

Circuit Court for Allegany County  
Case No:C-01-CV-18-000151

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2730

September Term, 2018

---

HORACE MONTAQUE

v.

FRANK B. BISHOP, JR.

---

Wright,  
Kehoe,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

---

PER CURIAM

---

Filed: September 30, 2019

\*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.

Horace Montaque appeals the order of the Circuit Court for Allegany County dismissing his complaint without awarding him money damages. Mr. Montque had filed the action pursuant to § 4-362 of the General Provisions Article of the Maryland Code, which authorizes a person who “is denied inspection of a public record or is not provided with a copy, printout, or photograph of a public record as requested” to “file a complaint with the circuit court.” Mr. Montaque filed his complaint after receiving no response to his request for certain documents from appellee, Frank Bishop, Jr., the Warden of the North Branch Correctional Institution where Mr. Montague is housed. We shall affirm the judgment because he was not entitled to costs or money damages.

#### BACKGROUND

In February 2018, Mr. Montaque requested, in writing, that the Warden produce the following for his review, which we quote:

1. The regulation, directive, policy, or institutional rule under which it states “that I can be made to work three (3) different jobs while only be paid for one (1).”
2. Any and all information on the job title, “Special Utility Worker.” I need the specifics like is there something in writing which says that a Special Utility Worker can be made to work multiple jobs – “at the same time” – for which other inmates are suppose[d] to be assigned to.

Mr. Montaque made clear that this was a “Maryland Public Information Act Request” and noted that, if he was “not provided with a response within 30 days,” he would be “filing in court.” The request was received on February 13, 2018. The Warden did not respond within 30 days and on March 29<sup>th</sup> Mr. Montaque filed a pleading he captioned “Petition for Judicial Review of Maryland Public Information Act” in the circuit court. He

named the Warden as the defendant. He alleged that the Warden had failed to respond to his public information request and that the Warden had “not made a good faith effort to comply,” demonstrating that “he knowingly and willfully denied disclosure rendering his actions arbitrary and capricious.” The self-represented Mr. Montaque requested, among other things, that the “records requested be produced for inspection”; that the court order the Warden “pay actual and/or punitive damages and any other reasonable costs equivalent to reasonable attorney fees for making this action necessary to be filed in court”; and that the court find the Warden “in violation of” the Maryland Public Information Act “and impose a fine of \$1,000 as permitted” by the statute.

Ultimately, the Warden filed a motion for summary judgment and a motion to dismiss. The Warden attached a letter dated June 7, 2018 from the prison’s public information officer responding to Mr. Montaque’s February request for documents. The June 7<sup>th</sup> letter informed Mr. Montaque that “there were no documents found, responsive to [his] request[s].” The circuit court granted the motion to dismiss, and on the order granting the motion stated that “this action is DISMISSED, as the only remaining issue is the damages claim, and no governmental unit was made a party. General Provisions Art. § 4-362(d).”

### DISCUSSION

On appeal, Mr. Montaque asserts that the circuit court erred “in not ruling on the damages claim.” He points out that General Provisions § 4-203(a) provides that the “custodian [of records] shall grant or deny the application [for a review of records] promptly, but not more than 30 days after receiving the application.” Here, it is undisputed

that Mr. Montaque did not receive a response within 30 days and, in fact, did not receive a response until after he filed his action in the circuit court. Mr. Montaque, therefore, maintains that the Warden “should be held accountable for his violation of the law[.]” He also claims that he is entitled to damages pursuant to General Provisions § 4-402(b), which states that “[a] person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000.”

The Warden responds that § 4-402(b) is not applicable here because the Warden has not been charged with a criminal offense. Section 4-402(a) states that a person may not “(1) willfully or knowingly violate any provision of [the Public Information Act]; (2) fail to petition a court after temporarily denying inspection of a public record; or (3) by false pretenses, bribery, or theft, gain access to or obtain a copy of a personal record if disclosure of the personal record to the person is prohibited by this title.” Upon “conviction” of this provision, § 4-402(b) provides for “criminal penalties.” We agree with the Warden that this penalty provision does not apply here because the Warden has not been convicted by a criminal court of violating any provision of the Public Information Act.

The Warden also points to provisions within General Provisions § 4-362, the authority pursuant to which Mr. Montaque filed his complaint, addressing “damages” and “costs,” but asserts that those provisions are also inapplicable here. General Provisions § 4-362(d) states:

- (1) A defendant governmental unit is liable to the complainant for statutory damages and actual damages that the court considers appropriate if the court finds that any defendant knowingly and willfully failed to:
  - (i) disclose or fully 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.
- (2) An official custodian is liable for actual damages that the court considers appropriate if the court finds that, after temporarily denying inspection of a public record, the official custodian failed to petition a court for an order to continue the denial.
- (3) Statutory damages imposed by the court under paragraph (1) of this subsection may not exceed \$1,000.

We agree with the Warden that this section is not applicable here given that there were no records responsive to Mr. Montaque’s requests and, therefore, he was not wrongfully denied access to or inspection of any public record. Although we do not countenance the Warden’s late response to Mr. Montaque’s request advising him that the documents he sought did not exist, we cannot read § 4-362(d) as authorizing the award of statutory or actual damages in this case.

Section 4-362(f) is also inapplicable. That section provides that, “[i]f the court determines that the complainant has substantially prevailed, the court may assess against a defendant governmental unit reasonable counsel fees and other litigation costs that the complainant reasonably incurred.” Here, the circuit court granted the Warden’s motion to dismiss on the merits, and as to the damages claim, noted that “no governmental unit was made a party.” Even if the Warden could be deemed a “defendant governmental unit” in this case, it cannot be said that Mr. Montaque “substantially prevailed” in the action and, therefore, the court did not err or abuse its discretion in failing to award him costs.

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