Circuit Court for Anne Arundel County
Case No.: C-02-CV-22-001474

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 277

September Term, 2024

IN THE MATTER OF JUSTIN HOLDER

Nazarian,
Albright,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: March 26, 2025

*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).

This case concerns a dispute between appellant, Justin Holder, and appellees, the Maryland Department of Natural Resources ("DNR") and its Public Information Act Coordinator, Anthony Burrows, over DNR's responses to nine records requests that Holder made pursuant to the Maryland Public Information Act ("MPIA"). Following a bench trial, the circuit court ruled in favor of the appellees, finding that they engaged in reasonable and good faith efforts to search for and produce all requested records. Holder appeals that judgment, arguing that it lacked an adequate factual basis. Holder also appeals the circuit court's decision to exclude certain testimony from evidence on hearsay grounds, as well as the circuit court's decision to deny discovery in this case and to quash most of Holder's trial subpoenas. Holder presents three questions for this Court's review,[1] which we have rephrased and reordered, as follows:

1. Did the circuit court err when it excluded, on hearsay grounds, Holder's testimony about the date stamp displayed in the metadata of documents responsive to MPIA Request #103122a?

[1] Holder presented the following questions on appeal:

1. Did the trial court abuse its discretion and/or err when it failed to make the five (5) requisite findings discussed in *State v. Walker* on the record, in sustaining Appellees' objection to the residual hearsay exception described in Md. Rule 5–803(b)(24) during Appellant's testimony, when that error was not harmless?
2. Was there "adequate factual basis" to find Appellees' search is "reasonable" and/or consistent with the holding in *Glass v. Anne Arundel County*, when Appellee did not search in the department Appellant told them to, with the parties to the records, and where the documents that Appellant had requested to inspect are most likely located? If so, did the prohibition of discovery, and quashing of Mr. Holder's trial subpoenas prejudice Mr. Holder's ability to impeach DNR's testimony?
3. Did the trial court's decision have "adequate factual basis" to find that Appellees' three (3) year delay in production of records was not "knowing and willful"? If so, did the trial court err by failing to analyze and/or consider, an award of reasonable litigation costs to the substantially prevailing Appellant?

2. Was there an adequate factual basis for the circuit court to find that DNR's search was reasonable, and that the delays in producing records were not knowing and willful?

3. Did the circuit court abuse its discretion in denying discovery and quashing six of Holder's seven trial subpoenas?

4. Did the circuit court err in failing to make a finding that Holder substantially prevailed in the action?

For the reasons that follow, we affirm in part and vacate in part the judgment of the circuit court, and remand for further proceedings consistent with this opinion.

BACKGROUND

On June 1, 2020, Holder submitted a request for public records to DNR under the MPIA. This was the first of fifty-eight MPIA requests Holder would submit to DNR over the next three and a half years, averaging out to more than one MPIA request per month. Most of Holder's MPIA requests concerned land disputes he had with DNR and local governments, as well as related criminal trespassing charges against him prosecuted by the Natural Resources Police.[2]

The MPIA is codified in Title 4 of the General Provisions Article of the Maryland Code. *See* Md. Code Ann., Gen. Provisions ("GP") § 4–101, *et seq*. The Act generally entitles all persons to "have access to information about the affairs of government and the official acts of public officials and employees." GP § 4–103(a). To carry out this right, the

[2] Holder explained that his numerous MPIA requests were prompted by a "$50 fine for disturbing a rock, plant, or mineral," a criminal charge that was ultimately dismissed. Despite the dismissal, Holder testified that he spent $100,000 on records requests in a separate case in an effort to file malicious prosecution charges against the State of Maryland.

MPIA is broadly "construed in favor of allowing inspection of a public record," GP § 4–103(b), providing that "[e]xcept as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time." GP § 4–201(a)(1).

A person wishing to inspect a public record must "submit a written application to the custodian." GP § 4–202(a). If, after a search for potentially responsive public records, the custodian of a requested record determines that it does not exist, the custodian must notify the applicant of this determination "promptly after the search is completed but not more than 30 days after receiving the application." GP § 4–202(d)(2). Additionally, a records custodian must grant or deny an application "promptly, but not more than 30 days after receiving the application." GP § 4–203(a)(1).

If an application is approved, the custodian must "produce the public record immediately or within a reasonable period that is needed to retrieve the public record, but not more than 30 days after receipt of the application." GP § 4–203(b)(1). Failure to produce a requested record within thirty days of the application "constitutes a denial of an application that may not be considered the result of a bona fide dispute," GP § 4–203(b)(3), unless the custodian (1) writes to the applicant within ten working days of the request indicating how much time it will take to produce the record, an estimate of the fees that may be charged, and the reason for the delay; *and* (2) is working with the applicant in good faith. GP § 4–203(b)(2)-(3). "[W]henever a person or governmental unit is denied inspection of a public record or is not provided with a copy, printout, or photograph of a

public record as requested, the person or governmental unit may file a complaint with the circuit court." GP § 4–362(a)(1).

At issue in this case are DNR's responses to the following nine MPIA requests, listed in chronological order by the date they were received: 070120, 052422, 070722, 073022, 101722, 103122a, 111422a, 121122, and 121922. The first request at issue here, #070120, sought the following records:

> In the dnr rail corridor known as the weaverton Roxbury rail and trail,, located in washington county maryland, please provide all agreements with abutting land owners, or other parties in which the dnr or state has agreed to usage, maintenance, driving on state land. Please provide any agreement with Mary ironside for property owners to mow, drive on or plant crops on state property in General. Specifically Austin flook, provide an agreement that allows him or his agents to farm the land and use it as a farm lane, Jeff young provide the agreement that allows him to use the corridor as a farm lane, the property owners on mt briar and trees road. Provide the agreement in which they use the corridor as a driveway, parking lot, put fence through it, and place buildings and sheds on it. I do have photos and videos of all of this. If no agreement s are in place please provide the complaint, cease and desist demand letters or fines residents abutting the weaverton Roxbury rail and trail have been sent in the last 5 years.

On July 10, 2020, nine days after Holder had submitted the request, DNR's then-MPIA Coordinator Gene Deems responded to Request #070120. Mr. Deems explained,

> Our offices are closed and we are doing our best to do the research when possible, however records are in paper form, and may not be readily accessible. I just wanted to keep you informed that we have your requests and are working on them as we can during these unprecedented times.[3] There may be a cost involved, but I cannot tell you at this time. And we won't start the work until you have given approval in case there is a cost. In the meantime, we will do what we can about identifying whatever responsive documents may exist without you incurring an expense.

[3] Although not explicitly stated, it is clear that Mr. Deems' mention of "unprecedented times" was a reference to the ongoing COVID-19 pandemic, which forced the closure of DNR and other state government offices in 2020.

After Holder submitted Request #070120, he filed twenty more MPIA requests to DNR over the next four months.[4] While DNR was still working on responding to the more than twenty requests Holder had submitted in the past four months alone, Holder also sent Mr. Deems repeated follow-up emails on November 3, November 12, November 21, November 23, and December 8, 2020, demanding that he produce the records requested in MPIA Request #070120. Mr. Deems promptly replied to each of Holder's emails, explaining that DNR was working on all of Holder's MPIA requests and that they were in varying stages of review and completion. On December 18, 2020, DNR produced the records responsive to Request #070120, as well as records responsive to several of Holder's other ongoing MPIA requests.

Unsatisfied with the responses he received, Holder entered into mediation with DNR. On May 10, 2022, Lisa A. Kershner, the public access ombudsman mediating the dispute, reached out to DNR's new MPIA coordinator, Burrows, to inform him that Holder "would like to proceed with that portion of his request that seeks email re: 'Austin' and/or 'Flook[.]'" On May 23, 2022, Burrows reached out to Holder and informed him that he had run the requested search for emails with the names "Austin" and/or "Flook," and that there were no responsive documents. The same day, Holder responded that "Mr. Flook corresponds with DNR by and through counsel Bruce D. Poole, Esq.," and he asked Burrows whether he had looked "for a letter from Mr. Flook or his agents[.]" On May 24,

[4] Holder submitted the following twenty MPIA requests to DNR between July 1, 2020, and November 3, 2020: 070120b, 070820, 071520, 080120, 082420, 082820, 090120, 090120a, 090420, 090520, 091720, 092520, 092920, 100720, 101420, 101620, 101820, 101820a, 102120, and 110320.

2022, the parties reached a resolution. As a result of the mediation, the parties agreed that DNR would adjust Holder's 070120 request and that DNR would run another search based on a new MPIA request Holder submitted that same day, labeled #052422. That request stated:

> I am very appreciative of the email search in good faith to conclude mediation, there is additional correspondence that would responsive to the" **INITIAL REQUEST MPIA 070120:**
>
> "Typically when Mr. Flook would like the Department of Natural Resources to interfere with other property owners to block development, Mr. Flook has his attorney Bruce D. Poole, Esq. wrote a letter stating his interest in the "viewpoints" or "visual buffer" area around his farm. Mr. Flook uses a letter he received from the Maryland film institute and/or his conservation easement as justification to interfere with other property development. Mr. Flook communicated his interest and while typically communicated through Bruce D. Poole, the interest may also have been communicated through Richard Bishop."
>
> As evidence of an agreement between abutting landowners with DNR, I am again kindly requesting redress and compliance with the sunshine laws of our state.
>
> Please provide a Formal response to my "**INITIAL REQUEST MPIA 070120:",** as I have only been provided a "draft".

Burrows testified that he told Holder, again, that there were no responsive documents to his request.

Still unsatisfied with the responses he received from DNR, Holder submitted another MPIA request on July 7, 2022, claiming that DNR did not give him everything he wanted in the 052422 request. Specifically, MPIA Request #070722 identified three items that Holder felt had not been produced:

> a) "agreements with abutting land owners, or other parties in which the dnr or state has agreed to usage, maintenance, driving on state land."; for Austin Flook, Jeffrey Young and "the property owners on mt briar and tre[go] [sic] es road";

> b) "the complaint, cease and desist demand letters or fines residents abutting the weaverton Roxbury rail and trail have been sent in the last 5 years";
>
> nor (upon information and belief) have I been provided
>
> c) "In the dnr rail corridor known as the weaverton Roxbury rail and trail,, located in washington county maryland, please provide all agreements with abutting land owners, or other parties in which the dnr or state has agreed to usage, maintenance, driving on state land."[Emphasis Added].

Then, apparently distrustful of Burrows' search efforts, Holder submitted another MPIA request on July 30, 2022. Holder filed this request to "verify that [Burrows] was indeed doing what [he] said [he] was doing by working on things[.]"

Frustrated with the responses he had received, Holder, proceeding *pro se*,[5] sued DNR and Burrows on September 6, 2022, alleging that they knowingly and willfully failed to disclose the public records he had requested in MPIA Requests #070120, #052422, and #073022. On September 10, 2022, Holder filed a Certificate Regarding Discovery, notifying the circuit court that he had served requests for admission, interrogatories, and requests for documents on DNR and Burrows. On October 11, 2022, DNR moved for a protective order requesting that discovery not be had in this case by Holder, and that DNR not have to respond to any discovery served on it by Holder. The circuit court granted DNR's motion on October 21, 2022.

Even after he sued them, Holder continued sending MPIA requests to DNR for more than a year leading up to trial. Between October 17, 2022, and January 5, 2024, Holder submitted twenty-three more MPIA requests. While he was filing new MPIA requests,

[5] Holder has proceeded *pro se* throughout this case.

Holder also amended his complaint three times to add additional DNR responses that he felt were insufficient. In the operative Third Amended Complaint, Holder ultimately contested DNR's responses to nine of his requests. The operative complaint was filed on January 20, 2023. Then, on February 13, 2024, Holder issued seven trial subpoenas, six of which were addressed to various individuals and agencies outside of DNR.[6] DNR moved to quash Holder's subpoenas and, with the exception of the subpoena to DNR, the circuit court granted the motion on March 18, 2024.

At trial on April 5, 2024, Burrows explained in detail the procedures that DNR follows when processing MPIA requests. There are three different ways that members of

[6] Holder issued trial subpoenas, as follows, to:

1) Lesley Sperling Cruz, for correspondence with DNR related to an abandoned railroad in Keedysville, Maryland;
2) D. Bruce Poole, Esq., for a copy of a letter to Ms. Jean Lippard in representation of "Mr. and Mrs. Flook" regarding "request for a possible grant of an easement";
3) The Maryland Department of General Services, for a quitclaim deed for the abandoned branch of the Washington County Railroad in 1991;
4) The Maryland Department of Natural Resources, for testimony from Angela Mock, Anthony Burrows, Nina Settina, George Forlifer, Mary Ironside, Cody Litton, Daniel Spedden, Jeanie Lipphard, Christy Bright, and Officer Shirley in Natural Resource Police Records;
5) The Maryland Office of Attorney General, for communications between Talley Kovacs and the Washington County State's Attorney office, Joseph Michael, Benjamin Estes, (and his agents Aaron Neal or Michael Schitzer) Frederic Frederick, (and his agents Sarah James, D. Bruce Poole, James Steele, Kevin Murphy, and Savannah Selvaggio), and Rachel Meyers, of the State of Maryland Department of Labor;
6) Victor Jewell Peeke, to authenticate documents related to the transaction and land development of a subdivision in Keedysville, Maryland commonly known as "Rockingham," and testify related to certain transactions and dealings with the State of Maryland program Open space; and
7) Washington County, for correspondence with DNR related to an abandoned railroad in Keedysville, Maryland, and other records relating to the railroad.

the public may submit an MPIA request to DNR. Most people utilize a Google form that is linked on DNR's website to submit their requests. Members of the public may also submit MPIA requests via email or through physical mail. When a requestor submits an MPIA request through the Google form, that request goes into a Google mailbox in the form of an email. The Google mailbox is managed by the MPIA Coordinator, in this case, Burrows. When a request is received, it is assigned a number that corresponds with the date DNR received the request.

Within DNR, there are several "units." The MPIA requests at issue in this case primarily concerned two units within DNR: the Land, Acquisition, and Planning Unit ("LAP"), and the Natural Resources Police Department ("NRP"). Each unit has a subject matter expert, known as a "unit custodian."

There are generally two types of records that are requested from DNR. The first is called a "unit record." These are paper records and records that exist within each unit's storage systems. The second type of record is email correspondence. When Burrows receives a request for a unit record, he reviews the request to identify which unit custodian will assist with fulfilling the request. When he identifies the proper unit custodian, Burrows sends them a copy of the MPIA request and asks them for any responsive documents, and also how long they anticipate taking to review, respond, and produce the records. If, alternatively, the request is for email correspondence, Burrows must generate a search query based on the request and send that query to the Department of Information Technology ("DoIT") for processing.

The process of responding to MPIA requests can be extremely time-consuming, especially given the volume and complexity of the requests that Holder submitted in this case. Burrows testified that many of Holder's requests were "very complex" and "long running," and that he requested records dating back decades. Burrows described the difficult process of generating search queries for Holder's MPIA requests as follows:

> [BURROWS]: So, the queries we use are what are called "and/or queries." So we have to kind of combine words to tell Google what to find in emails.
>
> And an example of a general request from Mr. Holder is a paragraph long, detailed, with key word request that goes from – it has information about cities, about people, about topics, about cases, about property.
>
> And it makes it difficult to run a search because we – if I run that all the way – if I run his request through our search, we get back no records because there are no exact matches.
>
> So what I have to do is, I have to do very general searches on words like Weverton, Roxbury, rail trail. And those results bring back thousands of returns.
>
> And then we have to go in and we have to read each of those emails in those returns to figure out if those match up to what he has sent in.

One of Holder's requests, #103122a, generated a return of 15,000 emails, each of which Burrows had to read to determine whether it was responsive to Holder's request.[7] This was just one of the fifty-eight MPIA requests Holder submitted over the course of three and a half years. Additionally, serving as DNR's MPIA coordinator is not Burrows' sole duty. He also runs DNR's public-facing website, DNR.Maryland.gov, as well as its Intranet; he runs the graphics shop for the Department; he manages DNR's online store;

[7] Burrows ultimately determined that eighty-three of these emails were responsive, and he sent the responsive records to Holder on February 1, 2023.

and he is the Department's photographer and videographer. Complicating matters even further for Burrows, Holder would frequently "weave in requests" while Burrows and others were working on the requests he had already submitted. Burrows explained how this made his job even more difficult in the following exchange:

> [DEFENSE COUNSEL]: During the course of his submitting requests, does he [Holder] modify or alter requests?
>
> [BURROWS]: Yes.
>
> [DEFENSE COUNSEL]: Could you describe how so?
>
> [BURROWS]: While we're working on a request, he may add new people to the request, which makes us redo the entire request. And he will add in new things all together. He will also change information as we go along.
>
> [DEFENSE COUNSEL]: You testified there that requires you to redo the request. Do you mean that it requires you to redo the search for records?
>
> [BURROWS]: It does because if he puts a new person into the mix and we're doing a search for records, we basically have to redo it because it's not only the person that we're looking for that he's added, but it's all the folks that they interacted with throughout the course of the search, so we have to do everything over.

Burrows testified that he sent Holder weekly status updates designed to keep Holder informed of DNR's efforts to respond to each of his requests. These weekly status updates included information like the status of DNR's search for records, along with an estimated response time.

Burrows also testified about some of the limitations DNR has on searching for records. He explained that email records are generally only available dating back to 2015, because that is when DoIT was created. Unless they were migrated into an existing mailbox, or otherwise preserved, emails dating back prior to 2015 no longer exist. As for

unit records, Burrows explained that LAP is subject to a twelve-year retention period for records, with the only exception being for permanent retention of records of land ownership and boundaries.

On cross-examination of Burrows, Holder brought his laptop up to the witness stand and attempted to show Burrows a PDF of the documents responsive to his 111422a request, allegedly revealing a metadata date stamp of December 21, 2022.[8] However, the trial judge immediately interjected to stop Holder from doing so, saying, "No, no, no, no, no, no, no. We are not doing all that. Just ask your question." Holder then proceeded to question Burrows about the metadata date stamp on the documents responsive to MPIA Request #111422a. Holder explained how paper records are scanned into PDF files, and how the metadata in those files include information about the date the file was created. Holder then asked Burrows whether the date stamp contained in the metadata could be a date prior to the one when the document was scanned, to which Burrows answered that he was "not aware of how that could be possible." The following exchange ensued:

> [HOLDER]: So if I represented to you that the documents that were responsive to the 11142022A request had a metadata date stamp of December 21st, 2022, would you argue with me?
>
> [DEFENSE COUNSEL]: Objection. If he has something like that –
>
> [THE COURT]: Sustained.
>
> [HOLDER]: That's what I was going to have him testify to with my laptop. He could look at them and inspect them.
>
> [DEFENSE COUNSEL]: Your Honor, I am going to object to that.

[8] The documents responsive to MPIA Request #111422a were produced to Holder on November 28, 2023, nearly a year after Holder alleges they were "scanned in."

[THE COURT]: Maybe you –

[DEFENSE COUNSEL]: He has an obligation to create exhibits.

[THE COURT]: I understand. I am going to sustain the objection.

The circuit court did advise Holder, however, that "[t]here may come a time where that [the metadata date stamp] will come into evidence, maybe through your testimony." Holder then continued to question Burrows about the documents responsive to MPIA Request #111422a, asking whether DNR held the documents for almost ten months before producing them to Holder on November 28, 2023. Burrows responded, "I never held documents. If we have documents that are ready to be released, they are released to the customer, even if it's a partial release."

Holder did not raise the metadata issue again during his own testimony on direct examination. When counsel for DNR asked, on cross-examination of Holder, whether Burrows responded to MPIA Request #103122a on February 1, 2023, Holder answered that he did, but that "[t]he documents in the request had a metadate of 12/21/22." Then, on redirect examination, the following exchange took place:

> [HOLDER]: In regards to the timing that he raised in his cross, I did look at metadata on the documents. And my inspection with my PDF and my preview on Safari said that most of the documents that were responsive to the – I believe it was the 1031 or 103022, the public hearing MPIA and the railbanking MPIA were created on December 21st, 2022. So it would be my belief that they were scanned in –
>
> [DEFENSE COUNSEL]: Objection, Your Honor. This is hearsay based on what the computer saw as far as telling him.
>
> [HOLDER]: That's my knowledge of how the software works.
>
> [THE COURT]: Yes, I am going to sustain the objection.

[HOLDER]: Okay.

[THE COURT]: Alright.

[HOLDER]: So I would need an expert to testify about that then?

[THE COURT]: I have just sustained the objection.

Following brief closing arguments from both parties, the circuit court rendered its decision from the bench:

> [THE COURT]: I am prepared to render a decision. I have listened carefully. As I said, I reviewed the file prior to coming in here today. I have taken into account the testimony provided, as well as the opening statements and closing arguments that have been made.
>
> I am sorry, Mr. Holder, but I agree with the defense on this. I am satisfied that the Department of Natural Resources has responded to all of your public information requests and that they have produced everything within their possession, excluding exempted records.
>
> I found Mr. Burrows to be very credible and I accepted his testimony. I don't have concerns about Mr. Holder's credibility. I do have concerns he seems to be exceedingly suspicious of how the government interacts with him.
>
> Maybe he has good reason to feel that way given what he has been through. But that, at least in my mind, impacted my decision on what weight to give his testimony.
>
> I am satisfied that the Department of Natural Resources has not knowing [sic] and willfully denied access to public records.
>
> I am satisfied the Department of Natural Resources made diligent and good faith searches and used appropriate and reasonable methods to capture the requested information.
>
> Quite frankly, their efforts are just above and beyond as far as I am concerned. I mean, we are talking thousands of hours of manpower. There were delays in the Department of Natural Resources responding.

> But a large basis of those delays – a large reason for those delays are the complexity of what is being requested; the number of requests, which were significant. And despite that, DNA [sic] still continued to work to provide Mr. Holder what it was that he asked for.
>
> I am also not satisfied that Mr. Holder has proven that there are any damages that he can recoup in this case. So, I am going to find in favor of the Defendant and you all are free to go.

Holder noted this timely appeal on April 5, 2024.

STANDARD OF REVIEW

When a matter is tried by a court without a jury, we review its judgment on both the law and the evidence. Maryland Rule 8–131(c). We will not set aside the judgment on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* "A trial court's findings are not clearly erroneous if 'any competent material evidence exists in support of the trial court's factual findings[.]'" *Plank v. Cherneski*, 469 Md. 548, 568 (2020) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). "However, no deference is owed to its assessment of the law." *Glass v. Anne Arundel County*, 453 Md. 201, 231 (2017).

DISCUSSION

I. The Circuit Court Erred when it Excluded, on Hearsay Grounds, Holder's Testimony About the Metadata Date Stamp in Documents Responsive to MPIA Request #103122a

As a threshold matter, DNR contends that Holder failed to preserve the metadata issue for appellate review. DNR notes that when he first attempted to raise the issue at trial, during his cross-examination of Burrows, Holder brought his laptop to the witness stand to show Burrows a PDF displaying the metadata. The court swiftly warned Holder against

showing Burrows the laptop screen, and prodded him to "[j]ust ask your question." Thus, Holder asked Burrows whether the metadata in the documents responsive to MPIA Request #111422a contained a date stamp of December 21, 2022. Before Burrows could answer, counsel for DNR objected to the question, and the court sustained that objection, apparently on the ground that Holder had "an obligation to create exhibits." The court then explained to Holder that "[t]here may come a time where that will come into evidence, maybe through your testimony." DNR argues, however, that Holder failed to take the court up on its invitation, and therefore, the court was never called upon to rule on the issue. Holder, on the other hand, argues that he did preserve the issue for appeal when, on his own redirect examination, the court sustained an objection to his testimony about the metadata.

"Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8–131(a). Here, the circuit court clearly decided the issue of the metadata's admissibility when it excluded Holder's testimony on redirect examination from evidence, but only as it related to the documents responsive to MPIA Request #103122a. Therefore, the metadata issue is preserved for our review only as it relates to MPIA Request #103122a.

On the merits, both parties accept the premise that Holder's testimony about what he learned from the metadata was hearsay, and they focus their appellate arguments on whether the testimony should have been admitted under the residual hearsay exception.[9]

[9] The residual hearsay exception states:

(continued)

However, both parties and the circuit court below were wrong to assume that the metadata testimony was hearsay.

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). Unless an exception applies, "hearsay is not admissible." Md. Rule 5–802. "[C]omputer-generated records generally do not constitute hearsay." *Baker v. State*, 223 Md. App. 750, 762 (2015). These are records that "are entirely self-generated by the internal operations of the computer[.]" *Id.* Computer-generated records "do not implicate the hearsay rule because they do not constitute a statement of a 'person.'" *Id.* Instead, "the admissibility of such data 'should be determined on the basis of the reliability and accuracy of the process used to create and obtain the data.'" *Id.* (quoting *State v. Reynolds*, 456 S.W.3d 101, 104 (Mo. Ct. App. 2015)).

> *Other Exceptions.* Under exceptional circumstances, the following are not excluded by the hearsay rule: A statement not specifically covered by any of the hearsay exceptions listed in this Rule or in Rule 5-804, but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the intention to offer the statement and the particulars of it, including the name and address of the declarant.
>
> Md. Rule 5–803(b)(24).

Here, the metadata that Holder tried to bring into evidence through his testimony—the creation date for a PDF—was clearly computer-generated, and not merely computer-stored. Unlike computer-generated records, which do not constitute hearsay, computer-stored records, which reflect human input into a computer, may constitute hearsay. *Baker*, 223 Md. App. at 763. The creation date on a PDF does not reflect any human input into the computer. When one converts or scans a document into PDF format, the computer automatically generates a creation date for that PDF. Therefore, the metadata at issue here could not constitute hearsay.

Holder also raised at trial the issue of whether expert testimony was needed to admit the metadata into evidence. "Expert testimony is *required* 'only when the subject of the inference ... is so particularly related to some science or profession that is beyond the ken of the average layman[.]'" *Johnson v. State*, 457 Md. 513, 530 (2018) (quoting *Bean v. Dep't of Health & Mental Hygiene*, 406 Md. 419, 432 (2008)) (emphasis in original). Such testimony "is not required on matters of which the jurors would be aware by virtue of common knowledge." *Johnson*, 457 Md. at 530 (quoting *Bean*, 406 Md. at 432).

The Supreme Court of Maryland has noted, in a footnote, that "[w]hen metadata is presented in the course of litigation, it is accomplished through expert testimony." *State v. Payne*, 440 Md. 680, 691 n.14 (2014). In *Payne*, a police officer testified as a lay witness about cell phone call records that the officer obtained from a cell phone company and subsequently analyzed in order to locate the suspects. *See id.* at 685–89. The Court held that the officer "needed to be qualified as an expert under Maryland Rule 5–702 before being allowed to testify as to his process for determining the communication path of [the

defendants'] cell phones[.]" *Id.* at 684. The Court explained that the process the officer used to determine the location data "was beyond the ken of an average person." *Id.* at 700.

In *Gross v. State*, 229 Md. App. 24 (2016), this Court differentiated between data that requires interpretation by a witness—as exhibited in *Payne*—and data that is merely read by the witness. *Gross*, 229 Md. App. at 33–34. We then held that "expert testimony is not necessary for the admission of records of GPS data, where the witness merely reads the GPS data as it appears in the records." *Id.* at 36. In explaining this holding, this Court stated that "the average juror could understand the GPS records without expert help" as they "indicate simply and clearly the date and time of the reading and the address at which the [object] was then located." *Id.* at 34. Later, in *Johnson*, the Court confirmed the ruling in *Gross*, concluding that GPS evidence does not need to be introduced through expert testimony because, even though an individual may not understand how a GPS device works, "[t]he general public has a common sense understanding of what information the device conveys." 457 Md. at 531.

Here, the admission of the metadata for certain PDF documents produced to Holder, specifically the date the PDFs were created or "scanned in," does not require expert testimony. As in *Gross* and *Johnson*, Holder did not seek to analyze or interpret the date provided in the PDF's metadata. Rather, he merely sought to testify that the date, as it appeared in the metadata, was December 21, 2022. In reading the date the PDF was created, Holder did not "engage[] in a process to derive his conclusion ... that was beyond the ken of an average person." *Payne*, 440 Md. at 700. And he was not required to apply any specialized knowledge in doing so. Indeed, "the average juror could understand the [date

stamp provided in the PDF's metadata] without expert help." *Gross*, 229 Md. App. at 34. As such, we hold that Holder's testimony regarding the metadata date stamp was improperly excluded during trial.

It also does not affect this Court's analysis that the disputed testimony was given on redirect examination. The circuit court has wide discretion to control the scope of redirect examination, and "a party is generally entitled to have his witness explain or amplify testimony that he has given on cross-examination and to explain any apparent inconsistencies." *Daniel v. State*, 132 Md. App. 576, 583 (2000). Here, Holder raised the metadata issue on redirect examination to "explain or amplify testimony" he had just given on cross-examination concerning the date that records responsive to MPIA Request #103122a were produced to him. *Id.* Therefore, the testimony was within the scope of redirect examination.

Finally, we must determine the effect of the erroneous ruling. It is well established that, "[e]ven where there is error, this Court will not reverse a lower court's judgment for harmless error." *Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 49 (2016). Instead, the objecting party must establish that the error was prejudicial. *Id.* "Prejudice will be found if a showing is made that the error was likely to have affected the verdict below. 'It is not the possibility, but the probability, of prejudice which is the object of the appellate inquiry.'" *Crane v. Dunn*, 382 Md. 83, 91 (2004) (quoting *State of Md. Deposit Ins. Fund Corp. v. Billman*, 321 Md. 3, 17 (1990)). "Courts are reluctant to set aside verdicts for errors in the admission or exclusion of evidence unless they cause substantial injustice." *Perry*, 447 Md. at 49 (quoting *Brown v. Daniel Realty Co.*, 409 Md. 565, 584 (2009)).

Here, Holder's testimony that the records responsive to MPIA Request #103122a had a metadata date stamp of December 21, 2022 goes to the heart of his claims against DNR. At bottom, Holder's operative complaint alleged that DNR knowingly and willfully failed to disclose public records he had requested when they were available. If believed, his testimony on redirect examination would call into question the testimony of Burrows, who stated that "If we have documents that are ready to be released, they are released to the customer, even if it's a partial release." If the documents responsive to MPIA Request #103122a did, as Holder attempted to testify, have a creation or "scanned in" date of December 21, 2022, that means at least some responsive documents may have been improperly held for over a month from the date they were available. Had the circuit court considered Holder's testimony about the metadata, it may have come to a different conclusion on the willfulness of DNR's actions, or it may not have. However, that is a determination of fact best left to the circuit court.

On remand, the circuit court should hold a new trial on the limited issue of whether DNR appropriately responded to Holder's MPIA Request #103122a.

II. The Circuit Court's Findings Regarding DNR's Efforts to Search for and Produce Requested Records were not Clearly Erroneous as to all Requests Other than #103122a

A. There was an Adequate Factual Basis to Find that DNR Made "Diligent and Good Faith Searches and Used Appropriate and Reasonable Methods to Capture the Requested Information"

Holder argues that the record in this case is "devoid of any credible evidence" that DNR made a reasonable search for three specific records he sought: (1) "communications with Jeannie Lippert* out of Open Space and D. Bruce Poole[;]" (2) "communications from

Mary Ironside, the Department manager to Holly Nicodemus* with the agreement for the fencing[;]" and (3) "agreements with Leslie and Michael Cruz* to put chains across the ---- corridor of their property." Holder contends that DNR's search was not reasonable because, despite spending thousands of hours working to fulfill his requests, "they did not look in the specific department that Mr. Holder told them the documents would be located, nor did they ask the specific parties to the three (3) documents at issue."[10] DNR, on the other hand, argues that they "more than satisfied" the standard set forth in *Glass v. Anne Arundel County*, 453 Md. 201 (2017).

In *Glass*, the Supreme Court of Maryland explained "what kind of search the PIA requires":

> An agency that receives a PIA request must conduct a search in good faith that is reasonably designed to capture all responsive records. In cases under FOIA, the federal courts have characterized such a search as "a good faith effort to conduct a search for the requested records, using methods that can be reasonably expected to produce the information requested." *Oglesby v. Department of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). This does not mean that the agency must robotically examine every record in its possession, running up an extravagant fee and diverting public resources in furtherance of a futile effort; rather, the search should be focused on where responsive records are likely to be found.
>
> The reasonableness of an agency's search is to be measured prospectively by how the agency designed the effort to find responsive records, not retrospectively by its success in locating every responsive record. A search may be reasonable and adequate without being perfect. *See, e.g.*, *Ethyl Corp. v. EPA*, 25 F.3d 1241, 1246

[10] Holder's insistence that DNR "ask the specific parties to the three (3) documents at issue" is unreasonable. We cannot assume that Burrows knows every employee (past and present) at DNR. It would be both impractical and inefficient for this Court to impose upon MPIA coordinators a duty to reach out to specific employees when searching for records responsive to MPIA requests. DNR has a process of delegating MPIA requests to assigned unit custodians and DoIT employees, and Burrows followed that process in this case.

> (4th Cir. 1994) (whether search is reasonable is not assessed by "whether every single potentially responsive document has been unearthed").

Glass, 453 Md. at 231–32.

The Court concluded that,

> In the end, what the PIA requires is a *reasonable* search designed to locate all records responsive to the particular PIA request, not a perfect search that leaves no stone unturned. Reasonableness must be measured against the specificity of the request and the willingness of the requestor to focus a request to improve the efficiency of the search. An agency is not expected to divert its resources to an exhaustive search in response to a broadly worded request that the requester refuses to focus and at an expense that will not be recovered.

Id. at 233 (emphasis in original).

Here, DNR's efforts to search for and produce the records that Holder requested were more than reasonable.[11] As Burrows explained at trial, DNR has a comprehensive system of responding to MPIA requests. When a request is received, the MPIA coordinator records that request in a spreadsheet where it is tracked. The MPIA coordinator then determines whether the request is for a unit record or for email correspondence. If a unit record is requested, the MPIA coordinator sends the request to the appropriate unit custodian. If email correspondence is requested, the MPIA coordinator generates a search query based on the request and sends it to DoIT. Then, ten days after the request is received, the MPIA coordinator sends an update to the requestor letting them know that DNR is working on the request, and how long they anticipate taking to search for the records.

[11] This holding does not apply to MPIA Request #103122a, which we remand for a new trial to consider Holder's metadata testimony.

Burrows described this as a "check in." Burrows also described how the MPIA coordinator will sometimes communicate with the requestor to "fine-tune" their request.

DNR followed all of these procedures when working on Holder's requests. Burrows testified that he sent Holder weekly status updates to keep him informed as to DNR's efforts to respond to all of his MPIA requests. Exhibits admitted into evidence also showed Burrows communicating with other officials at DNR to produce the requested records. According to Burrows, some of Holder's requests required him to sift through thousands of documents to determine which ones were responsive. Despite these efforts, the constant barrage of long, often vague requests from Holder made it impossible for DNR to respond to every request within the statutorily mandated thirty days. Holder apparently tried to take advantage of the system, overwhelming DNR with a deluge of MPIA requests, and then suing them when they could not complete the requests on time. Given their diligent efforts to search for the records and keep Holder informed throughout the process, DNR should be applauded, not condemned.

According to Holder, it does not matter how much effort went into DNR's search, nor does it matter how many thousands of documents were produced to him. Holder argues that DNR's search was unreasonable, simply because it failed to unearth three specific records that Holder wanted. However, by focusing on what DNR's search did not turn up, Holder seeks to apply a standard that is contrary to the one set forth in *Glass*. The issue for trial in this case was not "whether every single potentially responsive document has been unearthed," but rather "how the agency designed the effort to find responsive records," regardless of "its success in locating every responsive record." *Glass*, 453 Md. at 232.

Thus, while DNR may not have uncovered some of the records that Holder sought, that does not mean its search was unreasonable.

The uncontradicted testimony of Burrows and the exhibits admitted at trial provided the circuit court with competent material evidence of DNR's reasonable, good faith efforts to respond to Holder's records requests. Therefore, the circuit court's finding was not clearly erroneous.

B. There was an Adequate Factual Basis to Find that DNR did not Knowingly and Willfully Deny Access to Public Records

Holder also argues that the circuit court lacked an adequate factual basis for its decision that DNR did not knowingly and willfully deny access to public records. According to Holder, the facts are that he requested inspection of the records in the summer of 2020,[12] unsuccessfully mediated the dispute through the spring of 2022, and after "vexatiously" filing four "failed dispositive motions,"[13] DNR finally produced 6,000 documents "on the eve of trial."[14] Therefore, he contends that the decision in DNR's favor was clearly erroneous. DNR argues, however, that there *was* an adequate factual basis for the circuit court's decision, and points to the testimony of Burrows for support.

[12] This was MPIA Request #070120.

[13] DNR filed: (1) a motion to dismiss on October 11, 2022, which was denied on December 12, 2022; (2) a motion to dismiss on December 19, 2022, which was vacated on January 31, 2023; (3) a motion to dismiss on February 6, 2023, which was denied on March 27, 2023; and (4) a motion to dismiss on March 4, 2024, which was denied on March 21, 2024.

[14] This was in response to MPIA Request #111422a. DNR's response to this request came on November 28, 2023, more than four months before trial.

We agree with DNR.[15] Holder's recitation of the facts presents only a sliver of the evidence presented at trial, and fails to account for Burrows' detailed descriptions of DNR's efforts to respond to each of Holder's MPIA requests. While it is true that Holder made his initial request for records in the summer of 2020, mediated until 2022, and received 6,000 documents in 2023, this does not tell the full story. The evidence presented at trial shows that DNR responded to Holder's initial request at issue here in December of 2020. While it was working on its response to that request, DNR also received and responded to twenty-one other requests from Holder that are not at issue in this case. By the time DNR produced the aforementioned 6,000 documents in November of 2023, they had already responded to thirty-seven other MPIA requests submitted by Holder. Not only were these requests voluminous, but they were also long, vague, and complex. The record also reveals that the MPIA coordinator was in constant communication with Holder and other officials in DNR to produce responsive documents.[16]

Given the competent material evidence supporting DNR's efforts to search for responsive records and constantly update Holder on the status of those searches, the circuit court did not clearly err in finding that the delayed responses were not knowing or willful.

[15] This holding does not apply to MPIA Request #103122a, which we remand for a new trial to consider Holder's metadata testimony.

[16] Burrows testified that, during the time in which he was working on a response to MPIA Request #111422a,

> [W]e had several requests from Mr. Holder during the timeframe. I believe I was working on seven at a time. And as we got them done, we responded to Mr. Holder. I kept him abreast of our situation weekly, that we were working on things and the complexity of his requests, it just took time for us to get back to him with his data.

III. The Circuit Court Did Not Abuse its Discretion in Denying Discovery and Quashing Holder's Trial Subpoenas

Holder contends that the circuit court abused its discretion in denying discovery and quashing his trial subpoenas, arguing that without the ability to bring certain witnesses to trial, or to conduct discovery, he was "severely prejudiced" in the presentation of his case. DNR disagrees, arguing that the circuit court properly exercised its discretion to quash subpoenas seeking irrelevant evidence.

There is no provision in the MPIA that allows for discovery. *See* GP § 4–101, *et seq.* Rather, for a person denied inspection, the MPIA provides for a complaint to be filed by the complainant and a response to be filed by the defendant in the circuit court. GP § 4–362(a)(1)-(b)(1). The statute also provides for quick disposition of MPIA cases, stating that such proceedings should (1) take precedence on the docket; (2) be heard at the earliest practicable date; and (3) be expedited in every way. GP § 4–362(c)(1).

Furthermore, the Supreme Court of Maryland has held "that, absent a statute to the contrary, the rules of discovery applicable to circuit court proceedings are not, generally, applicable in respect to MPIA proceedings." *Hammen v. Balt. Cnty. Police Dept.*, 373 Md. 440, 453 (2003). The rationale is that "the MPIA has a purpose different from that of the discovery rules applicable to circuit court proceedings . . . and because the MPIA generally allows citizens broad access to public records." *Id.* at 455. In other words, the MPIA provides a process by which individuals can request public records from the various Maryland agencies, so when that process does not produce the records sought, the individual should not be permitted to utilize the tools of discovery to compel those same

records. Since that is what Holder attempted to do here, the circuit court did not abuse its discretion in denying him discovery.

The Supreme Court of Maryland has also explained that the enforcement of subpoenas "must necessarily be committed to the sound discretion of the trial court since the necessity for the subpoena most often turns upon a determination of factual issues." *Harris v. State*, 420 Md. 300, 331 (2011) (quoting *Sigma Reproductive Health Ctr. v. State*, 297 Md. 660, 671 (1983)). A trial subpoena is subject to being quashed under Maryland Rule 2–510(e) if the evidence sought is clearly irrelevant. *See CCI Entm't, LLC v. State*, 215 Md. App. 359, 414 (2013).

"Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5–401. The sole issue for trial in this case was whether DNR conducted searches in good faith that were "reasonably designed to capture all responsive records." *Glass*, 453 Md. at 232. On their face, the quashed subpoenas sought testimony and documents that were in no way probative of this issue. Instead, the subpoenas sought documents in the custody of individuals and agencies outside of DNR, none of whom would have been able to provide relevant evidence relating to DNR's efforts to search for and produce records responsive to Holder's MPIA requests. Therefore, the circuit court did not abuse its discretion in quashing those subpoenas.

IV. Holder did not "Substantially Prevail" in the Action, and Therefore was not Entitled to Litigation Costs as to all Requests Other than #103122a

Holder argues that the circuit court erred because it failed to make a finding that he substantially prevailed in the action. DNR, however, contends that the circuit court did not err because, as the final judgment was in DNR's favor, Holder did not substantially prevail.

A party will not have "substantially prevailed" merely because the requested documents were ultimately disclosed, or even because the requested documents were disclosed after a lawsuit was filed. Rather, to "substantially prevail" a party must demonstrate that there is a "causal nexus" between the prosecution of the lawsuit and the surrender of key documents such that "prosecution of the lawsuit could reasonably be regarded as having been necessary in order to gain release of the information." *Caffrey v. Dept. of Liquor Control for Montgomery Cnty.*, 370 Md. 272, 299 (2002) (quoting *Kline v. Fuller*, 64 Md. App. 375, 385 (1985)). And even when a litigant has substantially prevailed, they become "'eligible' but not 'entitled' to an award of reasonable attorney fees and costs." *Kline*, 64 Md. App. at 385; *see also* GP § 4–362(f) ("If 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.") (emphasis added).

Here, the circuit court did not make a finding that Holder substantially prevailed, nor does the evidence indicate that it should have.[17] At trial, Burrows testified that DNR's

[17] This holding does not apply to MPIA Request #103122a, which we remand for a new trial to consider Holder's metadata testimony. If, after considering that testimony, (continued)

response and production of records was not influenced at all by Holder's filing of this lawsuit. He added that, in his view, there was no need for Holder to file this lawsuit to compel DNR to respond and produce records. Burrows explained that many of the records were produced after the lawsuit was filed not because of the lawsuit, but because of "the complexity of the requests and the difficulty of managing multiple requests from Mr. Holder and his changing of those requests while trying to respond." Holder produced no evidence to contradict this testimony, so there is no indication that Burrows was motivated by the litigation when he sent Holder the responsive documents. Since there is nothing in the record suggesting that it was necessary for Holder to initiate litigation to gain the release of the information he sought, he did not substantially prevail. Accordingly, Holder was neither entitled to, nor eligible for, litigation fees under GP § 4–362(f).

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS AFFIRMED IN PART AND VACATED IN PART. CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS ARE TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.

Holder substantially prevails on his claims relating to MPIA Request #103122a, the circuit court should decide whether to assess any litigation fees against DNR.