IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

OFFICER JOHN DOE, *et al.* *Plaintiff* vs. MONTGOMERY COUNTY, MARYLAND *Defendant* and ALEXA RENEHAN, *et al.* *Intervenor Defendants.*	:	Case No.: C-15-CV-22-002523

OPINION AND ORDER

I. INTRODUCTION.

This case involves a citizen's right under the Maryland Public Information Act to access the internal disciplinary records of police officers. The litigation began when Plaintiffs Officer John Doe and Fraternal Order of Police, Montgomery County, Lodge 35, Inc. sued Montgomery County, seeking declaratory and injunctive relief regarding a request for Doe's disciplinary records. Maryland Coalition for Justice and Police Accountability and Alexa Renehan successfully moved to intervene as Defendants.[1] Doe, the FOP, the County, the Coalition, and

[1] The individual parties will be referred to by their last names. Plaintiff Fraternal Order of Police, Montgomery County, Lodge 35, Inc will be referred to as the "FOP." Defendant Montgomery County will be referred to as the "County." Intervenor-Defendant Maryland Coalition for Justice and Police Accountability will be referred to as the "Coalition." Intervenor- Defendant Washington Post will be referred to as the "Post." Intervenor-Defendant Reporters Committee for Freedom of the Press will be referred to as the "Reporters Committee." The Montgomery County Police Department will be referred to as the "MCPD."

Renehan have moved for summary judgment. The County has also moved to dismiss cross-claims filed by the Coalition and Renehan.

Doe and the FOP argue that allowing public access to documents like the ones at issue in this case runs counter to fundamental public policy concerns. There is some merit to their contentions. Law enforcement officers clearly provide much needed, and frequently heroic, service to the public, protecting life and property, and maintaining public safety and security. There are rational reasons to support some of the arguments Doe and the FOP raise here, *e.g.*, access to records regarding unsubstantiated allegations.

On the other hand, the Coalition and Renehan also raise compelling public policy arguments. Unfortunately, there are instances where law enforcement personnel have abused their positions, resulting in significant harm, including injuries and deaths. And some members of the public have experienced extremely disrespectful treatment from some officers. That harm and those experiences led to mistrust of the police among segments of the population, including mistrust of internal disciplinary processes. That harm and those experiences, and the resulting mistrust, created cries for transparency and resulted in reforms, such as Anton's Law.[2]

The Court concludes that there is merit to both sides of this argument. Assessing the merits of those arguments, and weighing the competing interests, presents serious public policy issues. The function of addressing those issues, however, falls squarely within the purview of the elected branches of government, not the judiciary. It is not for this Court to decide if disciplinary or investigative records pertaining to alleged misconduct by police officers should be shielded from

[2] Anton's Law refers to the Maryland Police Accountability Act of 2021, which among other things amended the Maryland Public Information Act ("MPIA"). Anton's Law will also be referred to as the "MPAA." The MPAA consisted of several bills that established various reforms affecting law enforcement. *See City of Brunswick v. Handler*, No. 1437, Sept. Term, pp. 3-4 n.2, 2026 WL 575004, *2 n.2 (March 2, 2026).

public view or freely available. It is not for this Court to decide if Anton's Law is a good idea or a bad idea. It is not for this Court to decide if the legislature acted wisely or foolishly in enacting that law. In some ways, the issues before the Court may seem complex. But they are not. While the legislature was faced with resolving those complex policy issues, the legal issues before the Court are narrow and straight forward. First, does the MPIA allow the disclosure of the records sought here by Renehan and the Coalition? And if so, does that disclosure run afoul of constitutional rights enjoyed by Doe and other police officers? The Court concludes that the answers are yes and no, respectively. The MPIA allows disclosure of the records sought by Renehan and the Coalition, and the disclosure does not violate any constitutional provisions.

For the reasons stated below, the Coalition's, Renehan's, and the County's motions for summary judgment are **GRANTED;** Doe's and the FOP's motion for summary judgment is **DENIED**; and the County's motions to dismiss the cross-claims are **GRANTED IN PART AND DENIED IN PART.**[3]

II. PROCEDURAL AND FACTUAL BACKGROUND.

A. Amended Complaint.

Doe is a police officer employed by the MCPD, and the FOP is a labor union and exclusive bargaining representative for police officers employed by the MCPD. (Amended Complaint ¶¶1, 2). They have sued the County, seeking declaratory and injunctive relief:

> Specifically, the Plaintiffs request the Court to declare that MD. CODE ANN., GEN PROV., § 4-311, as amended by the Maryland Police Accountability Act of 2021 ("MPAA"), violates the Due Process and Equal Protection guarantees of the Fourteenth Amendments to the United States Constitution and Articles 5 and 24 of the Maryland Declaration of Rights; that the Defendant is prohibited from releasing certain records sought under the Maryland Public Information Act and

[3] The Court would like to thank and compliment all counsel for their fine written and oral advocacy and their overall professionalism.

> issue a permanent injunction enjoining the Defendant from releasing the records. In the alternative, the Plaintiffs seek appropriate redactions to the records.

(Amended Complaint preamble, pp. 1-2).

On June 22, 2022, in accordance with a Memorandum of Agreement between the County and the FOP (the "MOA"), the County told Doe that it had received a request for Doe's police disciplinary records. (*Id.* ¶¶10, 16). That request had been made pursuant to the MPIA, as amended in 2021 by the MPAA. (*Id.*) The County also "provided the Plaintiffs with a copy of the investigatory records that it intended to produce in response to the MPIA request." (*Id.* ¶17). Thus, Plaintiffs know what information those records contain—and what information they do not contain.

A week later, the Plaintiffs' lawyer gave the County written notice of "Plaintiffs' objection to the production of the identified investigatory records." (*Id.* ¶18). The lawyers also told the County that the Plaintiffs intended "to seek an order from this Court precluding the release of the investigatory records." (*Id.*) In short, Doe and the FOP contend that the County intends to disclose records that the MPIA and the U.S. and Maryland Constitutions protect from disclosure. This litigation followed. Faced with this litigation, the County has not produced any of the requested records to the parties who made the request.

Count I is entitled, "Request for Declaratory Judgment and Injunctive Relief." This count focuses on the County's alleged violations of MPIA's provisions and Plaintiffs allege: "Officer John Doe will suffer personal harm if the records [are] wrongfully disclosed. The FOP has an interest in enforcing the proper administration of the new MPIA laws as they relate to its members." (*Id.* ¶24). They allege various manners in which the County is allegedly violating the MPIA:

25. The MPIA requires that "a custodian shall deny inspection of a personnel record of an individual," which includes "[a] record of a technical infraction" committed by a police officer. *See* MD. CODE ANN., GEN. PROV. § 4-311(a), (c)(2). The investigatory files compiled by the Defendant include records of technical infractions, which are precluded from being produced under the MPIA.

26. The MPIA requires the denial of the subject production because it would constitute "an unwarranted invasion of the privacy" of the Plaintiff. *See id.* § 4-103(b).

27. The MPIA further permits the denial of inspection of a record if it "would be contrary to the public interest." *See id.* at § 4-343. The investigatory files compiled by the Defendant include records involving allegations that were not sustained and the production would be contrary to the public interest. It would also be contrary to the public interest in promoting cooperation by civilian witnesses and police officers in internal police investigations to produce investigatory records when they were promised or assured of the confidential treatment of the investigation or to produce otherwise confidential information from these files. *See id.* at § 4-343; see also § 4-301(a)(1). In addition, these cooperating witnesses may be considered a confidential source based on assurances they received, for which their disclosure would be prohibited under the MPIA. *See* § 4-351(b)(4).

28. The MPIA does not authorize the disclosure of the name of any police officer who is the subject of a personnel record being produced to be disclosed. *Cf.* § 4-311(a); 4-311(c)(1).

29. The MPIA requires the denial of the subject production because it includes references to medications, medical conditions or medical treatment of a witness or suspect. *See id.* § 4-329(1).

(*Id.* ¶¶25-29).

The Plaintiffs then allege: "Unless Defendant is enjoined by the Court from releasing Officer John Doe's disciplinary records, Officer John Doe will suffer an unwarranted invasion of privacy that will result in substantial injury and both Plaintiffs will suffer additional harms as a result." (*Id.* ¶30).

Count II bears the lengthy title, "Request for Declaratory and Injunctive Relief that the MPAA Violates the Substantive Due Process and Equal Protection Rights Arising under the

Fourteenth Amendment to the Constitution of the United States and Articles 5 and 24 of the Maryland Declaration of Rights."[4] Plaintiffs allege that police officers hold "fundamental privacy and liberty interests" that are protected by the Due Process Clause of the Fourteenth Amendment and the Maryland Declaration of Rights and impinged by the MPIA as amended by the MPAA. (*Id.* ¶¶33-35). Plaintiffs continue, elaborating:

> 36. The MPAA's amendments to MD. CODE ANN., GEN. PROV. § 4-311, particularly the retroactive effect, are not backed by any compelling or legitimate state interest, nor are they narrowly tailored or reasonable. Instead, the MPAA sweepingly targets and violates officers' fundamental privacy rights without a justifiable state interest.
>
> 37. By singling out police officers as the only public servants subject to such invasion of privacy and liberty interests, the MPAA's amendments violate police officers' Equal Protection rights under the Fourteenth Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights.

(*Id.* ¶¶36-37).

Based on their allegations, Plaintiffs ask that that MPAA and the production of the requested records be "enjoined as unconstitutional." (*Id.* p. 11). Failing that, they ask

> that the Court conduct an *in camera* review of the subject records that the Defendant intends to produce in accordance with MD. CODE ANN., GEN. PROV. § 4-362(c)(2), as well as an *in camera* review or under seal review of the memoranda and arguments of the parties related to these records, in accordance with MD. CODE ANN., GEN. PROV. § 4-362(b)(2)(ii).

(*Id.*). They then ask the Court to enter an Order:

> 1. Declaring that the Plaintiff Officer John Doe's disciplinary records shall not be subject to inspection or production; or

[4] If a statute is alleged to be unconstitutional, the Attorney General must "be served with a copy of the proceedings by certified mail," and that service is to occur "immediately after suit has been filed." Md. Code Ann., Cts. & Jud. Proc. §3-405(c). The Attorney General "is entitled to be heard, submit his views in writing within a time deemed reasonable by the court, or seek intervention pursuant to the Maryland Rules." *See Gardner v. Bd. Of Cnty. Com'rs of St. Mary's Cnty.*, 320 Md. 63, 73-76 (1990). Doe and the FOP provided notice, but the Attorney General has neither submitted his views nor sought to intervene.

2. Declaring that the Plaintiff Officer John Doe's disciplinary records shall not be subject to inspection or production without proper redaction; and

3. Permanently enjoining Defendant from producing, releasing, or subjecting to inspection any of the Plaintiff Officer John Doe's disciplinary records not otherwise authorized; and

4. Granting any other relief the Court deems just and proper.

B. Memorandum of Agreement between the County and the FOP.

Shortly after enactment of the MPAA, the County and the FOP entered into the MOA, which pertained to requests for "the release of bargaining unit member internal files." They agreed that if the County received "an MPIA request for a bargaining unit member's internal affairs file," the County would notify the FOP and the police officer within two business days. They agreed on the following procedure:

> Once the request is approved and the Employer [*i.e.* the County] notifies the requesting party of its intent to release a bargaining unit member's internal affairs file, the Employer shall notify the bargaining unit member and the Union [*i.e.* the FOP]. Upon completion of the final production of records to be released per the MPIA request and at least ten (10) business days before the release, the Employer will provide the bargaining unit member and/or the Union with a copy of the final production. In the event the Employer intends to release any body-worn camera video or mobile car video in connection with the bargaining unit member's internal affairs file, the bargaining unit member shall have access to the video through the employer's video database. . . . Upon inspecting the material to be released, the bargaining unit member or the Union may notify the Employer of an objection and the intent to file a "reverse MPIA." The bargaining unit member and/or the Union shall file a "reverse MPIA" no later than ten (10) business days from receiving a copy of the final production. The Employer will then hold the file production until the action is ruled on. The parties will make all reasonable efforts to provide each other with expeditious notice under this agreement given the relatively short time limits in the MPIA and its overall policy of providing the public with prompt access to public records without unnecessary delay.

C. The Coalition's and Renehan's Motions to Intervene.

Renehan and the Coalition successfully moved to intervene.[5] In her motion, Renehan stated that she "submitted a public records request online to [MCPD] seeking the disciplinary records for a police officer currently employed by the Department." (Renehan's Memorandum in Support of Motion to Intervene, p. 2). She further stated that she "sought these files to learn more about potential internal and civilian complaints regarding Officer John Doe," and that these are the records at issue in this litigation. (*Id*).

She made her request on January 28, 2022, and MCPD confirmed receipt of the request that same day. (*Id.* at 3). On February 8, she asked when she would receive the records. On February 18, MCPD replied in an e-mail, stating that the requested documents had been gathered and that MCPD was waiting for legal review. MCPD said that it would send Renehan a cost estimate to produce the records. (*Id.*)

On February 23, MCPD sent Renehan an e-mail with a letter dated February 17. That letter stated that it would cost about $4,080 to review and redact documents and about $58,950 to review and redact video and audio files. Thus, according to Renehan, "the total for all redactions was $63,030 and payment was required before Ms. Renehan's request would be processed." (*Id.*). In an ensuing exchange of e-mails, over the next five days, Renehan limited the scope of the documents requested "in order to reduce the fee she would be charged. She clarified that she was not interested in audio or video material, only requiring the description and outcome of each complaint to satisfy her request." (*Id.*, p. 4).

[5] The Post and the Reporters intervened for the limited purpose of assuring public and media access to the proceedings in this case. They have not asserted a position regarding the merits of this litigation.

On March 22, MCPD sent an e-mail, advising Renehan that MCPD "has reviewed its files and has located responsive records to your request," and provided her with a link to access those documents. (*Id.*). Renehan replied, stating that she had not received everything she was seeking.

> She clarified that her request encompassed complaints made against Officer John Doe by citizens. Her email mentioned that she was aware of other incidents for which Officer Doe had been sanctioned, but that none of those were included in the record the MCPD disclosed. Ms. Renehan asked why this was not provided to her, but she did not receive a reply.

(*Id.*, pp. 4-5).

Over the next several weeks, Renehan sent e-mails inquiring into the status of her request. After she had further narrowed the scope of her request, and she had paid for the documents captured by that narrowed request, she had still not received them. MCPD attributed the delay to the time needed to redact the documents. (*Id.* at 5-6).

On June 5, she sent yet another e-mail, in which "she requested to view the documents before June 10 and raised the possibility of pursuing legal remedies if the MCPD did not provide the documents." (*Id.*, p. 6). MCPD responded two days later, advising Renehan that MCPD had processed the files and they were in "final legal and officer review prior to release." (*Id.*). MCPD elaborated, citing "an agreement between the FOP and MCPD that allowed the officer at issue in the records request to review the records before they were released." (*Id.*). After another series of e-mails and phone calls, MCPD offered July 6 as a target date for providing the documents to Renehan. (*Id.*). The documents, however, were not provided. Instead, faced with the initiation of this litigation, MCPD withheld production of the documents.

> On July 6, the date on which Ms. Renehan anticipated the release of the records, Ms. Davidson [MCPD Custodian of Records] instead notified her that the MCPD had received a court filing from the FOP to prevent the disclosure of the records Ms. Renehan sought. Ms. Davidson stated she would work with the County Attorney to facilitate next steps in the process and keep Ms. Renehan informed but was unsure about the timeline. Ms. Renehan learned that the day

> prior, on July 5, the FOP and Officer John Doe filed a Complaint against Montgomery County requesting "the Court to declare that the Defendant is prohibited from releasing certain records sought under the Maryland Public Information Act and issue a permanent injunction enjoining the Defendant from releasing records."

(*Id.*, p. 7). After some exchanges between Renehan and counsel for the County, Renehan obtained representation and successfully sought intervention in this action.

In its motion seeking intervention, the Coalition described its organization and its interest in the interpretation and implementation of Anton's Law and its interest in the outcome of this case:

> The Coalition is a large, diverse, statewide coalition of more than one hundred organizations united to demand police reform. As an organization made up of people harmed by police misconduct, local community organizations dedicated to restoring trust in police, and advocacy groups that came together to address Maryland's policing crisis, the Coalition's interests in the handling of this case cannot be overstated. Not only has the Coalition requested the same records that are at issue in this action, but, as the driver of Anton's Law and as a representative of its Montgomery County members, the Coalition has a substantial interest in whether the County and its police department are complying with the spirit and the letter of the [MPIA].

(Memorandum in Support of the Coalition's Motion to Intervene, p. 2) (footnote and citation omitted).

D. Renehan's and the Coalition's cross-claims.

In Count I of her cross-claim, Renehan alleges that the MOA is *ultra vires* and unlawful. In Count II, she alleges that the County violated her procedural due process rights by obstructing the disclosure of public records. In Count III, she alleges that the County violated the MPIA by ignoring its statutory time provisions. And in Count IV, she alleges that the County violated her constitutional rights to petition. She seeks various forms of declaratory and injunctive relief. She also requests an award of attorneys' fees and costs.

The Coalition filed a single count cross-claim, in which it seeks both declaratory and injunctive relief. Like Renehan, the Coalition seeks to invalidate the MOA, to obtain the records it requested, and an award of attorneys' fees. It also seeks damages.

III. STANDARDS FOR MOTIONS FOR SUMMARY JUDGMENT AND TO DISMISS.

Md. Rule 2-501(f) authorizes a circuit court to "enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Faced with a motion for summary judgment, a trial judge must "determine whether there is a genuine dispute as to a material fact sufficient to require an issue to be tried." *Underwood-Gary v. Mathews*, 366 Md. 600, 685 (2001). When the resolution of a case hinges entirely on questions of statutory or constitutional interpretation, disposition of some or all of the case by summary judgment is often appropriate. *See Baker v. Montgomery County*, 427 Md. 691, 705-06 (2012); *Washington Suburban Sanitary Comm'n v. Phillips*, 413 Md. 606, 618 (2010); *Martinez v. Ross*, 245 Md. App. 581, 587 (2020); *Trim v. YMCA of Cent. Md., Inc.*, 233 Md. App. 326, 333 (2017); *Town of Oxford v. Koste*, 204 Md. App. 578, 585 (2012).

In that vein, a circuit court "may resolve matters of law by summary judgment in declaratory judgment actions." *Emerald Hills Homeowners Ass'n, Inc. v. Peters*, 446 Md. 155, 161 (2016) (citing *Megonnell v. United States Auto. Ass'n*, 368 Md. 633, 642 (2002)); *accord Piney Orchard Community Ass'n, Inc. v. Piney Pad A, LLC*, 221 Md. App. 196, 206 (2015). This case is an example of a declaratory judgment action that is properly resolved through cross motions for summary judgment.

Md. Rule 2-322(b)(2) allows a defendant to move to dismiss all or part of an action pled in a plaintiff's complaint for "failure to state a claim upon which relief can be granted."

> Considering a motion to dismiss a complaint for failure to state a claim upon which relief may be granted, a court must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*, the allegations do not state a cause of action for which relief may be granted.

RRC Northeast, LLC v. BAA Md., Inc., 413 Md. 638, 643 (2010) (citations omitted).

IV. ANALYSIS.

A. MPIA and Anton's Law.

1. Substantive provisions of the MPIA, as amended by Anton's Law.

Title 4 of the General Provisions Article of the Maryland Code is referred to as Maryland's "Public Information Act," Md. Ann. Code, Gen. Prov. §4-601, or the MPIA. Subsection (a) of section 4-103 states the general purpose of the MPIA: "All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees." Subsection (b) of that section provides guidance regarding how MPIA's specific provisions should be construed: "To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection." Maryland's Supreme Court has repeatedly said that the MPIA "reflects the need for wide-ranging access to public records, and therefore, the statute should be construed in favor of disclosure for the benefit of the requesting party." *Ireland v. Shearin*, 417 Md. 401, 408 (2010) (citations omitted).[6]

[6] At the time of that decision, Maryland's highest court was called the Court of Appeals of Maryland. As of December 14, 2022, it is now known as the Supreme Court of Maryland. Similarly, prior to that date, Maryland's intermediate court was called the Court of Special Appeals of Maryland. It is now the Appellate Court of Maryland. This opinion will refer to those courts by their current names.

Although there is a general policy favoring access to information about the conduct of public employees, there are some exceptions. Custodians of records *must* deny inspection of certain delineated categories of documents. Records that are privileged or confidential, and records for which inspection would be contrary to a federal or state statute, certain federal regulations, Maryland rules of procedure, and court orders, fall within this prohibition. MPIA §4-301. In addition, a custodian *may* deny, in her discretion, other records. *See, e.g.,* MPIA §4-343 (inspection may be denied "if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest").

One specific category of mandatory denials involves personnel records. Section 4-311(a) states: "Subject to subsection (b) of this section, a custodian shall deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information."[7] Prior to the 2021 enactment of the MPAA, or Anton's Law, records of a police department's internal investigation of a police officer's alleged misconduct, or violation of the department's administrative rules, were considered personnel records and thus not obtainable under the MPIA. *Md. Dept. of State Police v. Dashiell*, 443 Md. 435, 458 (2015); *Montgomery Cnty. v. Shropshire*, 420 Md. 362, 365-66 (2011).

Anton's Law changed that. Subsection (c) of section 4-311 now reads:

> (c)(1) Except as provided in paragraph (2) of this subsection, the following records are not personnel records for the purposes of this section:

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[7] Subsection (b) allows inspection by "the person in interest;" "an elected or appointed official who supervises the work of the individual;" or "an employee organization described in Title 6 of the Education Article," but that employee organization may only have access to the portion of the record that contains the individual's "(i) home address; (ii) home telephone number; and (iii) personal cell phone number."

(i) a record relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record;

(ii) a hearing record;

(iii) a record of positive community feedback that was not solicited by the police officer who is the subject of the feedback; and

(iv) records relating to a disciplinary decision.

(2) A record of a technical infraction is a personnel record for the purposes of this section.

Anton's Law made it clear that (1) records relating to an administrative or criminal investigation of misconduct by a police officer, including internal affairs investigatory records; and (2) records relating to a disciplinary decision are not personnel records and thus no longer shielded from access through the MPIA.

The only exception applies to records of a "technical infraction." Those records are still treated as personnel records.

Section 4-104(l) defines the term technical infraction:

"Technical infraction" means a minor rule violation by an individual solely related to the enforcement of administrative rules that:

(1) does not involve an interaction between a member of the public and the individual;

(2) does not relate to the individual's investigative, enforcement, training, supervision, or reporting responsibilities; and

(3) is not otherwise a matter of public concern.

Therefore, investigative or disciplinary records that involve a minor violation related to the enforcement of an administrative rule are generally treated as personnel records and therefore not subject to disclosure under the MPIA. If, however, the minor violation (1) involves an interaction between a member of the public and the police officer, (2) relates to the police officer's investigative, enforcement, training, supervision, or reporting responsibilities, or (3) is

otherwise a matter of public concern, the violation is *not* a technical infraction, the records are *not* personnel records, and the records are subject to disclosure under the MPIA.

In responding to any request under the MPIA, a records custodian *must* deny inspection of certain defined information regarding public employees. The custodian has no discretion.

> Subject to § 21-504 of the State Personnel and Pensions Article, a custodian shall deny inspection of the part of a public record that contains the home address, personal telephone number, or personal e-mail address of an employee of a unit or an instrumentality of the State or of a political subdivision unless:
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> (1) the employee gives permission for the inspection; or
> (2) the unit or instrumentality that employs the individual determines that inspection is needed to protect the public interest.

Md. Code Ann., Gen. Prov. §4-331.

While an individual's name, address, e-mail address, and telephone fall within the section 4-101(h)'s definition of "personal information," section 4-331 does *not* prohibit the disclosure of an individual's name. The section pertains only to the disclosure of the individual's home address, personal telephone number, and personal e-mail address. A police officer's name is not shielded from disclosure.[8]

As noted above, a custodian *may* deny inspection of records if, in the discretion of the custodian, inspection would be contrary to the public interest: "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 the public interest, the custodian *may* deny inspection by the applicant of that part of the record, as provided in this part." Md. Code Ann., Gen. Prov. §4-343 (emphasis added).

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[8] Plaintiffs argue that the MPIA does not allow disclosure of an officer's name. That argument ignores both the language and the purpose of the MPIA. Moreover, when the legislature intended to protect someone's identity, they expressly did so. For example, while a custodian must notify an officer when a record concerning the officer's alleged misconduct is inspected, the custodian "may not disclose the identity of the requestor." MPIA §4-351(e).

A custodian also has discretion to deny certain records regarding records of investigation, among them records pertaining to records relating to alleged misconduct by a police officer, *i.e.* "records, other than a record of a technical infraction, relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record, a hearing record, a record of positive community feedback, and records relating to a disciplinary decision." *Id.* §4-351(a)(4).[9]

With exceptions that are not relevant here, the custodian must redact those portions of the records described in subsection (a)(4) that reflect certain information, including the "personal contact information of the person in interest." *Id.* §4-351(d)(1)(ii). A police officer who is the subject of the investigation is a "person in interest." MPIA §4-101(g)(1); *see Mayor & City Council of Balt. v. Md. Comm. Against The Gun Ban*, 329 Md. 78, 90 (1993) (explaining that the two police officers who were the subjects of the investigation for misconduct were persons in interest).[10] Thus, section 4-351's provision denying access to an officer's contact information mirrors section 4-331's provision denying access to the officer's home address, personal telephone number, and personal e-mail address.

2. Procedural and remedial provisions of the MPIA.

With an exception that is not applicable here, someone who "wishes to inspect a public record shall submit a written application to the custodian." Md. Code Ann., Gen Prov. §4-202(a). The custodian must generally "grant or deny the application promptly, but not more than 30 days

[9] A custodian lacks discretion to deny inspection of records regarding technical infractions because, as stated above, inspection of those records *must* be denied. The custodian has no discretion.

[10] The Court held that the political committee that had requested inspection of the records was not a person in interest.

after receiving the application." *Id.* §4-203(a). If the custodian approves the application, she must "produce the public record immediately or within a reasonable period that is needed to retrieve the public record, but no more than 30 days after receipt of the application." *Id.* paragraph (1) of subsection (b).

Paragraph (2) provides that, if "the custodian reasonably believes that it will take more than 10 working days to produce the public record," he must give written notice "within 10 working days after receipt of the request" stating "(i) the amount of time that the custodian anticipates it will take to produce the public record; (ii) an estimate of the range of fees that may be charged to comply with the request for public records; and (iii) the reason for the delay." Paragraph (3) states that failing "to produce the public record in accordance with this subsection constitutes a denial of an application." Subsection (c) requires the custodian to provide a written statement, within ten working days, explaining the basis for any denial, and subsection (d) allows for extensions of time in specified situations.

If a custodian denies a request for inspection, the person who made the request "may file a complaint with the circuit court." *Id.* §4-362(a)(1).[11] The defendant must respond within thirty days and bears the burden to sustain its decision to deny access to the requested record. The proceeding must "(i) take precedence on the docket; (ii) be heard at the earliest practicable date; and (iii) be expedited in every way." *Id.* §4-362(c)(1). The statute states that the "court may examine the public record in camera to determine whether any part of the public record may be withheld under this title." *Id.* subsection (c)(2). The court may also grant injunctive relief,

[11] A person who is denied inspection may also try to resolve the dispute with the help of the Office of the Public Access Ombudsman, *Id.* §§4-1B-01 *et seq.*, or may seek administrative relief through the State Public Information Act Compliance Board, *Id.* §§4-1A-01 *et seq*. In that instance, either party may pursue an administrative appeal. *Id.* §4-362(a)(2).

enjoining any continued withholding of the record, and the court may enforce its order through contempt proceedings. *Id.* subsection (c)(3). The statute also provides for awards of statutory and actual damages, as well as an award of reasonable counsel fees and litigation costs. *Id.* subsections (d) and (f).

Subsection (e) of section 4-351 establishes the time when a custodian must inform a police officer that an application has been made to inspect a record regarding an investigation of the officer. The custodian must notify the police officer "when the record is inspected, but may not disclose the identity of the requestor." The MPIA does not require the custodian to notify the officer when the application is made. The notice requirement contained in section 4-351(e) is the only provision in the MPIA that discusses notice to the officer.

Subtitle 4 of the MPIA allows for the recovery of actual damages if a court finds, by clear and convincing evidence, that access to a record was allowed in willful and knowing violation of the subtitle. Section 4-401 states:

> (a) *Liability.* — A person, including an officer or employee of a governmental unit, is liable to an individual for actual damages that the court considers appropriate if the court finds by clear and convincing evidence that:
>
> (1) (i) the person willfully and knowingly allows inspection or use of a public record in violation of this subtitle; and
>
> (ii) the public record names or, with reasonable certainty, otherwise identifies the individual by an identifying factor such as:
>
> 1. an address;
> 2. a description;
> 3. a fingerprint or voice print;
> 4. a number; or
> 5. a picture; or
>
> (2) the person willfully and knowingly obtains, discloses, or uses personal information in violation of § 4-320 of this title.
>
> (b) *Costs.* — If the court determines that the complainant has substantially prevailed, the court may assess against a defendant reasonable counsel fees and other litigation costs that the complainant reasonably incurred.

Section 4-401 is the only provision in the MPIA that establishes a cause of action or remedy for the unauthorized disclosure of information requested under the MPIA. Nothing in the MPIA gives a person in interest the right to seek in camera review prior to disclosure and nothing gives that person the right to seek an injunction barring that disclosure.

3. The MPIA does not expressly authorize the action brought by Doe and the FOP and implying the right to that cause of action is inconsistent with MPIA's provisions and the policy choices made by the General Assembly in enacting Anton's Law.

The MPIA does not expressly afford any other relief or remedy to a person who is identified in a public record for which inspection or access is allowed. And as the MPIA does not provide for notice to such a person until the access is permitted, the Act does not expressly provide for injunctive or other relief in advance of that disclosure or access. Although Doe and the FOP characterize their action as a "reverse PIA action," the Court agrees with the Coalition. The MPIA does not *expressly* authorize such a lawsuit.

Doe and the FOP, however, argue that a cause of action—allowing a person to enjoin disclosure of records—should be *implied*. They argue that an affected person should be able to challenge both a custodian's decision that a record is not covered by a provision prohibiting disclosure *and* a custodian's decision to disclose a record that could be withheld in the custodian's discretion. They contend that the "MPIA contains an implied private right of action for a reverse MPIA action under both mandatory and discretionary exemptions." (Plaintiffs' Opposition to the Coalition's Motion to Dismiss Amended Complaint, p. 10).[12]

[12] As part of their respective summary judgment memoranda, the parties incorporated their respective memoranda regarding the motions to dismiss.

In *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979), the Supreme Court of the United States was faced with a similar issue, as it pertained to the Freedom of Information Act, 5 U.S.C. §552 ("FOIA").[13] The Court held that the FOIA is a statute aimed at disclosure and does not confer a private cause of action to enjoin disclosure by an agency.

In that case, third parties made FOIA requests for records pertaining to Chrysler's compliance with employment opportunities and affirmative action requirements. Chrysler sued to enjoin disclosure, relying in part on exemptions to the FOIA. Chrysler specifically relied on Exemption 4, which states that the FOIA does not apply to "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 441 U.S. at 291 (quoting 5 U.S.C. §552(b)(4)) (internal quotation marks omitted). The Court described Chrysler's position:

> Chrysler contends that the nine exemptions in general, and Exemption 4 in particular, reflect a sensitivity to the privacy interests of private individuals and nongovernmental entities. That contention may be conceded without inexorably requiring the conclusion that the exemptions impose affirmative duties on an agency to withhold information sought. In fact, that conclusion is not supported by the language, logic, or history of the Act.

Id. (footnote omitted).

The Court noted that subsection (a) of 5 U.S.C. §552 "places a general obligation on the agency to make information available to the public and sets out specific modes of disclosure for certain classes of information." *Id.* at 292. The Court then stated that subsection (b), "which lists the exemptions, simply states that the specified material is not subject to the disclosure obligations set out in subsection (a). By its terms, subsection (b) demarcates the agency's

[13] As the purpose of the MPIA "is virtually identical to that of the FOIA," federal courts' interpretation of the FOIA are persuasive in interpreting the MPIA. *MacPhail v. Comptroller*, 178 Md. App. 115, 119 (2008) (cleaned up) (citations omitted).

obligation to disclose; it does not foreclose disclosure." *Id.* In other words, if a request falls within a specified exemption, the agency has the discretion to withhold the information but is not required to do so.

The Court also found FOIA's provisions regarding judicial relief significant. While the Act expressly authorizes judicial intervention to require an agency to produce records, *the Act does not authorize courts to prevent disclosure.*

> That the FOIA is exclusively a disclosure statute is, perhaps, demonstrated most convincingly by examining its provision for judicial relief. Subsection (a)(4)(B) gives federal district courts "jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B). That provision does not give the authority to bar disclosure, and thus fortifies our belief that Chrysler, and courts which have shared its view, have incorrectly interpreted the exemption provisions of the FOIA.

Id.

The Court concluded that providing access to public records— and deciding what exemptions should exist and what judicial relief should be afforded, involved balancing competing interests and making public policy choices—and the Court would not authorize judicial intervention where Congress had not expressly authorized it. "Enlarged access to governmental information undoubtedly cuts against the privacy concerns of nongovernmental entities, and as a matter of policy some balancing and accommodation may well be desirable. We simply hold here that Congress did not design the FOIA exemptions to be mandatory bars to disclosure." *Id.* at 293 (footnote omitted).

The parties have cited an Opinion of the Attorney General that addressed the holding in *Chrysler* and drew a distinction between the FOIA and the MPIA. In 71 Md. Op. Att'y Gen., 318, 1986 WL 287646 (Oct. 15, 1986), the Attorney General addressed several questions from the Office of the Comptroller concerning the MPIA. One of those questions was whether a taxpayer

had the right to restrict the disclosure of information that was the subject of a MPIA request. The inquiry focused on two provisions of the MPIA, former Md. Code Ann., State Gov. §§10-615 and 10-617(f)(2). Those two sections were the predecessors to current Gen. Prov. §§4-301(a) and 4-336(b). As noted above, section 4-301(a) mandates the denial of a request of a record if:

> (1) by law, the public record is privileged or confidential; or
> (2) the inspection would be contrary to:
>
> (i) a State statute;
> (ii) a federal statute or a regulation that is issued under the statute and has the force of law;
> (iii) the rules adopted by the Supreme Court of Maryland; or
> (iv) an order of a court of record.

Subsection (b) of section 4-336 provides that "a custodian shall deny inspection of the part of a public record that contains information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or creditworthiness."[14]

In answering that question, the Attorney General discussed *Chrysler* and the distinction between the FOIA and the MPIA:

> It is a closer question, however, whether a taxpayer has a right to challenge the Division's determination that particular information is not confidential. In Chrysler Corp. v. Brown, 441 U.S. 281, 293 (1979), the Supreme Court held that the federal Freedom of Information Act ("FOIA") does not afford a private right of action to prevent disclosure of information that is exempt from the FOIA's general requirement of disclosure. Nonetheless, we think that the PIA does create a private right to prevent disclosure of information protected by SG §§ 10-615 or 10-617.
>
> The FOIA's exemptions merely permit agencies to withhold the described information; they do not limit agencies' discretion to disclose that information. Chrysler Corp., 441 U.S. at 294. In contrast, the PIA absolutely prohibits disclosure of certain information. Thus, unlike the FOIA, the PIA is not "exclusively a disclosure statute." See 441 U.S. at 292. This office has previously suggested that individuals may have a right to institute "reverse PIA" actions to prevent disclosure of confidential information. Office of the Maryland Attorney General, Public Information Act Manual 33-34 (4th ed. 1985). In addition, a

[14] Subsection (c), however, states that the custodian "shall allow inspection by the person in interest."

> person claiming that information is required by law to be kept confidential presumably may seek a writ of mandamus to prevent disclosure. See generally, e.g., Criminal Injuries Comp. Bd. v. Gould, 273 Md. 486 (1975).
>
> Hence, whether under the PIA itself or through common law process, a taxpayer may challenge a determination that particular information about the taxpayer in the Central Registration System is not confidential. See Chrysler Corp., 441 U.S. at 318 (submitter of information may seek review under the Administrative Procedure Act of agency's decision to disclose information).
>
> That is not to say that the Division must notify the taxpayer of any requests for information, however. No provision of the PIA expressly imposes such an obligation on custodians of public records. And, in the case of information from the Central Registration System, the number of taxpayers affected by a single request could easily run into the hundreds. We believe that, if the General Assembly had intended to impose such an obligation, it would have done so expressly.
>
> At the same time, the PIA certainly does not prohibit the giving of such notice. Thus, you may notify taxpayers—directly or through the publication of a general notice—that certain information has been requested, if you choose to do so.

1986 WL 287646, at *9-10 (footnotes omitted).

In *In the Matter of Sanders*, Nos. 362 and 433, Sept. Term, 2024, 2025 WL 1121960 (April 16, 2025), the Appellate Court of Maryland recently addressed the possible remedies that could arise from disclosure of records that violates the MPIA.[15] Sanders sued a Town of Perryville police officer who sent Sanders's employer two police reports regarding a domestic dispute between Sanders and his ex-girlfriend. In a separate case, Sanders sued a Cecil County Deputy Sheriff who sent Sanders's employer a copy of a domestic protective order that had been issued against Sanders. Those documents were public records under the MPIA, but Sanders argued that the defendants were not authorized to disclose them.

> Mr. Sanders asserted that neither officer was a "custodian" under the MPIA, and therefore they violated the MPIA by sending the documents to his employer. Both officers moved, in their individual cases, to dismiss for failure to state a claim. The circuit court granted both motions, and Mr. Sanders appealed.

[15] Reliance on an unreported opinion is appropriate "if no reported authority adequately addresses an issue before the court." Md. Rule 1-104(a)(2)(B). That is the case here.

Id., at *1.

The Court ultimately held that both defendants were custodians and that Sanders had failed to allege any violation of the MPIA. Before reaching that conclusion, however, the Court briefly discussed whether a "reverse" action was allowed under the MPIA.

> In a typical MPIA action, a requestor sues an agency to compel the production of documents that the requestor believes have been wrongfully withheld. *See, e.g., ACLU Found. of Md. v. Leopold*, 223 Md. App. 97 (2015). Unlike its federal counterpart, however, the MPIA also permits a "reverse" action—one to prevent rather than allow disclosure, or one for damages suffered due to an improper disclosure. *GP § 4-401(a)(1) creates a civil cause of action by an individual against a person who "willfully and knowingly allows inspection or use of a public record in violation of [the MPIA]," if the public record identifies the individual by an "identifying factor."*
>
> Mr. Sanders presents a reverse MPIA action with a novel twist. His claims are not about the documents that were disclosed; he concedes that, when they were disclosed, the Protective Order and the Police Reports were public records, and he does not contend that any provision of the MPIA precluded disclosure. Instead, Mr. Sanders's issue is with *who* disclosed the records.

Id. at *3 (emphasis added) (footnotes omitted).

Sanders filed his lawsuits after the records had been disclosed, so they obviously were not injunctive actions to prevent disclosure. They were presumably attempts to recover damages. And section 4-401(a)(1)—which is the only MPIA provision cited by the Appellate Court as support for the existence of a "reverse" action—does not authorize an action to enjoin disclosure. To the contrary, it only authorizes an action for damages after an inspection or use of a public record that violates the MPIA.[16]

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[16] In footnote 5 of its opinion, the Court considered, and rejected, Sanders's argument that section 4-103(b) authorizes a custodian to withhold a record. As stated above, that subsection states that "unless an unwarranted invasion of the privacy of a person in interest would result, [the MPIA] shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection." Quoting *Police Patrol Sec. Sys., Inc. v. Prince George's County*, 378 Md. 702, 717 (2003), the Court explained that the quoted subsection "is part of an internal statutory construction provision having no independent effect." The Court further explained:

Determining whether the MPIA creates an implied private cause of action to enjoin disclosure of public records involves an issue of statutory construction. *Baker v. Montgomery Cnty.*, 427 Md. 691, 709 (2012). A cause of action "does not exist simply because a claim is framed that a statute was violated and a plaintiff or class of plaintiffs was harmed by it." *Id.* at 708-09 (citing *Touche Roche & Co. v. Redington*, 442 U.S. 560, 568 (1979)) (other citation omitted). A court is to consider three factors in deciding whether a private remedy is implicit:

> In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff "one of the class for whose especial benefit the statute was enacted [.]" Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?

Id. at 709 (quoting *Cort v. Ash*, 422 U,S., 66, 78 (1975) (internal quotations omitted)) (footnote omitted).

The *Baker* Court further explained that the central inquiry focuses on legislative intent. "Courts discern legislative intent whether a private cause of action was intended by analyzing the language of the statute to identify its purpose and intended beneficiaries, reviewing the statute's legislative history, and *determining whether the statute provides otherwise an express remedy*." *Id.* at 710 (citing *Touche Ross*, 442 U.S. at 575-76; *Scull v. Doctors Groover, Christie & Merritt,*

> In other words, § 4-103(b) does not, itself, permit withholding a public record. *Id.* A public record may be withheld only if it falls within one of the specific exemptions set forth in the MPIA. *Id.*; *see* GP §§ 4-301–4-358 (setting forth exceptions to disclosure). Mr. Sanders does not contend any of these exemptions apply here.

Id. at *3 n. 5.

P.C., 205 Md. App. 567 (2012); *Sugarloaf Citizens Assoc. v. Gudis,* 78 Md. App. 550, 556 (1989)) (emphasis added).

Citizens who make requests for public records—along with public officials and employees whose conduct is the subject of those records—are intended beneficiaries of the MPIA's provisions, as is evidenced by the remedies that the MPIA affords to both classes of persons. But the existence of those *express* statutory remedies conferred on persons like Doe undercuts his argument that the legislature intended to confer other unnamed, *implied* remedies to him and other similarly situated individuals.

In *Baker*, the plaintiffs had received speeding citations based on photographs taken by speed monitoring systems. They sued the local governments where the systems were located, claiming that the governments' contracts for those systems violated the statute authorizing the systems and "therefore were ultra vires, rendering all of the previously issued speed monitoring system citations invalid." *Baker*, 427 Md. at 702-03. The plaintiffs asked the governments to "refund the collected civil penalties stemming from the speed monitoring system violations, with interest." *Id.* at 703.

The Supreme Court held that the plaintiffs did not have an implied right to bring suit to enforce the statute, in part because the statute expressly provided them with a more limited remedy. "An elemental canon of statutory construction is where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." *Id.* at 713 (quoting *Sugarloaf,* 78 Md. App. at 556, quoting *Transamerica,* 444 U.S. at 19) (cleaned up). The statute permitted citation recipients to "defend against receiving a citation on the basis that the local government violated" the section the plaintiffs were trying to enforce through an implied cause of action. *Id.* (footnotes omitted). The existence of that express statutory remedy militated against

implying a separate, private cause of action to enforce the statute. *Id.*; *see Johnson v. United Parcel Serv.*, 722 D. Supp. 1282, 1283-84 (D. Md. 1989) (holding that a statute's inclusion of a narrow express remedy is fatal to the implication of a broader cause of action).

The same is true here. In section 4-401, the legislature allowed a person harmed by a wrongful disclosure of records to file a suit seeking damages. The legislature chose not to give that person the right to enjoin an allegedly wrongful disclosure.

Conversely, in section 4-362, the legislature provided that a requestor is entitled to seek injunctive relief if the requested records are withheld. The legislature also provided that a court may review a withheld document and decide whether it may be withheld. As stated, however, the legislature, however, did not see fit to provide similar parallel rights to persons of interest who oppose disclosure. The legislature did not require a custodian to notify a person of interest before disclosing a record. The legislature did not require a custodian to show a person in interest any record before disclosing the record. And the legislature did not give a person in interest the right to file an action in the circuit court seeking to enjoin disclosure. Instead, the legislature, provided the damages remedy found in section 4-401.

In short, the legislature saw fit to devise a statutory scheme aimed at transparency and the *prompt* disclosure of public records that are the subject of requests and provided for rights and remedies it thought were consistent with that objective. Allowing the right and remedy sought by Doe and the FOP would severely hinder that public policy choice made by the legislature.

4. The records the County intends to produce do not contain any information that is subject to mandatory denial.

As discussed above, the Attorney General issued an opinion stating that a right to a "reverse MPIA" action to stop disclosure might exist in the case of mandatory denials. The Coalition acknowledges that possibility, noting the MPIA's "dual structure," by which some

provisions require a custodian to deny inspection, while other provisions permit a custodian to deny inspection. (Memorandum in Support of Coalition's Motion to Dismiss the Amended Complaint, p. 11).[17] The Coalition further states: "The implied cause of action can, and should be, allowed in Maryland that prohibit the release of information. For the parts of the MPIA that are similar to the FOIA structure, in permitting, but not mandating the withholding of information, no private right of action should be implied." (*Id.*) (citing *Chrysler Corp.*, 441 U.S. at 290-94).

The Coalition, however, urges that the requested documents do not fall within any mandatory denial categories. As noted above, records regarding a technical infraction are protected from disclosure. And as also noted above, section 4-104(l) defines a technical infraction as a "minor rule violation" that is "solely related to the "enforcement of administrative rules" that falls into one of three categories: (1) a violation that "does not involve an infraction between a member of the public and the individual;" (2) a violation that "does not relate to the individual's investigative, enforcement, training, supervision, or reporting responsibilities;" or (3) a violation that "is not otherwise a matter of public concern."

Doe and the FOP have asked the Court to conduct "an *in camera* review of the records that the Defendant intends to produce in accordance with MD. CODE ANN., GEN. PROV. §4-362(C)(2)."[18] (Amended Complaint prayer for relief, p. 11). Assuming *arguendo* that a reverse

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[17] Renehan apparently does not share that view.

[18] Section 4-362 does not apply here, because subsection (a) governs a complaint filed in circuit court by a person or governmental unit that has been denied a request for inspection of a public record or a copy, printout, or photograph of a public record. And subsection (b) governs an "appeal to the circuit court [from] a decision issued by the State Public Information Act Compliance Board." This action does not fall within either subsection, but the Court nonetheless has engaged in the requested review. Plaintiffs' request for *in camera* review was made "to the extent the MPAA and proposed production are not enjoined as unconstitutional." (Amended Complaint *supra*). As explained below, the Court concludes that the MPAA and proposed production are not unconstitutional.

MPIA action is available to enjoin the proposed production of records that are covered by a mandatory non-disclosure provision, the Court has conducted that review, and has concluded that none of the records involve a technical infraction. Each record involves an interaction between a member of the public and Doe, and therefore does not fall within the definition of technical infraction. Likewise, each record relates to Doe's investigative, enforcement, training, or reporting responsibilities. Thus, for that reason as well, the records do not fall within the definition of technical infraction.

Moreover, none of the records contain Doe's home address, personal telephone number, or personal e-mail address, each of which is prohibited from disclosure by section 4-331. In fact, Plaintiffs do not allege that any of the records contain any of that information. As noted above, Plaintiffs maintain that the MPIA does not allow disclosure of Doe's name. (*See* Amended Complaint ¶28). And as also noted above, the Court rejects that argument, as it is contrary to the language and purpose of the MPIA.

5. Plaintiffs' other statutorily based arguments also lack merit.

Citing section 4-103(b), Plaintiffs also claim that the custodian must deny the request for production of the records "because it would constitute 'an unwarranted invasion of the privacy'" of Officer Doe. (Amended Complaint ¶26). In the memorandum supporting its motion to dismiss, the Coalition cites *Police Patrol Sec. Sys., Inc. v. Prince George's Cnty.*, 378 Md. 702, 717 (2003) and argues that section 4-103(b) is a statutory rule of construction that does not create a cause of action and has no independent effect. (Memorandum in Support of Coalition's Motion to Dismiss the Amended Complaint, p. 15). As noted above, the Appellate Court of Maryland has reached the same conclusion. *In the Matter of Sanders*, 2025 WL 1121960, at *3 n. 5. This Court agrees and also reaches that conclusion.

In paragraph 27 of the Amended Complaint (which is fully quoted above), Plaintiffs allege that the custodian should withhold production in accordance with sections 4-343 and also cite two other provisions of the MPIA, *i.e.* sections 4-301(a)(1) and 4-351(b)(4). As previously noted, section 4-343 merely *permits*, but does not require, a record to be withheld from inspection if the custodian concludes that inspection would be contrary to the public interest.

Section 4-301(a)(1) requires a custodian to deny inspection of a record, if, "*by law*, the public record is *privileged or confidential*." (emphasis added). As the Maryland Supreme Court held in *Police Patrol Sec. Sys., Inc. v. Prince George's Cnty.*, 378 Md. at 714-15, the "sources of law" listed in section 4-301(a)(2) "apply equally" to (a)(1). "In other words, no public record may be considered confidential or privileged unless a basis for that is found in one of those enumerated sources of law," *i.e.* a "(i) a State statute; (ii) a federal statute or a regulation that is issued under the statute and has the force of law: (iii) the rules adopted by the [Supreme Court]; or (iv) an order of a court of record." *Id.* at 715 (footnote omitted). The Court noted that the United States and Maryland Constitutions "are potential sources of law that could create exemptions to the MPIA." *Id.* n.5.

Plaintiffs has suggested that section 4-351(b)(4) may fill that role. Any such argument is misplaced. That provision provides that a "custodian *may* deny inspection by a person in interest only to the extent that the inspection would disclose the identity of a confidential source." (emphasis added). Thus, it is another *permissive*, not mandatory, denial provision. Also, it applies to a request from a "person in interest," and a party requesting inspection is *not* a person in interest. So, the permissive denial would *not* apply to the requests by Renehan or the Coalition in

their roles as requestors. *See Mayor & City Council of Balt. v. Md. Comm. Against The Gun Ban*, 329 Md. at 90.[19] Moreover, the records here do not disclose the identity of a confidential source.

Finally, Plaintiffs contend that the "MPIA requires the denial of the subject production because it includes references to medications, medical conditions or medical treatment of a witness or suspect. *See id.* § 4-329(1)." (Amended Complaint ¶29). Section 4-329(b)(1) requires a custodian to deny inspection of the part of a record "that contains medical or psychological information about an individual, other than an autopsy report of a medical examiner." (cleaned up). Plaintiffs lack standing to lodge such an objection and the records do not contain medical or psychological information. Section 4-301(a)(1) does not preclude inspection of the records sought by Renehan and the Coalition.

Therefore, with regard to Count I, the County, the Coalition, and Renehan are entitled to judgment as a matter of law.

B. Constitutional issues raised by Plaintiffs.

1. Anton's Law does not violate police officers' due process rights.

a. There is no substantive due process violation.

The FOP and Doe contend that the MPIA impermissibly intrudes on a fundamental right of privacy held by police officers and thus violates both the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and Article 24 of the Maryland Declaration of Rights.[20]

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[19] Doe is clearly a person in interest. It is unclear whether a complaining witness is a person in interest. 329 Md. at 90.

[20] Maryland courts "have consistently interpreted the Due Process Clause of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights as complementary provisions that protect the same rights." *Roberts v. Total Health Care, Inc.*, 109 Md. App. 635, 643 (1996) (footnote omitted). As was true for the petitioners in *Zukowski v. Anne Arundel Cnty.*, 490 Md. 243, 274 n. 29 (2025) and *Clarke v. Gibson*, 492 Md. 557, 581 n. 17 (2025), Plaintiffs do not

Citing *District of Columbia v. Fraternal Order of Police,* 75 A.3d 259 (D.C. 2013), they assert that "police officers have a privacy right in not being publicly identified." (Plaintiffs' Opposition to Intervenor-Defendant Maryland Coalition for Justice and Police Accountability's Motion to Dismiss the Amended Complaint, p. 29). Similarly, in moving for summary judgment, they again cite that case to support their contention that "police officers have a privacy right in not being publicly identified." (Memorandum in Support of Plaintiffs' Motion for Summary Judgment., p. 11) (cleaned up).[21]

That case, however, does not support their position. The case involved a requesting party's challenge to an agency's failure to disclose information pursuant to a freedom of information request. It did not involve a party's challenge to an agency's decision to provide the information. And it certainly did not hold, or even suggest, that police officers have a fundamental privacy right—protected from disclosure pursuant to principles of substantive due process—in records involving the officers' performance of their duties, or alleged misconduct in the performance of those duties.

Interestingly, in that case, it was a Fraternal Order of Police organization that sought identifying information about police officers, pursuant to the District of Columbia Freedom of

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differentiate between the two constitutional provisions. Thus, the Court is treating Plaintiff's claims under the Fourteenth Amendment and Article 24 together, as one claim. *Id.*

[21] In support of their position, at the cited pages from their two memoranda, they rely on the following purported quote from that case: "police officers subject to departmental disciplinary proceedings have far more than a *de minimis* interest in not being publicly identified," attributing that quote to 75 A.3d at 268. That quoted language, however, does not appear in that case, but it does appear in another case where the MPD FOP was also unsuccessful in obtaining information pursuant to the DC FOIA, *Fraternal Order of Police v. District of Columbia*, 124 A.3d 69, 77 (D.C. 2015). MPD FOP was represented by the same lawyer and law firm representing Plaintiffs here.

Information Act. The District of Columbia Chief of Police had established an e-mail account where Metropolitan Police Department employees could submit questions, concerns, or comments.[22] The MPD FOP sought disclosure of the identities of the employees of the employees who had sent e-mails to that account. The District of Columbia disclosed the contents of the e-mails, but redacted identifying information for the senders. The Superior Court ruled in the MPD FOP's favor and ordered production of the identifying information. The Court of Appeals, however, reversed, "because the District is entitled to redact the identifying information under the personal privacy exemption of FOIA." *District of Columbia v. Fraternal Order of Police,* 75 A.3d at 262-63.[23]

Much like the federal FOIA and the MPIA, the DC FOIA is designed "to pierce the veil of administrative secrecy and to open agency to the light of public scrutiny." *Id.* at 264 (cleaned up) (citation omitted). Thus, statutory exemptions are to be construed narrowly, and an agency bears the burden of defending any decision to withhold or redact any information. *Id.*

At issue in the case was an exemption that "allows an agency to withhold 'information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.'" *Id.* at 265 (quoting D.C. Code §2-534(a)(2)) (cleaned up). Determining whether an agency properly exercised its discretion to withhold information pursuant to this personal privacy exemption involves a balancing act, by which the public interest in disclosure is weighed against the asserted privacy interest. "Because FOIA demands disclosure

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[22] The Metropolitan Police Department will be referred to as "MPD" and the Fraternal Order of Police, Metropolitan Police Department Labor Committee will be referred to as "MPD FOP." The District of Columbia Freedom of Information Act will be referred to as "DC FOIA" or "FOIA."

[23] Ironically, MPD FOP, represented by the same firm representing Plaintiffs here, maintained "that the MPD employees have no privacy interest and, even if they do, that interest cannot outweigh the public interest in disclosure." 75 A.3d at 264.

unless a privacy interest is implicated, a preliminary question in determining the applicability of D.C. Code § 2-534(a)(2) is whether there is any privacy interest at stake in the information." *Id.* The privacy interest "need only be more than *de minimis* to trigger application of the balancing act." *Id.* at 266 (citation omitted). And "the bar is low." *Id.* (cleaned up) (citation omitted).

The Court of Appeals concluded that the MPD employees who had sent comments to the e-mail account had a more than *de minimis* privacy interest in their names and identifying information, and that privacy interest outweighed the minimal public interest in disclosing that information. Thus, the Court held "that FOIA does not require the District of Columbia to disclose the identities of the email authors. . . because the District is entitled to redact the identifying information under the personal privacy exemption of FOIA." *Id.* at 269. In short, the District of Columbia had properly exercised an exemption allowed by the DC FOIA. No substantive due process right to privacy was asserted or recognized.

A more recent case from the D.C. Court of Appeals severely undercuts the arguments the FOP and Doe raise in this case. In *Fraternal Order of Police v. District of Columbia*, 290 A.3d 29 (D.C. 2023), MPD FOP sued the District—alleging that legislation requiring the mayor to release body-worn camera footage from officer-involved death or serious use of force incidents, along with the names of the officers involved—infringed on officers' rights of privacy and violated their substantive due process rights. The Superior Court rejected that argument, dismissed the action, and the Court of Appeals affirmed.

The Court of Appeal acknowledged that, for purposes of applying the personal privacy exemption of the DC FOIA, officers may have a privacy interest in not being publicly identified. *See also United States v. Kingsbury*, 325 F.Supp.3d 158 (D.D.C. 2018); *Huthnance v. District of Columbia*, 255 F.R.D. 285 (D.D.C. 2008) (two cases cited by Plaintiffs that recognize that

disclosure of training and disciplinary information regarding police officers is governed by statute, but do not acknowledge a substantive due process privacy right held by officers).

That limited privacy interest, however, does not amount to a fundamental right of privacy that gives rise to constitutional substantive due process protection.

> In FOP's very brief discussion of its substantive due process claim, it does not explain how we should make the leap from a privacy interest to a fundamental right. Exercising "the utmost care" in considering the asserted substantive due process right and understanding that we should recognize new fundamental rights only "sparingly," *Jordan*, 235 A.3d at 815, we are unable to conclude that FOP members' privacy interest in their names and in videos of their interactions with the public implicates a fundamental right. We are not aware that any court has ever held that police officers have a fundamental right to the privacy of information about their involvement — while on duty and while in contact with the public they serve — in a shooting or other serious use of force.

Id. at 44 (citing *Jordan v. United States*, 235 A.3d 808, 815 (D.C. 2020)).

The Superior Court of New Jersey, Appellate Division rejected a substantive due process right of privacy argument much like the one raised by the FOP and Doe. *In re Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6*, 240 A.3d 419 (N.J. Super. Ct. App. Div. 2020). The Supreme Court of New Jersey modified another aspect of the intermediate appellate court's decision, but it affirmed the decision regarding the substantive and procedural due process and equal protection issues, adopting the reasons stated in the Appellate Division's opinion. 252 A.3d 135, 161 (N.J. 2021). The intermediate court explained the background and the directives that were being challenged:

> Responding to state and national demands for accountability and reform of law enforcement following the death of George Floyd at the hands of Minneapolis police, Attorney General Gurbir S. Grewal announced in June that he would end New Jersey's decades-long practice of shielding the identities of law enforcement officers receiving major discipline for misconduct.

240 A.3d at 427.

One directive required "every law enforcement agency in the State to publish a synopsis

of all complaints in which an officer received final discipline of termination, demotion, or a suspension of more than five days, including the name of the officer, a summary of the misconduct, and the sanction imposed." *Id.* A second directive ordered other designated New Jersey law enforcement agencies to disclose the same information. The directives met an immediate legal challenge, in which various associations representing law enforcement officers raised multiple legal arguments attacking the directives, including arguments that the Directives violated the equal protection and due process rights of affected officers. The trial court rejected those arguments, as did the Appellate Division and the Supreme Court.

In rejecting the claim based on a substantive due process right to privacy, the Appellate Division said:

> Appellants' claims that the Directives violate their substantive due process right to privacy under our State Constitution fare no better. Simply stated, appellants cannot show they have a constitutionally protected reasonable expectation of privacy in their disciplinary records that is not outweighed by the government's interest in public disclosure, in light of prior case law establishing their diminished expectation of privacy in those records, and the clear statement in every IAPP [Internal Affairs Policy and Procedure] issued since 2000 that the Attorney General could order the release of the records.

Id. at 446-47.

Other courts have reached a similar result. *See, e.g., Organization of Police Officers v. City and Cnty. of Honolulu*, 494 P.3d 1225, 1244 (Haw. 2021) (reaffirming that "information regarding a police officer's misconduct in the course of his or her duties is not within the protection of Hawai'i's constitutional right to privacy"); *Chasnoff v. Mokwa*, 466 S.W.2d 571, 579 (Mo. Ct. App. 2015) (holding that police officers had no constitutional right to prevent disclosure of records regarding misconduct).

Plaintiffs argue that they at least have a right of privacy as to records "of unfounded or unsubstantiated allegations of wrongdoing." (Plaintiffs' Opposition to Intervenor-Defendant

Renehan's Motion to Dismiss the Amended Complaint, p. 34).[24] But they again rely on *Shropshire* and cases from other jurisdictions, where the decisions were based on interpretation and application of relevant statutes, *not* a fundamental constitutional right of privacy.

The Maryland General Assembly could have chosen to limit public access to records where the relevant internal affairs committee, or other disciplinary body, did not find that the officer had engaged in the alleged misconduct. But that was not the policy decision it made. It decided to allow access to all records, other than those pertaining to technical infractions. That was the policy decision it made and it was a rational one, given the public interest in complete transparency when it comes to alleged police misconduct and the manner in which the relevant law enforcement agencies address those allegations. Different policy makers might have reached different decisions, but there was no constitutional right of privacy that prevented Maryland's legislature from making the decision it did.

Plaintiffs' continued reliance on *Md. Dept. of State Police v. Dashiell* and *Montgomery Cnty. v. Shropshire* is misplaced. At pages 11-12 of their memorandum supporting their motion for summary judgment, and pages 29-30 of their memorandum opposing the Coalition's motion to dismiss, they cite those cases as support for their argument that officers have a privacy right. But the right referenced in *Dashiell* and *Shropshire* arose from the pre-Anton's Law version of the MPIA. Those opinions did not recognize a fundamental constitutional right to privacy. The

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[24] They similarly contend "that any records concerning allegations that are not sustained should be considered confidential and not subject to disclosure." (Plaintiffs' Opposition to Intervenor-Defendant Maryland Coalition for Justice and Police Accountability's Motion to Dismiss the Amended Complaint, p. 21). That argument, however, is not based on a claimed constitutional right of privacy, but instead on a statutory argument, claiming that the records are "confidential" and thus protected by section 4-301 of the MPIA. And the confidentiality contention rests on pre-Anton's Law cases, which relied on pre-Anton's Law statutory provisions. As stated above, Anton's Law clearly makes the records at issue in this case subject to disclosure.

privacy right involved was a statutory one that could be, and was, repealed.

The Court has reviewed the authorities cited by the parties regarding the FOP's and Doe's substantive due process right of privacy claim and concludes that no fundamental constitutional right of privacy exists here. The Court also notes that Plaintiffs rely heavily on cases where a court's interpretation of the relative jurisdiction's version of a freedom of information act—and *not* a court's determination that a constitutional right of privacy exists regarding police records—afforded some degree of success to the party challenging disclosure.

Faced with "statutes that do not discriminate on the basis of an inherently suspect classification and do not burden any fundamental constitutional right," courts must "assess whether such a statute is rationally related to a legitimate governmental interest." *Pizza di Joey, LLC v. Mayor of Balt.*, 470 Md. 308, 347 (2020) (cleaned up) (citation omitted). The rational basis review is "the least exacting and most deferential standard of constitutional review." *Id.* (cleaned up) (citation omitted). *Id.* When applying the rational basis test, courts "presume that the challenged statute is constitutional," and the statute will withstand challenge so long as there is any rational basis for it. *Id.*

Such a rational basis exists here. Anton's Law was specifically crafted to address growing concerns surrounding police accountability and to reinforce the public's trust in law enforcement. There is a widely held view that an "historic lack of transparency about police misconduct issues has played a part in generating the public controversy about officers' use of force." *Balt. Police Dep't. v. Open Justice Balt.*, 485 Md. 605, 669 (2023). Addressing that lack of transparency by increasing public access to records regarding police conduct is a legitimate public policy goal that furthers a legitimate government interest. The enactment of Anton's Law does not violate Plaintiffs' substantive due process rights.

b. There is no procedural due process violation.

Plaintiffs fare no better with their procedural due process claim. As a threshold matter, they did not plead a procedural due process claim in their Amended Complaint. While the allegations in Count II strive to assert a claim that the MPAA violates their substantive due process and equal protection rights, they are silent when it comes to procedural due process. (Amended Complaint ¶¶31-38). Yet in the memorandum supporting their motion for summary judgment, they argue that the legislation serves to strip them of procedural due process protections. (Memorandum in Support of Plaintiffs' Motion for Summary Judgment, pp. 15 – 17).

As the Coalition notes, courts lack authority to rule on claims not properly presented by the pleadings. The authority to act is "limited by the issues framed by the pleadings," and a trial court has "no authority, discretionary or otherwise, to rule upon a question not raised as an issue by the pleadings." *Dietrich v. State*, 235 Md. App. 92, 102 (2017).

The Coalition also asserts that "if the claim were properly asserted, it would fail. A procedural due process claim can either be premised on the deprivation of a protected property interest or a deprivation of a protected liberty interest." (Corrected Opposition of Intervenor-Defendant Maryland Coalition for Justice and Police Accountability to Plaintiffs' Motion for Summary Judgment, p. 14) (citing *Reese v. Dep't. of Health & Mental Hygiene*, 177 Md. App. 102, 149 (2007)). The Coalition correctly observes that Plaintiffs, in their memorandum, fail to allege the existence of any liberty or property interest. Instead, they rely on a discussion of two cases. The first is *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 147 (2002), where the Court addressed the process due to a police officer whose employment was terminated. The second case is *Johnson v. Md. Dep't. of Health*, 470 Md. 648 (2020), which involved the

involuntary administration of medication.

The Coalition cogently responds to Plaintiffs' procedural due process argument:

> Plaintiffs rely on *Johnson v. Md. Dep't. of Health*, 470 Md. 648 (2020), where the Court found a significant liberty interest in avoiding unwanted medication, and *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 146 (2002), where the Court "assumed, *arguendo*, that Petitioner demonstrated a cognizable property or liberty interest in his continued employment with the Anne Arundel County Police Department." MSJ at 17. Neither case has any connection to Plaintiffs' claims here, because there is no liberty interest at stake (certainly not the freedom from bodily intrusion at stake in the cases they rely on), and Plaintiffs are not being deprived of any property.

(Corrected Opposition of Intervenor-Defendant Maryland Coalition for Justice and Police Accountability to Plaintiffs' Motion for Summary Judgment, p. 15).

The Court agrees. Neither the enactment nor application of Anton's Law implicated or violated any due process right held by Doe.

2. Anton's Law does not violate police officers' right to equal protection of the law.

As stated above, when a statute does not discriminate based on an inherently suspect classification or burden a fundamental right, courts apply the rational basis test. *Pizza di Joey, LLC*, 470 Md. at 347. When "the legislative action at issue neither interferes with a fundamental right nor implicates a suspect classification, the test for determining whether a statute violates the equal protection component. . . is nearly identical to the due process examination." *Tyler v. City of College Park*, 415 Md. 475, 501 (2020) (footnote omitted). Maryland courts "will uphold a statute subject to rational basis review against an equal protection challenge unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that the court may conclude only that the government actions were arbitrary or irrational." *Id.* (internal quotations omitted). Therefore, "a classification having a reasonable basis does not offend equal protection merely because it is not made with 'mathematical nicety' or

because in practice it results in some inequality." *Id.* (citations omitted).

Courts are particularly obligated "to respect the legislative judgment where the legislature is attempting to solve a serious problem in a manner which has not had an opportunity to prove its worth." *Id.* at 500 (internal quotations marks and citation omitted). Consequently, courts should be reluctant to invalidate legislation before the legislature can consider whether that legislation had a positive, negative, or neutral effect on the problem it was aimed to address. *Id.* at 500-01.

As already explained above, Anton's Law does not affect a fundamental right. And it does discriminate against a suspect or protected class. Courts throughout the country have agreed that law enforcement officers do not constitute a suspect class. For example, a directive permitting disclosure of the identities of disciplined law enforcement officers was challenged on equal protection grounds, in part because it treated law enforcement officers differently than other public employees. *In re Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6*, 240 A.3d at 447. In rejecting that challenge, the court pointed out that the officers are "not members of a suspect class and no fundamental constitutional right is impinged by publication of their disciplinary records." *Id.* The court further noted that "the Legislature and our courts have long distinguished law enforcement officers from other public employees based on the responsibilities and privileges of law enforcement officers." *Id.* (citation omitted).

The court concluded that the directive was "rationally related to the Attorney General's goal of increasing transparency of internal affairs and officer discipline in the State's law enforcement agencies, thereby making them more accountable to the communities they serve." *Id.* at 448; *accord Fraternal Order of Police v. District of Columbia,* 45 F.4th 954, 958 (D.C. Cir. 2022) (rejecting FOP MPD's argument that legislation violated "equal protection because it irrationally discriminates between police officers and similarly situated government employees.");

Uniformed Fire Officers Ass'n v. De Blasio, 846 F. App'x 25, 31 (2d Cir. 2021) ("Because law enforcement officers are not a protected class for equal protection purposes, they must show that there is no rational and nondiscriminatory basis to treat their records differently from the records of other public employees."); *Organization of Police Officers v. City and Cnty. of Honolulu*, 542 P.3d 1275, *2 (Haw. Ct. App. 2024) (rejecting equal protection argument based on statute's treating county police officers differently than other law enforcement officers).

The same is true here. Law enforcement officers do not constitute a suspect or protected class, and there clearly is a rational basis for treating their records in a way that differs from the records of other public employees. As the Coalition argues, "unlike other government employees, police officers wield deadly power and have a duty to protect the public, including by engaging with community members, making arrests, carrying weapons, and using physical force." (Memorandum in Support of Intervenor-Defendant Maryland Coalition for Justice and Police Accountability's Motion to Dismiss the Amended Complaint, p. 29).

Consequently, "the General Assembly's decision to increase access to records pertaining to the conduct of police officers as opposed to other public employees passes constitutional muster." (*Id.*) (citations omitted). The Second Circuit summed it up quite well. "Because the public has a stronger legitimate interest in the disciplinary records of law enforcement officers than in those of other public employees, the District Court correctly determined that there was a rational, nondiscriminatory basis for treating the two sets of records differently." *Uniformed Fire Officers Ass'n v. De Blasio*, 846 F. App'x at *31-32. This Court agrees.

3. Anton's Law applies prospectively to all requests made after its effective date, regardless of when the record was created.

Section 2 of Senate Bill 178, which was adopted and became 2021 Md. Laws Ch. 62, clearly states: "That this Act shall be construed to *apply prospectively to any* Public Information

Act *request made on or after the effective date of this Act* ***regardless of when the record requested to be produced was created.***" (emphasis added). Section 3 just as clearly states: "That this Act shall take effect October 1, 2021." Thus, it is quite clear that Anton's Law applies to any MPIA request made as of October 1, 2021, even if the record was created before that date. That is exactly what the law states.

Plaintiffs, however, propose a creative, and very novel, argument. They claim—despite the above quoted crystal-clear language—that "the General Assembly did not express a clear intent to retroactively apply the Act to require the production of every investigatory file of a police officer created from the beginning of time." (Memorandum in Support of Plaintiffs' Motion for Summary Judgment, p. 25).

They note that the General Assembly passed the Act on March 15, 2021, but the law did not become effective until October 1, 2021. This, according to Plaintiffs, shows that the legislature "provided a five and one-half month window of time before requests for these records could be made. Presumably, this window of time was to allow each municipality adequate time to create systems to store and organize new categories of materials that they would now have an obligation to produce." (*Id.*, p. 26). Of course, had the legislature intended that result, it likely would have said that "this Act applies prospectively to any Public Information Act request made on or after the effective date of this Act *for any record requested that was produced after the passage of this Act.*" But that is not what the Act said.[25]

Undeterred by the plain language of the Act, Plaintiffs divine a procedure that the legislature purportedly intended, yet never articulated. They suggest the following was the

[25] Plaintiffs point to the date the legislation passed, March 15, 2021, as the date that the Act became law. The Court notes that Governor Hogan vetoed the legislation on April 9, 2021 and the Senate and House overrode that veto on April 10, 2021.

legislature's true, yet unspoken, intent:

> Once the Act became effective on October 1, 2021, members of the public could begin submitting requests for disciplinary records. However, there was a five and one-half month period of time when disciplinary records could have been generated but not requested. *During this window of time, police officers and police departments were on notice that such records would be subject to production under the new law*. However, if the statute was not effective until October 1, 2021, a question would arise as to whether a disciplinary record created between the date the Act was passed and its effective date would be subject to the new MPIA production rules. The language "regardless of when the record requested to be produced was created," answers the question and requires the production of records created during this window of time and thereafter. However, this language does not unambiguously express an intent that records created before the Act was passed were intended to be subject to the new MPIA production requirements.

(*Id.*, pp. 26-27) (emphasis added).

Initially, the Court notes that it is unclear why police officers and police departments would need notice that disciplinary records would now be subject to production, as it is not clear how that would affect officers' conduct or the way complaints were handled. Nonetheless, as the Court has concluded, the legislative intent is clear—*all* records, *no matter when they were created*, are now subject to disclosure. And as the Coalition notes, other courts have determined that changes to public information laws do not prevent disclosure of police records created prior to the passage of the new law. *See, e.g., Matter of Abbatoy v. Baxter*, 210 N.Y.S.3d 555, **556 (N.Y. App. Div. 2024) (holding that applying, to preexisting police records, the repeal of exception protecting police records from freedom of information requests "is not a retroactive application" of that repeal, "it is merely a recognition that police departments faced with FOIL requests cannot rely on an exception that no longer exists to evade their prospective duty of disclosure"); *State ex re. Beacon J. Publ'g v. Univ. of Akron*, 415 N.E.2d 310, 313-14 (Ohio 1980) (same)

New York's highest court provides a perfect example. In *NYP Holdings, Inc. v. New York*

City Police Dep't., 263 N.E.3d 871 (N.Y. 2025), the Court of Appeals of New York was faced with a question like the one presented to this Court and reached a result like the one this Court reaches. The New York Freedom of Information Law ("FOIL"), much like the MPIA, generally makes government records available to the public. In 1976, the legislature exempted personnel records of certain law enforcement officers, making those records confidential, and thus not subject to disclosure. In 2020, the legislature changed course. It amended the law and provided "for public access to 'law enforcement disciplinary records,' which are defined as 'any record created in furtherance of a law enforcement disciplinary proceeding.'" *Id.* at 873 (citation omitted).

The repeal of the law enforcement exemption was followed by 144 FOIL requests from the *New York Post* and one of its reporters. Those requests led to litigation that ultimately landed in New York's highest court. The sole question before the Court was "whether law enforcement disciplinary records created while [the law enforcement exemption] was in effect may be disclosed in response to FOIL requests submitted after the statutory exemption was repealed." *Id.* at 874. The Court first noted that "assuming, *arguendo*, that the Post's FOIL requests entail retroactive application of the repeal legislation, the legislation contains the requisite clear expression of the legislative purpose to justify a retroactive application." *Id.* (cleaned up) (citation omitted).

The Court next pointed out that the FOIL defines records "with reference to whether an agency possesses information, but without reference to the date the information was created." *Id.* at 875. The Court concluded that the amendment applied to records that had been created before the amendment took effect:

> The amendments impose various redaction requirements and personal privacy protections for law enforcement disciplinary records specifically, *yet they do not,*

> *for example, single out records created before a certain date for special treatment, or direct that disclosure of any record is tethered to the date it was created.* Had the Legislature intended to deviate from FOIL's presumption that information kept or held by an agency is disclosable by exempting records created prior to the repeal, or to mandate that an agency responding to a FOIL request ascertain and apply the law that governed when each responsive record was created, then surely it would have said as much.

Id. (emphasis added). The Court held that the amendment—which made previously confidential police disciplinary records now subject to public disclosure—applied to records created before the amendment.

4. Anton's Law does not abrogate a vested right.

Plaintiffs pivot from their statutory interpretation argument, turning to a contention that applying the amendment to records created before adoption of the amendment would be an unconstitutional retroactive application. (*See* Plaintiffs' Opposition to Intervenor-Defendant Maryland Coalition for Justice and Police Accountability's Motion to Dismiss the Amended Complaint, pp. 33-41). Citing *Pautsch v. Md. Real Estate Comm'n*, 423 Md. 229, 263 (2011), they assert that "statutes are impermissibly retroactive when they impair vested rights, deny due process, or violate the prohibition against *ex post facto* laws." (*Id.* at 37) (cleaned up). The Court has already ruled that Anton's Law does not deny Plaintiffs' due process right, and it clearly does not constitute an ex post facto law, *see Doe v. Dep't of Pub. Safety and Corr. Servs.*, 430 Md. 535, 559 (2013) ("Article 17's prohibition [against *ex post facto* laws] is not implicated in purely civil matters").

But does it impair a vested right? The Supreme Court recently analyzed vested rights jurisprudence in *Roman Catholic Archbishop of Wash. v. Doe*, 489 Md. 514 (2025). The Court began its analysis by explaining that the terms "substantive rights" and "vested rights" are not synonymous. *Id.* at 537. "A law is substantive if it creates rights, duties and obligations, while a

remedial or procedural law simply prescribes the methods of enforcement of those rights." *Id.* (cleaned up) (citations omitted). A right is vested when it "has been so far perfected that it cannot be taken away by statute." *Id.* (cleaned up) (citations omitted). The Court explained that a vested right "is something more than a *mere expectation* based on the anticipated continuance of the existing law; *it must have become a title*, legal or equitable, to the present or future enjoyment of a property." *Id.* at 537-38 (cleaned up) (citations omitted) (emphasis in original).

The Court explained that its prior decisions have "identified vested rights most frequently in connection with tangible property interests and present contractual rights," and then listed examples. *Id.* at 538. The examples were:

- the ownership of real property;
- the property rights of a ground rent owner;
- the right to property devised in a will upon the testator's death;
- rights created by valid deeds of trust;
- rights created by existing contracts;
- the right in the continuing invalidity of a void deed;
- the right to receipt of a sum of money owed; and
- the right to maintain the settled consequences of completed financial transactions.

Id. at 538-39 (citations omitted). The Court also noted that it has previously held that a party has a vested right in a cause of action that has accrued. *Id.*

The Court then held that the expiration of an ordinary statute of limitations (as opposed to a statute of repose) does not create a vested right to be free of liability. The Court went on to hold that a statute that allows an action for alleged child sex abuse to be brought at any time is a statute of limitations that does not retroactively abrogate vested rights. The Court acknowledged

that some parties, having received the benefit of a statute of limitations, "may alter their behavior in reliance on the anticipated continuation of that limitation." *Id.* at 546. But that "does not give rise to a *vested* right." *Id.* (emphasis in original) (footnote omitted). The Court quoted again from *Muskin v. State Dep't. of Assessments & Tax'n*, 422 Md. 544, 560 (2011): "A vested right is something more than a mere expectation based on the anticipated consequence of the existing law; *it must have become a title,* legal or equitable, *to the present or future enjoyment of a property.*" 489 Md. at 546-47 (cleaned up) (citation omitted) (emphasis in original).

The Court distinguished between the effect of a law that repeals a statute of limitations on claims after the period of limitation has run, and the effect of a law that repeals a statute of repose on claims after the period of repose has run. A statute of limitations does not confer a vested right. It only limits the time in which a claim may be asserted against a party who enjoys the benefit of the limitations period. It is a procedural device designed "to block access to a remedy for a cause of action that otherwise continues to exist after a designated period, not to absolve defendants from accountability." *Id.* at 544 (citation omitted). It does not create a "vested right to be free of liability."

A statute of repose, on the other hand, bars a cause of action. Its purpose "is to provide an absolute bar to an action or to provide a grant of immunity to a class of potential defendants after a designated time period." *Id.* at 531 (cleaned up) (citation omitted). It creates "a substantive right protecting a defendant from liability." *Id,* at 533 (cleaned up) (citation omitted). The Court concluded that statutes of repose create vested rights:

> Statutes of repose create substantive rights with the purpose of protecting the defendant from liability. And they do not merely render a remedy to a cause of action unavailable; they eliminate the cause of action itself. They therefore create a substantive immunity that is the very purpose of the restriction, not a byproduct of a desire to promote the swift resolution of claims and to avoid unfairness in the prosecution of stale claims. Accordingly, a defendant protected by such a statute

has a vested right to be free of liability.

Id. at 547 (citations and footnote omitted).

In short, just as a putative plaintiff has a vested right in a cause of action that has accrued and thus cannot be abrogated, a putative defendant has a vested right in an accrued bar to a cause action and that absolute bar cannot be abrogated. Once a cause of action has accrued, it cannot be taken away. And once a bar to a cause of action has accrued, it cannot be taken away.

Here, Anton's Law does not abrogate any contractual or property right, nor does it divest anyone of an accrued cause of action or an accrued bar to a cause of action. Before Anton's Law was enacted, public employees' personnel records were not subject to disclosure under the MPIA and court rulings had interpreted "personnel records" to include investigatory files regarding alleged police misconduct. The legislature responded by enacting a statute excluding most investigatory files from the definition of personnel records. Personnel records remain exempt, but the definition of personnel records has changed. This is akin to a change in a statute of limitations. Just as parties might have relied on the existing statute of limitations and expected that limitations period to remain in place, police officers might have relied on the then-existing definition of personnel records and expected that definition to remain in place.

But as Maryland's Supreme Court has repeatedly held, a vested right is something more than a mere expectation based on an anticipated continuance of the existing law—it must have become a title, legal or equitable, to the present or future enjoyment of a property. And as the Coalition points out, there is no evidence of "any legislative intent to grant a permanent right to confidentiality in investigatory files after the passage of a particular period of time." (Reply in Support of Intervenor-Defendant/Cross-Claim Plaintiff The Maryland Coalition for Justice and Police Accountability's Motion for Summary Judgment, p. 5). Anton's Law does not affect any

vested right held by Plaintiffs.

C. The MOA violates the MPIA and is invalid.

In their cross-claims, the Coalition and Renehan seek a declaratory judgment ruling that the MOA violates the MPIA.[26] "A contract conflicting with public policy set forth in a statute is invalid to the extent of the conflict between the contract and that policy." *Mayor & City Council of Balt. v. Clark*, 404 Md. 13, 33 (2008) (cleaned up) (citations omitted). In that case, the Court held that a provision in a memorandum of understanding between Baltimore's Police Commissioner and the Mayor and City Council violated the Code of Public Laws of Baltimore City and was therefore invalid. The Coalition and Renehan argue that the same is true of the MOA and the same outcome should be the result. This Court agrees.

The MPIA is geared toward prompt disclosure of public records. A record custodian is required to "grant or deny the application promptly, but not more than 30 days after receiving the application." MPIA §4-203(a). If the application is granted, the custodian must "produce the public record immediately or within a reasonable period that is needed to retrieve the public

[26] The Coalition argues that Plaintiffs' sole remedy was to pursue a claim for administrative mandamus and therefore their request for declaratory relief should either have been dismissed or disposed of through the entry of summary judgment. Administrative mandamus is available for review of a quasi-judicial order or action of an administrative review when no other right of review is provided by law. Md. Rule 7-401. It is not clear that Plaintiffs' Count I arises from a quasi-judicial action, as it arises from a contract with the County. Count II attacks the constitutionality of the MPIA and administrative mandamus would not be available. Assuming that the Coalition were correct, and that Plaintiffs were not entitled to seek declaratory relief, the Coalition and Renehan sought declaratory relief themselves—thus putting the same issues squarely before the Court to resolve through a judgment declaring the rights of the parties. Also, even if administrative mandamus is the proper procedural vehicle, but the plaintiff instead seeks declaratory and injunctive relief, courts can nonetheless review the issues presented. *See Balt. Police Dep't. v. Open Justice*, 485 Md. 605, 631, 645-46 (2023). The case was filed in the Circuit Court for Baltimore City, Case No. 24-C-20-001269 and the complaint in that case sought declaratory and injunctive relief, as well as damages and an award of attorneys' fees. There was no effort to seek review through administrative mandamus. The attorney representing the plaintiff in that case represents Renehan in this litigation.

record, but not more than 30 days after receipt of the application." And if "the custodian reasonably believes that it will take more than 10 working days to produce the public record," the custodian must provide a written explanation within that 10-working day-period, providing details outlined in paragraph (2) of subsection (b).

The MOA flies in the face of those requirements, undermining the MPIA's objective of prompt disclosure. The MOA provides that, within two days of an MPIA request for an FOP member's internal affairs file, the County must notify the FOP and the member. Once the County has completed the process of compiling the records (the time for completion of that task is not defined by the MOA), and at least ten business days before the release of the records to the requesting party, the County must give the FOP, the member, or both a copy of what the County intends to produce. The member or the FOP may then file, within ten business days, a "reverse MPIA action"—a cause of action that this Court has held does not exist. If an action is filed, the County must withhold production pending the outcome of that action. As discussed above, the reverse MPIA procedure espoused by the Plaintiffs, and incorporated in the MOA, conflicts with the rights and remedies the legislature saw fit to include in the MPIA. Allowing it would impede the public policy behind the MPIA.

Thus, the MOA makes it impossible for the County to produce the requested record to the requesting party the record within ten business days of the request. Every time the County is asked for the internal affairs file of an FOP member, the County will be forced to provide the written notice called for by section 4-203(b)(2), which includes "the reason for the delay." And in each instance, the reason for the delay will be, at least in part, the provisions of the MOA. The

MOA violates the MPIA and is invalid.[27]

D. The County's motions to dismiss the cross-claims are granted in part and denied in part.

1. The County's limitations and laches arguments do not support dismissal of the cross-claims.

The County contends that the Coalition's and Renehan's cross-claims are barred by the statute of limitations created by Md. Code Ann., Cts. & Jud. Proc. §5-110, which provides:

> An action to enforce any criminal or civil liability created under Title 4 of the General Provisions Article may be brought within two years from the date on which the cause of action arises, except that if the defendant has materially and willfully misrepresented any information required under those sections to be disclosed to a person and the information so misrepresented is material to the establishment of liability of the defendant to the person under those sections, the action may be brought at any time within two years after discovery by the person of the misrepresentation.

In applying this statute, a court must determine whether the cause of action seeks to enforce a criminal or civil liability created under the MPIA. If the court determines that the action falls within that description, the court must next determine if the action was brought within two years from the date when the cause of action arose or accrued. That obviously requires the court to decide when the cause of action arose. Finally, the court must address whether the defendant has materially and willfully misrepresented any information that was required to be disclosed and whether that information was material to the liability of the defendant. The action must have been brought within two years of when the cause of action arose, unless a material misrepresentation occurred, in which case the action had to have been brought within two years after discovery of the misrepresentation.

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[27] For its part, the County states that it did not intend "to undermine the MPIA and will defer to the Court on the validity of the document." (Corrected Defendant's Cross Motion for Summary Judgment, p. 8)

In opposing the motion to dismiss, the Coalition and Renehan argue that the doctrine of laches, and not the applicable statute of limitations, should apply. Specifically, as they seek injunctive relief in addition to a declaratory judgment, they urge the Court to apply the doctrine of laches. *See Murray v. Midland Funding, LLC*, 233 Md. App. 254, 263 (2017).[28]

In resolving the motion to dismiss, however, the Court does not have to decide whether the doctrine of laches or the applicable statute of limitations governs.[29] A complaint should be dismissed for failure to state a claim, on limitations grounds, *only* if the time bar is apparent on the face of the complaint. *G&H Clearing and Landscaping v. Whitworth*, 66 Md. App. 348, 344 (1986). Thus, a motion to dismiss should not be granted on limitations grounds, unless it is clear, based on the facts and allegations on the face of the complaint, that the statute of limitations has run. *Caruso Builder Belle Oak, LLC v. Sullivan*, 489 Md. 346, 361 (2025); *Litz v. Md. Dep't of the Env't*, 434 Md. 623, 641 (2013); *Nathanson v. Tortoise Capital Advisors, LLC*, 267 Md. App. 1, 25 (2025); *SG Md., LLC v. PMIG 1024, LLC*, 264 Md. 245, 258 (2024). The same applies to the application of a laches defense. *Rounds v. MNCPPC*, 441 Md. 621, 656 (2015); *Desser v. Woods*, 266 Md. 696, 703 (1972).

A plaintiff is *not* required to plead that the statute of limitations or laches do not preclude the relief she seeks. Compliance with the applicable statute of limitations or laches is not an element of the cause of action. They are affirmative defenses, which must be asserted and proven

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[28] "There is no time bar at all if [a plaintiff] seeks the primary relief of a simple declaration." *Id.* at 261.

[29] It is not clear if every count asserted by the Coalition and Renehan is "an action to enforce any criminal or civil liability created under" the MPIA. If not, and to the extent that the action is a legal action, the action would be governed by the general three-year statute of limitations. Md. Code Ann., Cts. & Jud. Proc. §5-101.

by the defendant. *See* Rule 2-323(g)(10), (15); *Jones v. State*, 445 Md. 324, 329 (2015) (laches is an affirmative defense); *Liddy v. Lamone*, 398 Md. 233, 243 (2007) (laches is an affirmative defense which generally must be pled (citing Rule 2-323)); *Simmons v. Md. Mgmt. Co.*, 253 Md. App. 655, 699 (2022) (limitations is "a defense that must be pleaded in the answer to the complaint and, as an affirmative defense, must be proven by the defendant" (citing Rule 2-323(g)(15)).

Here, neither the Coalition nor Renehan have "pled themselves out of court" by alleging facts establishing that any of their claims are barred by either limitations or laches. From the face of the parties' respective cross-claims, it cannot be said that the County did not materially and willfully misrepresent any information that was required to be disclosed and that the misrepresentation was material to the establishment of liability under the MPIA—misrepresentation that would extend the limitations period provided in section 5-110. Likewise, from the face of the cross-claims, it cannot be said that the delay was unreasonable and that the County was prejudiced by the delay. *See Murray v. Midland Funding, LLC*, 233 Md. App. at 260 ("Laches bars an action where there has been both inexcusable delay and prejudice to the party asserting the defense." (Internal quotation marks and citation omitted)).

And as Judge Moylan explained for the court in *Blythe v. State*, 161 Md. App. 492, 512 (2005), "the §5-110 statute of limitations . . . is one of essentially miniscule significance. It has little more than nuisance value." (footnote omitted). In that omitted footnote, the court observed that the limitations argument could have more weight if the requesting party were seeking statutory damages, or disciplinary action, due to the non-disclosure. "In such a case, the focus might well be upon the time of original denial of access, as the pertinent historic event." *Id.*, n. 4. But where the relief requested is production of the requested records, the situation differs, as the

failure to produce the records continues. Earlier in the opinion, Judge Moylan explained:

> We cannot help but note the feeble character of Courts Article, § 5–110 as an effective statute of limitations. Ordinarily, the phenomenon being litigated is a discrete historic event—an accident, a breach of contract, an act of professional malpractice, a crime. If litigation is not commenced within a prescribed period of time, the right to litigate, and to recover, may be lost forever. In such a context, a statute of limitations has critical importance. The focus of the litigation, moreover, is on the significance of what the parties did back at the time of the triggering historic event, not on the current propriety of what they are doing, or are about to do, at the time of trial.
>
> The focus of an MPIA disclosure hearing, by contrast, is totally different. *The concern of the circuit court hearing of February 27, 2004, for instance, was not on the propriety of the County Attorney's Office's denial of disclosure back on July 14 or August 16, 2000. It was on the propriety of Harford County's continuing denial of disclosure up to and including February 27, 2004.* A law school professor could easily conjure up a scenario wherein non-disclosure back on August 16, 2000, might have been perfectly appropriate then, but wherein non-disclosure might have become inappropriate as of February 27, 2004. Such a scenario, however, would not be at all damaging to the disclosure petition at the hearing on which the focus will be on non-disclosure now, not on non-disclosure back then.
>
> July 14, 2000, and August 16, 2000, do not, in the context of this case, have the significance, as historic events, that a past tort or a past crime might have. *They are but random points along a continuum of non-disclosure.*

Id. at 511-12 (emphasis added) (cleaned up).[30]

As the statute of limitations is the only basis for the County's motion to dismiss the

[30] The Court noted that the limitations issue had "not been preserved for appellate review," as the "trial judge never made a ruling on limitations and was never called upon to make such a ruling." *Id.* at 510. The Court then said: "Accordingly, we will not address it." The Court, however, then spent nearly three pages addressing the issue. It is not clear whether the Court intended that discussion to be viewed as dicta or a holding. *See* Md. Rule 8-131(a); *Hurt v. Chavis,* 128 Md. App. 626, 638 (1999) (appellate courts have discretion to decide issues that were not raised below). A subsequent decision of that Court indicates that it might have intended that the discussion be seen as a holding. A three-judge panel that included Judge Moylan issued a per curiam opinion in which the panel discussed *Blythe*, saying that "the MPIA is concerned with outstanding non-disclosure up to the time of the court's disposition of the matter." *Tillman v. Prince George's Cnty. Police Dep't.*, No. 818, Sept. Term, 2019, 2020 WL 4515790, *2 (Aug. 5, 2020). As that opinion was designated as a per curiam one, and as it was issued before July 1, 2023, it may not be cited as persuasive authority. Md. Rule 1-104(a)(2)(B). This Court cites the opinion for the very limited purpose of shedding light on whether the *Blythe* Court intended its limitations discussion to be seen as dicta or a holding.

Coalition's cross-claim, that motion is denied. Likewise, the County's motion to dismiss Count III in Renehan's cross-claim is denied.

2. Count I of Renehan's cross-claim, which is based on taxpayer standing to challenge an illegal and *ultra vires* act, is dismissed with leave to amend .

Count I of Renehan's cross-claim is entitled, "Defendant's Memorandum of Agreement with the Fraternal Order of Police is *ultra vires* and unlawful," and rests upon an allegation of taxpayer standing to challenge the MOA as being illegal and *ultra vires*. "Taxpayer standing doctrine permits a taxpayer to invoke the said of a court of equity to restrain the action of a public official, which is illegal or *ultra vires* and may injuriously affect the taxpayer's rights and property." *George v. Balt. Cnty.*, 463 Md. 263, 275 (2019) (cleaned up) (citation omitted). The doctrine is based on a concept that the party bringing the action is acting as a taxpayer, "on behalf of all other similarly situated taxpayers." *Id.* (internal quotation marks and citation omitted). The taxpayers bringing the action are essentially "asserting the rights of their government against local administrators," and the action is thus akin to a shareholders' derivative suit. *Id.*

The first of the two requirements for asserting taxpayer standing is taxpayer status. "The plaintiff must demonstrate that: (a) the complainant is a taxpayer, and (b) the suit is brought, either expressly or implicitly, on behalf of all other taxpayers." *Id.* (cleaned up) (citation omitted).

The second requirement is referred to as either the "special interest" or "special damage requirement." *Id.* This requirement is comprised of two prongs, the first of which is the illegal or *ultra vires* act prong and is relatively easy to meet. "Plaintiffs must simply allege, in good faith, an *ultra vires* or illegal act by the State or one of its officers." *Id.* at 276 (cleaned up) (citation omitted). Renehan has pled sufficient facts to satisfy this prong.

The second prong is the "specific injury" prong and is more difficult to meet. "The specific injury prong is more opaque, and often proves a 'stumbling block.' Plaintiffs establish specific injury by demonstrating the appropriate type of harm, a nexus between the illegal or *ultra vires* act and the alleged harm, and some modest showing regarding the degree of harm." *Id.* (citation omitted). The plaintiff must allege facts showing a reasonable probability of either pecuniary loss or a tax increase, and the courts will "recognize substantial waste in government operations, even without potential tax increase, as a pecuniary loss sufficient to confer standing. This is because taxpayers, as 'shareholders,' are reasonably entitled to a sound and careful use of funds." *Id.* at 277, 279.[31] The plaintiff must also sufficiently allege a nexus between the challenged act and the potential pecuniary damage. *Id.* at 281-82.

Renehan alleges that, in her capacity as a taxpayer and resident of Montgomery County, she "continues to experience the injurious effects of the agreement between Montgomery County and the police union." (Cross-Claim of Intervenor-Defendant Alexa Renehan Against Defendant Montgomery County, Maryland ¶60). She does not allege any pecuniary loss or tax increase, nor does she allege facts that would support such allegations. In *Floyd v. Mayor and City Council of Balt.*, 463 Md. 226, 234 (2019), the taxpayer plaintiffs, in paragraph 39 of their complaint, alleged: "The *ultra vires* or illegal imposition of a new Zoning Map on Baltimore City will cause Baltimore City taxpayers to suffer pecuniary losses or tax increases." They alleged nothing more

[31] By virtue of a claimant's status as a taxpayer, she has a special interest in wasted funds that is distinct from the general public. Taxpayer "means those in the relevant jurisdiction subject to the taxation which is alleged to have been increased or wasted, while the 'general public' amounts to those who are not subject to such taxation." *Id.* at 280-81. In this way, a taxpayer is again analogous to a corporate shareholder, and just as the plaintiff shareholder in a derivate action is suing to remedy harm suffered directly by the corporation and indirectly by the shareholders, the taxpayer is suing to remedy harm suffered directly by the government entity and indirectly by the taxpayers.

to support that assertion. In affirming the circuit court's dismissal of the complaint, the Supreme Court pointed to that allegation, and the ones that followed, holding that they were woefully inadequate:

> At oral argument, Petitioners' counsel argued that Petitioners had sufficiently alleged pecuniary loss and an increase in taxes, and drew this Court's attention to paragraphs 39 through 50 of the complaint, set forth above. A review of the complaint, however, demonstrates otherwise. In the complaint, at paragraph 39, Petitioners baldly alleged that "[t]he *ultra vires* or illegal imposition of a new Zoning Map on Baltimore City will cause Baltimore City taxpayers to suffer pecuniary losses or tax increases." Petitioners did not allege, with any explanation or particularity, the pecuniary losses or tax increases expected or how the new Zoning Map potentially would result in such harm. Petitioners simply stated that pecuniary loss and tax increases would occur. This is a bare allegation that, in and of itself, is insufficient to establish taxpayer standing. Were we to conclude otherwise, anyone could establish taxpayer standing by merely using the magic words "pecuniary loss and an increase in taxes."
>
> Similarly, in paragraphs 44 and 45, Petitioners alleged that adoption of the Zoning Map by *ultra vires* or illegal means could "overburden the taxpayer-funded resources of City agencies, boards[,] and commissions that review and issue permits and zoning authorizations[,]" and would "place extra burdens on the taxpayer-funded resources of the City Law Department[.]" The meaning of these allegations is difficult to discern. More importantly, the allegations fall far short of alleging any pecuniary loss or increase in taxes potentially caused by the comprehensive rezoning, and instead appear to refer to potential costs caused by defending challenges to the comprehensive rezoning and Zoning Map. In addition, in paragraph 50 of the complaint, Petitioners alleged that "[b]onds may be issued to support the development of unlawfully rezoned property." Again, this allegation lacks any explanation or specificity. Overall, the complaint fails to allege any injury resulting in a pecuniary loss or an increase in taxes due to the comprehensive rezoning.
>
> In the complaint, Petitioners alleged harm that has no connection whatsoever to a pecuniary loss or tax increase. For example, in paragraph 40 of the complaint, Petitioners alleged that "[a] Zoning Map adopted by *ultra vires* or illegal means lacks the presumption of validity afforded in Maryland to lawful comprehensive rezonings." And, in paragraph 41, Petitioners alleged that "an unlawfully adopted Zoning Map w[ould] bring prolonged instability to Baltimore City" because there is "no statute of limitations for claiming error in a comprehensive rezoning[.]" The alleged harms—lack of presumption of validity and instability—are not the types of injury on which taxpayer standing is predicated. These types of alleged harms have no relationship to the expenditure of public funds or taxation in Baltimore City. The comprehensive rezoning ordinances are not spending or tax

> bills, and there was no well-pled allegation that taxes were, or would be, raised as a result of the enactment of the ordinances, or that the enactment of the ordinances would result in pecuniary loss.

Id. at 256-57.

The same is true here. The County's motion to dismiss Count I is granted, but with thirty days leave to amend.

3. Counts II and IV of Renehan's cross-claim are dismissed with prejudice.

Count II is entitled, "Defendant violated Ms. Renehan's Procedural Due Process rights under the Fourteenth Amendment of the Constitution of the United States and under Article 24 of the Maryland Declaration of Rights by obstructing the disclosure of public records." Count IV is entitled, "Defendant violated Ms. Renehan's right to petition under Article 40 of the Maryland Declaration of Rights and under the First Amendment of the U.S. Constitution." Having reviewed the County's motion and reply memorandum, and Renehan's opposition, the motion will be granted, as to Counts II and IV, for all the reasons stated in the County's motion and reply. In particular, the denial of a public information act request does not create a due process claim. *Freeman v. Fine*, 820 Fed. Appx. 836, 839 (11th Cir. 2020); *Trentadue v. Integrity Comm.*, 501 F.3d 1215, 1236 (10th Cir. 2007); *Johnson v. Exec. Office for U.S. Attorneys*, 310 F.3d 771, 777 (D.C. Cir. 2002). And "the right to petition confers no attendant right to a response from the government." *Trentadue v. Integrity Comm.*, 501 F.3d at 1237 (citing *Smith v. Ark. State Highway Employees*, 441 U.S. 463, 465 (1979).

V. CONCLUSION.

As explained above, and for the following reasons, Doe's and the FOP's motion for summary judgment is denied, the County's motion for summary judgment is granted, and the Coalition's and Renehan's motions for summary judgment are granted:

1. The MPIA does not expressly authorize the action brought by Doe and the FOP and implying the right to that cause of action is inconsistent with the MPIA's provisions and the policy choices made by the General Assembly in enacting Anton's Law.

2. The records the County intends to produce do not contain any information that is subject to mandatory denial, and the County is permitted to produce them.

3. Despite Doe's and the FOP's arguments to the contrary, MPIA §§ 4-103(b), 4-301(a)(1), 4-351(b)(4), and 4-329(b)(1) do not preclude the County from producing the requested records.

4. Anton's Law does not violate police officers' due process rights.

5. Anton's Law does not violate police officers' right to equal protection of the law.

6. Anton's Law applies prospectively to all requests made after its effective date, regardless of when the record was created.

7. Anton's Law does not abrogate a vested right.

8. The MOA violates the MPIA and is invalid.

As also explained above, and for the following reasons, the County's motions to dismiss the Coalition's and Renehan's cross-claims are granted in part and denied in part:

1. The County's limitations and laches arguments do not support dismissal of the Coalition's cross-claim and Count III of Renehan's cross-claim.

2. Count I of Renehan's cross-claim, which is based on taxpayer standing to challenge an illegal and *ultra vires* act, fails to allege facts establishing pecuniary loss or tax and increase and nexus, and is dismissed with leave to amend.

3. Counts II and IV of Renehan's cross-claim, alleging a due process violation and a violation of the right to petition, are dismissed with prejudice.

WHEREFORE, it is, this 30th day of March, 2026

ORDERED that Doe's and the FOP's motion for summary judgment (filed November 8, 2024) is **DENIED**; and it is further

ORDERED that the County's motion for summary judgment (filed December 20, 2024) is **GRANTED**; and it is further

ORDERED that the Coalition's motion for summary judgment (filed March 13, 2025) is **GRANTED**; and it is further

ORDERED that Renehan's motion for summary judgment (filed March 17, 2025) is **GRANTED**; and it is further

ORDERED that the County's motion to dismiss the Coalition's cross-claim (filed April 11, 2025) is **DENIED**; and it is further

ORDERED that the County's motion to dismiss Renehan's cross-claim (filed December 20, 2024) is **GRANTED IN PART (COUNTS I, II, AND IV) AND DENIED IN PART (COUNT III)** ; and it is further

ORDERED that Count I of Renehan's cross-claim is **DISMISSED** with thirty days leave to amend; and it is further

ORDERED that Counts II and IV of Renehan's cross-claim are **DISMISSED WITH PREJUDICE**; and it is further

ORDERED that the MOA between the County and the FOP is illegal and invalid and unenforceable; and it is further

ORDERED that a separate written declaratory judgment order, defining the rights and obligations of the parties, as requested by the competing requests for declaratory relief, will be issued, as required by, among other cases, *Catalyst Health Solutions, Inc. v. Magill*, 414 Md. 457, 471-72 (2010); *Lloyd Land, Inc. v. State Highway Admin.*, 408 Md. 242, 256 (2009); and *Bowen v. City of Annapolis*, 402 Md. 587, 608-09 (2007); and it is further

Entered: Clerk, Circuit Court for
Montgomery County, MD
April 3, 2026

ORDERED that a separate Order issuing injunctive relief will be entered.

Judge J. Bradford McCullough

Entered: Clerk, Circuit Court for
Montgomery County, MD
April 3, 2026