Ms. Ali included aforementioned email communications between herself and the County.

The Department moved to dismiss Ms. Ali’s petition making only two averments: 1) that Ms. Ali had been provided the “rank and duty assignment of the three officers” and 2) that “Montgomery County, Maryland has provided all information sought by [Ms. Ali].” Ms. Ali filed an equally terse opposition, contending that there still existed “a dispute regarding several records that [had] not been settled now or then” and alleging that she was “owed damages” pursuant to § 4-362(d)(1)(3).

DISCUSSION

When considering the Department’s motion to dismiss, the court was tasked with determining whether “the [petition], on its face, disclose[d] a legally sufficient cause of action.” *Scarborough v. Transplant Res. Ctr. of Maryland*, 242 Md. App. 453, 472 (2019) (citation omitted). Upon review, we note that there were at least three causes of action raised by Ms. Ali in her petition for judicial review which were stated with sufficient particularity. First, she sought review of the Department’s “June 26th, 2018 and October 1st, 2018” decisions, both of which had denied her request for the “rank and duty assignment of the three officers.” Secondly, she sought statutory damages against the Department pursuant to § 4-362(d)(1)(3) of the General Provisions Article,⁵ which imposes civil liability for “knowingly and willfully fail[ing] to disclose or fully to disclose a public

⁵ Since the circuit court’s decision, § 4-362 of the General Provisions Article has been amended by the Maryland General Assembly. The changes shall take effect on July 1, 2022.

record that the complainant was entitled to inspect.” Lastly, Ms. Ali sought review regarding the allegedly “deleted email” which was not produced by the Department.

Had the only cognizable claim in Ms. Ali’s petition for judicial review been the disclosure of the rank and unit of the three officers, it might have been appropriate for the court to dismiss the action as moot upon the Department’s showing that the requested information had been provided. However, there were two remaining claims in Ms. Ali’s petition that were not addressed in the Department’s motion to dismiss. These two claims, therefore, were not passed upon by the court. For adjudication, the issue remains whether 1) Ms. Ali was entitled to statutory damages pursuant to § 4-362(d)(1)(3) of the General Provisions Article stemming from the Department’s prior refusal to disclose the name and rank of the three officers, and 2) whether the Department “conduct[ed] a search in good faith that [was] reasonably designed to capture” the deleted email sought by Ms. Ali in her MPIA request. *Glass v. Anne Arundel County Maryland, et. al.*, 453 Md. 201, 232 (2017). Accordingly, these two matters are still pending for judicial review. For the foregoing reasons, we vacate the order of dismissal and remand to the circuit court for proceedings consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY VACATED
AND REMANDED FOR PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLEE.**