IN THE COURT OF APPEALS OF MARYLAND

September Term, 2014

No. 84

MARYLAND DEPARTMENT OF STATE POLICE

Petitioner/Cross-Respondent,

v.

TELETA DASHIELL

Respondent/Cross-Petitioner.

BRIEF OF RESPONDENT/CROSS-PETITIONER TELETA DASHIELL

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STATEMENT OF THE CASE

This case presents a question that is at the heart of the Nation's growing recognition that transparency is essential to building and maintaining community trust in law enforcement: Will the public ever get to see records reflecting how Maryland law enforcement agencies handle specific cases of *proven* officer misconduct, or will such records be kept secret from even the victims of such misconduct?

More than five years ago, on November 19, 2009, a Maryland state trooper directed racist slurs against Teleta Dashiell in the performance of his official duties. As a young African-American woman in a county with a long history of racial violence and oppression, the legacy of which persists today, it was no small thing for her to walk into the Princess Anne Barrack and swear out an official complaint against a white Maryland State Police sergeant. But she did.

Several months later, on February 17, 2010, the MSP assured Ms. Dashiell it had investigated her complaint, sustained it, and taken "appropriate" action. Ms. Dashiell, however, wanted to know more than mere platitudes from the MSP about how it had handled her case. She wanted to see if the MSP only sustained her complaint because the proof of the officer's misconduct was captured on tape. She wanted to see if the MSP's investigation accounted for the fact that a trooper used racial slurs freely in conversation with other troopers. In short, she wanted to see for herself whether the MSP had taken her complaint seriously. Her skepticism was not unwarranted. Her case fell against the backdrop of more than 25 years of litigation addressing civil rights violations by the MSP, including racial profiling of African-American motorists and spying on political

activists, as well as revelations that, out of approximately 100 citizen complaints alleging racial profiling from 2003 to 2008, the MSP did not sustain a single one.

Yet, on March 2, 2010, when Ms. Dashiell made this reasonable request for documents pertaining to her complaint under the Maryland Public Information Act ("MPIA"), she was denied. The MSP contended that all records pertaining to her complaint and its investigation—including even her own statement—were exempt from disclosure under the MPIA because, among other things, they were "personnel records" of an officer and "confidential" under the Law Enforcement Officers Bill of Rights ("LEOBR"). The MSP also claimed that no part of its files relating to her complaint were severable or able to be disclosed even in redacted form. According to the MSP, the offending officer's purported privacy interests in keeping the details of his wrongdoing, Ms. Dashiell's complaint, and the agency's investigation secret were paramount.

On October 27, 2010, Ms. Dashiell filed suit in Baltimore County Circuit Court, challenging the MSP's denial of her request. Promptly thereafter, the MSP moved to dismiss or for summary judgment. The trial court granted the MSP's motion, entering summary judgment for the MSP on June 28, 2011. Ms. Dashiell appealed to the Court of Special Appeals, and the case was heard on October 4, 2012. The intermediate appellate court issued its decision on October 8, 2014, rejecting the MSP's position that such records were categorically barred from disclosure under the MPIA, under either the "personnel records" exemption or the MPIA's interaction with the LEOBR, and remanding the case to the trial court for further proceedings.

This appeal followed. Perhaps more pointedly than any prior MPIA appeal, it implicates the wisdom of the General Assembly's recognition in the MPIA that

transparency in government is essential to trust in government. That wisdom is implicated particularly meaningfully in the context of law enforcement, as the police wield unique power in their authority to initiate criminal investigations, detain, search and use force. Transparency regarding how a police agency has handled proven cases of misconduct, achieved through disclosure of public records, advances the compelling public interest in police accountability, especially where, as here, there is strong evidence of past misconduct. This is all the more evident now in light of the national conversation about the state of policing, the mounting evidence that trust in police, particularly among communities of color, is at historic lows, and the demands for greater transparency in policing coming from the very highest levels of our government.

Yet the MSP clings to the extreme and insupportable position that neither Ms. Dashiell, nor any other member of the public, has any right to see records showing how it handles *confirmed* misconduct. The MSP claims that, regardless of the context, such records are categorically exempt from disclosure. If the MSP's argument were to stand, no one outside the MSP—including the individual whose grievance *triggered* the investigation—would ever know how the agency addressed a sustained citizen complaint. By flouting the public's interest in obtaining assurance that official misconduct is properly addressed, this level of official secrecy profoundly undermines the public trust that law enforcement must build and sustain to function effectively. "Trust us" is simply not an adequate response to the community's valid questions—neither for the community nor for the legitimacy of law enforcement itself.

The better approach, embraced by the Court of Special Appeals and supported by the text, history, and purpose of the MPIA, rejects the MSP's categorical claims. The

Court of Special Appeals properly recognized that faithful adherence to the text, history, and purpose of the MPIA requires balancing the Act's presumption of government transparency against any privacy interests at stake. In this case, the requested records would provide vital information about how the government responded to racially discriminatory misconduct by a police officer. And they are the *only* official records that would provide such information. Consistent with the goal of open government that animates it, the MPIA does not prohibit disclosure of these records.

The MPIA's personnel records exemption does not preclude disclosure because disclosure would not result in an unwarranted invasion of privacy. Nor does the LEOBR preclude disclosure because the LEOBR, by its plain terms, does not confer confidential status upon internal investigation records outside the context of pending disciplinary proceedings. The MPIA's investigatory records exemption also does not preclude disclosure because Ms. Dashiell—who has a compelling interest in accessing records arising from her *own* civil rights complaint—qualifies as "a person in interest," and none of the circumstances prohibiting disclosure to a person in interest exists.

QUESTIONS PRESENTED

1. Does the personnel records exemption in GP § 4-311 prohibit disclosure of the records of an internal affairs investigation resulting in a "sustained" finding that a police officer engaged in misconduct toward a member of the public in the performance of his official duties?

2. Does § 3-104(n) of the Law Enforcement Officers' Bill of Rights prohibit disclosure of the records of an internal affairs investigation outside the context of a pending disciplinary proceeding?

3. Does a police misconduct victim who files a citizen complaint that triggers an internal affairs investigation qualify as "a person in interest" under the investigatory records exemption in GP § 4-311 and thereby enjoy a fortified right to obtain the records of that investigation once it is closed?

STATEMENT OF FACTS

On November 3, 2009, Maryland State Police Sgt. John Maiello telephoned Ms. Dashiell, a potential witness in a case he was investigating. (E. 9). Sgt. Maiello left a message identifying himself and asking her to call him back. (E. 9). He then continued speaking, apparently in conversation with another MSP trooper, and disparaged Ms. Dashiell as "some God dang n****r." (E. 9). His statements were recorded as a message on Ms. Dashiell's voicemail:

> "Why, that's what I think about it, and I need to hear shit like that . . . . That's when I say to myself, 'Oh my God' . . . I'm listening to some God dang n****r's voicemail play for 20 minutes."

(E. 9).

After listening to the voicemail, Ms. Dashiell was distraught, and uncertain how to proceed. She contacted the MSP's Princess Anne Barrack and inquired about the complaint process. (E. 9). The barrack commander directed Ms. Dashiell to come to the barrack and give a statement. (E. 9). Although intimidated at the prospect, Ms. Dashiell did as she was directed.

Nearly four months later, Ms. Dashiell received a letter from MSP Captain Kristina Nelson stating that Ms. Dashiell's complaint had been assigned to Detective Sergeant Kristi Meakin of the Internal Affairs Section for investigation, and that the investigation had confirmed Ms. Dashiell's allegations. (E. 9–E. 10; E. 247). Captain Nelson's letter also stated that she had "reviewed Detective Sergeant Meakin's investigative file and concur[red] with her sustained findings. As a result of these findings the appropriate disciplinary action was taken against Sgt. Maiello and documented in his personnel file." (E. 10; E. 247). The letter provided no additional information about how the investigation was conducted, or anything about any reforms resulting from the incident.

After receiving the letter, Ms. Dashiell decided she wanted more information. After her experience with Sgt. Maiello, Ms. Dashiell had little confidence that she could trust what the MSP's letter told her about the investigation into her complaint. She therefore concluded that she needed to review all documents pertaining to the investigation so that she could form her own opinion about the MSP's investigation and response to her complaint. (E. 10).

Accordingly, Ms. Dashiell submitted an MPIA request to the MSP seeking documents relating to her complaint and the MSP's handling of it. (E. 10–E. 11; E. 247–E. 250).[1] Additionally, Ms. Dashiell requested that, if the MSP document custodian

[1] Specifically, she sought any documents including, but not limited to, those created or obtained during the investigation, incident reports, witness statements, charging documents, complaint control card (i.e., the document completed after Ms. Dashiell's complaint was filed), and the results of the internal investigation and of the review of the investigation's findings. (E. 10; E. 247–E. 250).

claimed that any of the documents resulting from the investigation of her complaint were exempt under the MPIA, the MSP allow her to review any reasonably severable portion of such records. (E. 250).

The MSP rejected Ms. Dashiell's request in its entirety. (E. 11; E. 52–E. 55). In its response, the MSP told her that *each and every* record requested—including her own complaint and statement—was exempt from disclosure because (1) the LEOBR prohibited their disclosure, (2) the records were personnel records, (3) the records were intra-agency memoranda and disclosure was contrary to the public interest, and (4) the records were investigatory records and disclosure was contrary to the public interest. (E. 52). The MSP provided no information regarding what records existed and were being withheld.

Ms. Dashiell replied to the MSP's denial of her request. She disputed the MSP's contentions and pointed out that records created because of her complaint were investigation records whose disclosure would directly benefit the public interest. She reminded the MSP that any records that were reasonably severable from those that were exempt from disclosure had to be disclosed under the MPIA's severability mandate. (E. 11–E. 12; E. 252–E. 253). She requested an index of the investigatory records as to which the MSP denied inspection. (E. 252). The MSP responded by again refusing to produce any records, and refusing even to provide an index of the records that the MSP withheld. (E. 237–E. 238).

After the MSP again denied her request, Ms. Dashiell brought this action in the Circuit Court for Baltimore County, contending that the MSP's refusal to disclose public records violated the MPIA. (E. 6–E. 14).

Before discovery opened, the MSP filed a Motion to Dismiss or in the Alternative a Motion for Summary Judgment. (E. 15–E. 43). After briefing and oral argument, the court ruled from the bench, granting summary judgment to the MSP on the grounds that all of the records sought by Ms. Dashiell were contained in Sgt. Maiello's personnel file and thus qualified as "personnel records" exempt from disclosure under the MPIA. (E. 442–E. 443; E. 445). The court did not order the MSP to create an index of the withheld documents and did not review any of the documents *in camera*. Nor did the court require the MSP to produce any reasonably severable portions of the file or address any of the alternate justifications for non-disclosure the MSP offered. (E. 441–E. 443).

Ms. Dashiell appealed the Circuit Court's summary judgment ruling to the Court of Special Appeals. (E. 446). That court issued its decision on October 8, 2014. *Dashiell v. Md. State Police Dep't*, 219 Md. App. 647 (2014). The court analyzed this Court's decisions in *Montgomery County Maryland v. Shropshire*, 420 Md. 362 (2011), and *Maryland Department of State Police v. Maryland State Conference of NAACP Branches*, 430 Md. 179 (2013), to determine whether the investigation records resulting from Ms. Dashiell's sustained complaint were exempt from disclosure. The court stated that it was "difficult . . . to see how the trial court could properly determine the applicability of any exemption under the [MPIA] without having detailed information about each document withheld or conducting an *in camera* review of all such documents." *Dashiell*, 219 Md. App. at 671.

The court concluded that without such information, it could not conduct a review of the legality or propriety of the MSP's refusal to disclose the records created as a result of Ms. Dashiell's complaint. *Id.* at 672. Relying on *Maryland NAACP*, the court

declined to classify the documents categorically as "personnel records" under the MPIA. The court instead remanded the case for further proceedings in which the MSP would identify each document and the circuit court would review them *in camera* to determine whether any were exempt from disclosure under the MPIA. *Id.* at 672-73.

The Court of Special Appeals further determined that, contrary to the MSP's contention, the LEOBR did "not govern whether documents from an internal investigation [we]re subject to disclosure to third parties under the MPIA." *Id.* at 663. The court held that the LEOBR "'deal[s] only with the rights of the *officer* and serve as a protection for them.'" *Id.* (emphasis in original). The court accordingly concluded that disclosure of the records pertaining to Ms. Dashiell's complaint "would not be contrary to the LEOBR under SG § 10-615(2)(i)." *Id.* at 664.

The court also decided that Ms. Dashiell was not a "person in interest" under the MPIA, and thus was not entitled to require the MSP's custodian of records to meet a higher standard of proof to deny her access to the records she sought. *Id.* at 662. The court acknowledged that in *Mayor & City Council of Baltimore v. Maryland Committee Against the Gun Ban*, 329 Md. 78 (1993) ("*Gun Ban II*"), this Court "left open the question of whether a complaining witness may be a 'person in interest.'" *Id.* at 661. The court answered that question by relying on its own decision in *Briscoe v. Mayor & City Council of Baltimore*, 100 Md. App. 124 (1994). The court determined that, under *Briscoe*, only Sgt. Maiello could be the subject of the records created during the investigation of Ms. Dashiell's complaint, and, thus, only he qualified as a "person in interest" with respect to the requested records. *Id.* at 662.

STANDARD OF REVIEW

This Court reviews *de novo* a Court of Special Appeals' reversal of a Circuit Court's grant of summary judgment. *Charles Cnty. Comm'rs v. Johnson*, 393 Md. 248 (2006). The question for the Court is whether the circuit court's legal rulings were legally correct. *Matthews v. Howell*, 359 Md. 152, 161-62 (2000). The Court likewise reviews *de novo* any issue "involv[ing] the interpretation and application of Maryland constitutional, statutory, and case law." *Schisler v. State*, 394 Md. 519, 535 (2006).

SUMMARY OF ARGUMENT

1. The MSP has not carried its burden of proving that the requested records are exempt from disclosure as "personnel records" under GP § 4-311.

Consistent with its "common sense meaning," the personnel records exemption only protects records that: (1) directly pertain to a government employee's job performance abilities, *Kirwan v. The Diamondback,* 352 Md. 74, 83-84 (1998); and (2) enjoy a reasonable expectation of privacy. *Univ. Sys. of Maryland v. Baltimore Sun Co.*, 381 Md. 79, 99-100 (2004); *see also* Md. Code Ann., GP § 4-103(b).

Because the MSP's failure to provide a document index and the trial court's failure to conduct an *in camera* review made it impossible to determine whether each and every one of the requested records directly pertained to Sgt. Maiello's job aptitude, the Court of Special Appeals properly found that the requested records could not receive blanket protection as personnel records.

The Court of Special Appeals nonetheless erred in failing to recognize that, with the exception of necessary redactions for personal identifiers like home addresses, none

of the requested records are, in fact, exempt from disclosure under GP § 4-311 because none of them enjoys a reasonable expectation of privacy. The requested records would principally shed light on how the MSP, as an agency, addressed Sgt. Maiello's confirmed misconduct. Neither the MSP nor any trooper possesses any expectation of privacy in the MSP's performance. To the extent the requested records also would reveal Sgt. Maiello's proven, racially-charged behavior, they are not "private." Sgt. Maeillo's identity and actions are already a matter of public record. More importantly, Sgt. Maiello was performing his official duties with a potential witness during an investigation, and his actions generated a *sustained* complaint of misconduct. In view of GP § 4-103(b), this Court's precedents, the examples of personnel records in GP § 4-311, the policy considerations animating the MPIA, and pertinent authority from other jurisdictions, records relating to such misconduct are "exactly the types of records to which the Legislature intended the public to have access." *Baltimore Sun Co.*, 381 Md. at 102.

Shropshire—which involved a specific set of facts, including an *unsustained* complaint of an administrative rule violation—does not compel a different conclusion. If credited, the MSP's assertion that *Shropshire* establishes blanket protection for all internal affairs records would leave the public with *zero* means of assessing the sufficiency of a law enforcement agency's response to proven misconduct toward a civilian by one of its own officers. That indefensible result, which flouts the very purpose of the MPIA, is neither required nor permitted by the personnel records exemption.

2. As the Court of Special Appeals correctly found, the LEOBR, as a source of state law under GP § 4-301(2)(i), does not prohibit disclosure. The LEOBR

guarantees law enforcement officers certain procedural safeguards *during the pendency of* disciplinary proceedings. Contrary to the MSP's assertions, neither the text nor history of § 3-104(n), nor the case law interpreting it, confers confidential status on internal affairs investigation records outside the confines of pending disciplinary proceedings. Rather, Section 3-104(n) "deal[s] only with the rights of the officer and serve[s] as a protection for them," and "does not address, or even purport to address" the right of access to public records, which is at the heart of the MPIA and "critical to the resolution of this case." *Robinson v. State*, 354 Md. 287, 308 (1999).

3. The investigatory records exemption, GP § 4-351, also does not prohibit disclosure. Faithful adherence to the text, history and purpose of the exemption's exception for "***a*** person in interest"—as distinguished from the exceptions for "*the* person in interest" in the exemptions for, *e.g.*, personnel, retirement and student records, GP §§ 4-311, 4-312 & 4-313—shows that the exception applies not only to targets of investigations, but to victims of misconduct whose complaints trigger investigations. Ms. Dashiell is, therefore, "a person in interest." Indeed, the requested records "respect[] [her] "personally," *Gun Ban II*, 329 Md. at 93 (quoting Senate Committee report), every bit as much as they do Sgt. Maeillo. As "a person in interest," Ms. Dashiell is entitled to the requested records because none of the seven circumstances precluding disclosure to a person in interest presently exists. GP § 4-351(b).

ARGUMENT

The MPIA "establishes a public policy and a general presumption in favor of disclosure of government or public records." *Kirwan,* 352 Md. 74, 81 (1998); *see also*

Maryland NAACP, 430 Md. at 190 (collecting cases); Md. Code Ann., GP § 4-103. This Court has emphasized repeatedly that "the provisions of the Public Information Act reflect the legislative intent that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government. . . . [T]he provisions of the statute must be liberally construed . . . in order to effectuate the Public Information Act's broad remedial purpose." *Kirwan*, 352 Md. at 81 (internal citations omitted); *see also Maryland NAACP,* 430 Md. at 190-91. By directly expressing the MPIA's "broad remedial purpose" in the actual *text* of the statute, the General Assembly has gone further than both the U.S. Congress and many state legislatures in proclaiming fidelity to the goal of open government. *Compare* Md. Code Ann., GP § 4-103(a) *with, e.g.,* 5 U.S.C. § 552 (containing no statement of purpose).[2]

The presumption in favor of disclosure requires that, when a government agency resists disclosure, it carries a heavy burden of showing that the requested record falls within one of the MPIA's exemptions. *Maryland NAACP,* 430 Md. at 191; *Kirwan*, 352 Md. at 78. "Given the PIA's policy in favor of public access, GP § 4-103(a), and the requirement that the PIA 'be construed in favor of permitting inspection of a record,' GP § 4-103(b), these exceptions should be construed narrowly." Office of the Attorney

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[2] *See also* Ala. Code § 36-12-40 (containing no statement of purpose); Alaska Stat. §§ 40.25.110 *et. seq.* (same); Ariz. Rev. Stat. Ann. §§ 39-101 *et. seq.* (same); Conn. Gen. Stat. §§ 1-200 *et. seq.* (same); Ga. Code Ann. §§ 50-18-70 *et. seq.* (same); Idaho Code Ann. §§ 9-337 *et. seq.* (same); Iowa Code §§ 22.1 *et. seq.* (same); La. Rev. Stat. Ann. §§ 44:1 *et. seq.* (same); Mass. Gen. Laws ch. 66, §§ 1 *et. seq.* (same); Minn. Stat. §§ 13.01 *et. seq.* (same); Mont. Code Ann. §§ 2-6-101 *et. seq.* (same); N.C. Gen. Stat. §§ 132-1 *et. seq.* (same); Neb. Rev. Stat. §§ 84-712 *et. seq.* (same); N.D. Cent. Code §§ 44-04-18 *et. seq.* (same); Ohio Rev. Code Ann. § 149.43 (same); S.D. Codified Laws §§ 1-27-1 *et. seq.* (same); Tenn. Code Ann. §§ 10-7-101 *et. seq.* (same); Wyo. Stat. Ann. §§ 16-4-201 *et. seq.*(same).

General, *MPIA Manual* 3-1 (13th ed. 2014) ("MPIA Manual") (citing *Office of the Governor v. Washington Post Co.*, 360 Md. 520, 545 (2000)). Moreover, even when a requested record might fall within one of the MPIA's exemptions, the custodian must redact any reasonably severable portion and produce the rest. Md. Code Ann., GP § 4-203(c)(3); *Maryland NAACP*, 430 Md. at 194-96 (requiring MSP to produce internal affairs investigation files with redactions removing individual identifiers).

I. THE REQUESTED RECORDS ARE NOT PERSONNEL RECORDS.

A. The Personnel Records Exemption Protects Only Records that Directly Pertain to an Employee's Ability to Perform a Job and Enjoy a Reasonable Expectation of Privacy.

GP § 4-311 sets forth one of the MPIA's exemptions. In pertinent part, it provides that "unless otherwise provided by law . . . a custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information." Md. Code Ann., GP § 4-311. Construed narrowly to favor disclosure, the provision does not exempt "*any* record identifying an employee. . . . Instead, the General Assembly likely intended that the term 'personnel records' retain its common sense meaning. This is indicated by the list following the prohibition on the release of personnel records [which refers to applications, performance ratings and scholastic achievement information]." *Kirwan,* 352 Md. at 84 (emphasis in original).

There is essentially a two-part inquiry for determining whether records are "personnel records" within the meaning of GP § 4-311. First, custodians and reviewing courts must examine whether the records "directly pertain to employment *and* an employee's ability to perform a job" because, for example, they "relate to [the

employee's] hiring, discipline, promotion, dismissal, or . . . status as an employee." *Kirwan*, 352 Md. at 83-84 (emphasis added) (concluding that parking tickets were not personnel records because they did not relate to hiring, discipline, promotion, dismissal or job status); *see also Washington Post Co.*, 360 Md. at 548 (telephone and scheduling records from Governor's Office were not personnel records because they were unrelated to "the discipline, promotion, dismissal, status, job performance, or achievement of an existing or former employee").

But a record's connection to an employee's job is not enough, nor is every record related to hiring, discipline, promotion, dismissal or job status categorically exempt. As *Kirwan* commands, the record also must *directly* pertain to an employee's *job performance abilities*. *See, e.g., Baltimore Sun Co.*, 381 Md. at 103 (employment contracts of university football and basketball coaches, though clearly related to hiring and job status, were not personnel records). The three examples of personnel records provided in the text of GP § 4-311—job applications, performance ratings, and scholastic achievement information—demonstrate as much, as all of them directly pertain to job aptitude.

The second part of the inquiry, which is undertaken if the first part is satisfied, is determining whether release of the requested record would result in an unwarranted invasion of a government employee's personal privacy. Several independent sources of authority establish that assessing whether a record qualifies as a personnel record requires determining initially whether it enjoys a reasonable expectation of privacy.

First, there is the Act's express "Construction" mandate found in GP § 4-103(b). The mandate—noteworthy because few statutes contain explicit interpretive guidance—

provides that "[t]o carry out the right [of access to information about the affairs of government] set forth in subsection (a) of this section, *unless an unwarranted invasion of the privacy of a person in interest would result*, this [Act] *shall be* construed in favor of permitting inspection of a public record. . . ." Md. Code Ann., GP § 4-103(b) (emphasis added). The General Assembly's inclusion of the limiting word "unwarranted" means that, if a particular record does not enjoy a *reasonable* expectation of privacy—one that is "warranted"—any MPIA exemption potentially applicable to the record must be construed in favor of disclosure. Nothing in the MPIA suggests that this directive is inapplicable to the personnel records exemption. To the contrary, as this Court has observed, the very language of GP § 4-103(b) makes clear that "it is the threat of, and protection against, an unwarranted invasion of privacy that led to the exclusion[] in [GP § 4-311]." *Baltimore Sun Co.*, 381 Md. at 95.

If there had been any doubt that GP § 4-103(b) meant that the personnel records exemption in GP § 4-311 shields only those records that have a reasonable expectation of privacy, the *Maryland NAACP* decision extinguished it. As the Court emphasized in *Maryland NAACP,* GP § 4-311(a) states that "*unless otherwise provided by law*, a custodian shall deny inspection of a public record, as provided in this section." Like the severability mandate in GP § 4-203(c)(3) at issue in *Maryland NAACP,* the construction mandate in GP § 4-103(b) "is a statutory provision '*otherwise provided by law*.'" *Maryland NAACP*, 430 Md. at 195. Thus, in the same way GP § 4-203(c)(3) requires redaction and disclosure of records that the personnel records exemption might otherwise cover, *id.*, GP § 4-103(b) requires disclosure of such records "unless an unwarranted invasion of privacy . . . would result."

Relying on *Police Patrol v. Prince George's County*, 378 Md. 702 (2013), the MSP nonetheless contends that GP § 4-103(b) has no application to records potentially subject to the personnel records exemption. Brief of Petitioner (filed Feb. 2, 2015) ("MSP Br.") at 22. In fact, *Police Patrol* says the opposite. There, the agency resisted disclosure on the grounds that "the unwarranted invasion of privacy" language in GP § 4-103(b) created a separate, independent exemption. The Court disagreed, and clarified that, "[i]n fact, the . . . language is part of an internal statutory construction provision having no independent effect." *Id.* at 717. Significantly, the Court proceeded to observe that "[the] language [of GP § 4-103(b)] directs that the MPIA be construed more narrowly, and its exemptions more broadly, when privacy issues are at stake." *Id.* The converse, of course, is equally true. When disclosure would *not* result in an unwarranted invasion of privacy, GP § 4-103(b) requires the MPIA to be construed more broadly, and its exemptions more narrowly. As explained *infra,* that is precisely what Ms. Dashiell contends here: because release of the requested records would not result in an unwarranted invasion of privacy, the personnel records exemption, in this case, must be construed narrowly to favor disclosure.

Second, this Court's precedents establish that whether a record qualifies as a personnel record turns on whether it carries with it a reasonable expectation of privacy. In particular, *Baltimore Sun* illustrates how the GP § 4-103(b) reasonable expectation of privacy standard governs application of GP § 4-311. In that case, the *Sun* sought the employment contracts of the University of Maryland's football and basketball coaches, as well as any documents specifying incentives, bonuses, broadcast agreements, athletic footwear contracts, and similar deals. The University disclosed the coaches' salaries, but

denied the remainder of the requests under GP § 4-311 and another mandatory exemption. The Court began its analysis by canvassing the Court's prior MPIA decisions, including *Kirwan* and *Washington Post Co.*, the two principal decisions then applying GP § 4-311. *Baltimore Sun Co.*, 381 Md. at 96-99. Its review of those decisions led it to conclude that GP § 4-311 "intend[s] to address . . . reasonable expectation[s] of privacy." 381 Md. at 99-100; *see also Washington Post Co.*, 360 Md. at 537-38 (records of calls from Governor's house were "private" and exempt from disclosure "[i]n light of one's reasonable expectation of privacy in . . . own home.").

The Court then determined that it was "not persuaded by the appellants' personnel records argument." *Id.* at 101. Records evidencing the coaches' employment arrangements did not enjoy a reasonable expectation of privacy because they involved "the transaction of state business" and "certainly inform[] and give[] context to [the coaches' salaries, which must be disclosed.]" *Id.* at 102. According to the Court, the requested records were "exactly the types of records to which the Legislature intended the public to have access." *Id.* Therefore, "denial of inspection of the employment contracts would contribute to the lack of public understanding of the amounts earned by [the coaches] as a result of their public understanding of their public employment and would thwart achievement of the goal of the MPIA." *Id.* at 103.

Consistent with the *Baltimore Sun Co.* decision, the Court of Special Appeals properly noted in its decision below that the reasonable-expectation-of-privacy analysis applies in this case. *Dashiell*, 219 Md. App. at 673 n.8 ("[T]he instant case involves a finding of a 'sustained' complaint against a police officer. Consequently, concerns about the privacy interests of the police officer weigh much less against the public interest in

disclosure of information concerning confirmed allegations of racist comments by a police officer in the course of his official duties.").

Third, the *ejusdem generis* principle of statutory construction establishes that determining whether a record is a personnel record requires determining whether the record enjoys a reasonable expectation of privacy. *In re Wallace*, 333 Md. 186, 190 (1993) (when "general words in a statute follow the designation of particular things or classes of subjects or persons . . . the general words will usually be construed to include only those things or persons of the same class or general nature as those specifically mentioned"). The statute lists three examples of records that qualify as personnel records: "an application, performance rating, or scholastic achievement information." Each of these examples is of a record that contains private, personal information, the disclosure of which is not justified or "warranted" by the public interest in the operations of government.

There is a very good reason, reinforced by the General Assembly's mandate in GP § 4-103(b), for the reasonable expectation of privacy inquiry. Certain records might bear on employment or reside in a personnel file, yet at the same time provide exactly the kind of vital information about government operations that the MPIA intended the public to have. This is particularly true for records that pertain to citizen complaints about misconduct by government officials. Such records will sometimes reflect personnel matters, such as discipline or dismissal. And sometimes, as in *Shropshire, see infra*, an employee's privacy interests in such records will outweigh the public interest in disclosure—that is, disclosure would result in an *unwarranted* invasion of privacy.

But treating *all* such records as personnel records, regardless of whether disclosure would result in an unwarranted invasion of privacy, would flout the MPIA's very purpose and lead to the perverse result that the public could *never* inspect records resulting from misconduct complaints, even when they show egregious or pervasive misconduct committed by government employees *engaged in their on-duty, official interactions with members of the public*. Further, even in the most extreme cases of misbehavior, the public would *never* learn how a government agency has responded and whether it adequately polices its own. Recent events across the country, from Ferguson to Staten Island and elsewhere, demonstrate the adverse effect such a sweeping rule would have on public trust in law enforcement—precisely the kind of public trust the MPIA intends to foster—is plain. *See, e.g.,* U.S. Dep't of Justice Civil Rights Division, *Investigation of the Ferguson Police Department,* March 4, 2015, at 82, available at http://www.justice.gov/crt/about/spl/documents/ferguson_findings_3-4-15.pdf (discussing how an ineffectual, inaccessible internal affairs system contributed to loss of public trust in Ferguson Police); *Interim Report of the President's Task Force on 21st Century Policing*, March 2015, at 11, available at http://www.cops.usdoj.gov/pdf/taskforce/Interim_TF_Report.pdf ("Task Force Report") (discussing importance of establishing "culture of transparency and accountability in order to build public trust and legitimacy"); U.S. Dep't of Justice, Office of Community Oriented Policing Services, *Building Trust between the Police and the Citizens They Serve: An Internal Affairs Promising Practice Guide for Local Law Enforcement*, at 7, 20-26, 34, 37, available at http://www.theiacp.org/portals/0/pdfs/BuildingTrust.pdf (report of DOJ and International Association of Chiefs of Police discussing, *inter alia*,

importance of transparency of internal affairs process to building and sustaining community trust).

Similar considerations have led courts in other states to interpret the personnel records exemptions in their public records laws to protect only records possessing a reasonable expectation of privacy. *See* cases cited in Section I.B.2., *infra.*[3] Exemption 6 of the federal Freedom of Information Act likewise forbids disclosure of personnel files only when it "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6); *Dep't of Air Force v. Rose*, 425 U.S. 352, 371-73 (1976). This language, including the subjective term "*unwarranted*," mirrors the "unwarranted invasion of the privacy of a person of interest" language in GP § 4-103(b). Exemption 6 case law thus falls within the general rule that FOIA cases are "persuasive" in construing the MPIA. *Fioretti v. Maryland State Bd. of Dental Exam'rs*, 351 Md. 66, 76 (1998); *MPIA Manual* at 3-1–3-2 (collecting cases). Just like GP § 4-311, particularly as construed under GP § 4-103(b), exemption 6 does not provide blanket protection to

[3] The Wyoming Public Records Act's mandatory exemptions were progenitors of the MPIA's mandatory exemptions. *See* MSP Brief in *Maryland State Police v. Maryland NAACP*, Case No. 10-41, at 11 & n.7 (citing Letter from General Assembly Counsel to Hon. Steny Hoyer, President of the Senate (Jan. 13, 1977) at 2). Notably, Wyoming courts have interpreted these MPIA forebears as applying only in those instances where disclosure would result in an "unwarranted invasion of privacy"—even though, unlike GP § 4-103(b), the Wyoming PRA does *not* additionally include a "construction" mandate that requires disclosure "unless an unwarranted invasion of privacy would result." *Houghton v. Franscell*, 870 P.2d 1050, 1055-57 (Wyo. 1994) (mandatory exemption for hospital records "exempts from disclosure under the Public Records Act only those records the disclosure of which would constitute an unwarranted invasion of privacy"); *see also Wyoming Dep't of Transp. v. Int'l Union of Operating Eng'rs Local Union 800*, 908 P.2d 970, 973-75 (Wyo. 1995) (mandatory exemptions for sociological data and trade secret information apply only where disclosure would result in unwarranted invasion of privacy).

employment-related records, but rather protection just for records implicating privacy interests that outweigh the public interest in information about government operations. *See Rose*, 425 U.S. at 372 (exemption 6 determination balances public interest in "open[ing] agency action to the light of public scrutiny" against any individual privacy interests); *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press,* 489 U.S. 749, 773 (1989) (same); *Columbia Packing Co. v. U.S. Dep't of Agriculture*, 563 F.2d 495, 499 (1st Cir. 1977) (noting that under exemption 6 "the public has an interest in whether public servants carry out their duties in an efficient and law-abiding manner").

Contrary to the MSP's contentions, *Shropshire* does not eliminate or modify the reasonable expectation of privacy framework. The MSP posits that *Shropshire* requires *every* document pertaining to police internal investigations to be shielded from disclosure as a personnel record, regardless of whether disclosure would result in an unwarranted invasion of privacy. But *Shropshire* imposed no such requirement. The case involved a specific set of facts. The requester was not a private citizen with no other means of obtaining the requested information, but the Montgomery County Inspector General, a government agency with broad investigatory powers and the corresponding ability to obtain information through alternative measures, including subpoenas. *Shropshire*, 420 Md. at 372-73. Moreover, the records sought were of a local police department's internal investigation of an officer's violation of administrative rules governing how to conduct traffic accident investigations. *Id.* at 366, 382. And importantly, the complaint triggering the internal investigation was unsustained. *Id.* at 366, 374 n.12. Unlike this case, *Shropshire* did not involve either *proven* police misconduct or a department's handling of it. *Dashiell*, 219 Md. App. at 673 n.8.

This Court determined that, *on those facts*, the personnel records exemption applied. One can see why. The person who is the subject of records relating to an unsustained complaint of a department rule violation possesses an expectation of privacy that outweighs any public interest in disclosure, particularly when the requester is a government agency with broad power to acquire the records through means other than the MPIA. *Id.* at 381 (describing harm to officer privacy if records revealing unfounded allegations of rules violations were released); *see also Baltimore Sun Co.*, 381 Md. at 102-03 (distinguishing information in employment contract from information protected by personnel records exemption based on reasonable expectation of privacy).

Shropshire simply did not establish a categorical rule that *all* internal investigative files identifying a particular trooper qualify as personnel records. In fact, the Court expressly left open the question of whether investigative records resulting in a *sustained* complaint of police misconduct would so qualify. *Shopshire,* 420 Md. at 374 n.12. What is more, *Maryland NAACP*, decided *after Shropshire*, left often the question of whether records relating to even certain *unsustained* complaints qualify as personnel records. *Maryland NAACP,* 430 Md. at 194 (declining to decide whether unredacted records of racial profiling complaint investigations are personnel records).[4]

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[4] *Shropshire* expressed concern about the potential effect of disclosure on witness cooperation in internal affairs investigations. *Id.* at 380-81. That policy concern, however, may not supplant the statutory mandate requiring disclosure in the absence of an unwarranted invasion of the subject trooper's privacy. Moreover, disclosure of witness statements from internal investigations already occurs with some frequency because the rights of criminal defendants and civil litigants often require it. *See, e.g., Robinson v. State*, 354 Md. at 309-13 (criminal defendants with constitutional rights to discover internal investigation files containing impeachment material); *Blades v. Woods*, 107 Md. App. 178, 185-86 (1995) (civil litigants with right to discover relevant internal

In short, the MSP's categorical position that *all* internal investigative records are *always* personnel records is inconsistent with GP § 4-103(b) and with the reasonable expectation of privacy standard that this Court, like other courts, has established. Under that standard, some internal investigative records will be shielded from disclosure. Others will not be. A case-by-case determination is required. *Baltimore Sun Co. a*gain is instructive in this regard. After concluding that GP § 4-311 did not shield the coaches' contractual arrangements with the University of Maryland, this Court proceeded to determine whether the financial information exemption—another mandatory exemption "intended to address . . . reasonable expectation[s] of privacy," 381 Md. at 99-100—barred disclosure of documents reflecting financial arrangements between the coaches and third parties. Rather than recognizing a categorical exemption for third party arrangements akin to what the MSP seeks here, the Court expressly adopted a fact-intensive, case-by-case, public and privacy interest-driven framework for determining whether the financial information exemption applies:

> The decision whether it is appropriate to disclose the third party contract under the MPIA is one that cannot be made in a vacuum. . . . If the [trial] court determines that Coach Williams is receiving payments from companies solely as a result of his position as coach of UMCP, and that the income is intimately connected to his activities as coach of UMCP, then that income is part of compensation and subject to disclosure. Thus, for instance, if the third party contract requires that the members of the basketball team wear that party's shoes or clothing during UMCP basketball games, the court may find that the financial benefit to the coach is directly related to the coach's status with the University and, therefore, order the contract pursuant to which it is paid disclosed.

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investigation files). There is no evidence that such disclosures have had a chilling effect on witness cooperation in internal investigations.

Id. at 104-105. This is precisely how the records Ms. Dashiell requested must be analyzed—not within the categorical exemption the MSP urges, but rather within a framework that carefully weighs the vital public interest in seeing records that reveal how the government is functioning, against whatever incidental burden disclosure might impose on employees' privacy interests.

In sum, GP § 4-103(b), this Court's precedents, the examples of personnel records set forth in the text of GP § 4-311, the public policy considerations animating the MPIA and authority from the federal FOIA and other jurisdictions with exemptions similar to GP § 4-311 establish conclusively that the personnel records exemption protects from disclosure only those records in which a government employee enjoys a reasonable expectation of privacy.[5]

B. The MSP Did Not Carry Its Burden of Demonstrating That the Requested Records Either "Directly Pertain" to Sgt. Maiello's Job Aptitude Or Implicate a Reasonable Expectation of Privacy.

1. The Record Below Does Not Show Whether All of the Requested Records Directly Pertain to Job Aptitude Or, If They Do, Whether They Are Non-Segregable and Thus Precluded from Disclosure Even In Redacted Form.

To justify the blanket protection it seeks for the requested records, the MSP had the burden of first establishing that each and every one of the records "directly pertains" to Sgt. Maiello's "employment and ability to perform a job." But the trial court could not determine whether the MSP carried that burden because the trial court did not conduct an

[5] Notwithstanding the current position of the Attorney General's office about how to interpret the personnel records exemption, the office previously stated, "The obvious purpose of [GP § 4-311] is to preserve the privacy of personal information about a public employee that is accumulated during his or her employment." 65 Md. Op. Att'y Gen. 365, 367 (1980).

in camera review of the requested records. And because there was no review, even if any of the requested records did pertain directly to Sgt. Maiello's job performance abilities, the trial court could not determine whether, consistent with GP § 4-203(c)(3) and *Maryland NAACP*, those records could nevertheless be produced with any private, job ability-related information removed. For those reasons, the Court of Special Appeals remanded this case to the trial court for an *in camera*, document-by-document review "to determine whether *each* requested document in the investigatory record is exempt from disclosure under any provision of the MPIA advanced by the MSP, and if exempt, whether any such document is subject to disclosure as severable under SG § 10-614(b)(3)(iii) [now GP § 4-203(c)(3)]." *Dashiell*, 219 Md. App. at 666 (emphasis added).

The Court of Special Appeals was correct in determining that the requested records could not receive blanket protection under the personnel records exemption to the extent that the MSP's failure to provide a document index and the trial court's failure to conduct an *in camera* review made it impossible to determine whether each and every one of the records directly pertains to Sgt. Maiello's job performance abilities. It is certainly possible that some of the records fail to satisfy the directly-pertain-to-job-aptitude criterion. For instance, records reflecting the sanction imposed on Sgt. Maiello do not bear directly on his job aptitude. What they bear on "directly" is the MSP's performance as a steward of the public trust. Similarly, it is possible that, even if a particular record does pertain directly to job aptitude, it may nevertheless be severable and produced in redacted form with the portions implicating privacy concerns removed.

But without a *Vaughn* index and a document-by-document review, it is simply impossible to know.

Although the Court of Special Appeals correctly found that the relationship of the requested records to Sgt. Maiello's job aptitude cannot be discerned without a document index and a document-by-document review, the court nonetheless erred in failing to recognize that, with the exception of necessary redactions for private personal identifiers like home addresses, social security numbers, dates of birth and the like, none of the requested records is exempt from disclosure under GP § 4-311 because none of them satisfies the second part of the test for determining whether they are personnel records. That is, none of them enjoys a reasonable expectation of privacy.[6] We explain.

2. The Requested Records Do Not Enjoy a Reasonable Expectation of Privacy.

The records Ms. Dashiell requested would shed light on how the MSP, *as an agency*, addressed Sgt. Maiello's conduct. Neither the MSP nor troopers such as Sgt. Maiello have a reasonable expectation of privacy in how the agency carries out and follows through on its institutional policies and procedures. 71 Md. Op. Att'y Gen. 368 (1986) ("The agencies involved have no privacy interest to be protected; on the contrary, the public interest requires that they be held accountable for their performance, like any other part of government."); *Reporters' Comm. for Freedom of the Press*, 489 U.S. at 763-65 (privacy interest does not belong to agency); *Maryland NAACP*,

[6] If the Court determines that, notwithstanding the argument in the next section of the brief, it remains possible that certain records, or certain portions of records, possess a reasonable expectation of privacy, then the case should be remanded to the circuit court for a document-by-document reasonable-expectation-of-privacy determination.

190 Md. App. 359, 392 (210) (Kehoe, J., concurring in the judgment) ("an individual trooper has no privacy interest in the policies and procedures of the MSP"), *adopted in relevant part,* 430 Md. at 194-96 (adopting Judge Kehoe's rationale for disclosure under MPIA's severability mandate). The MSP does not contend otherwise. Indeed, the MSP assiduously avoids acknowledging in its Brief that the requested records would show how the MSP addressed Sgt. Maiello's actions.

Although the requested records would show how the MSP handled Ms. Dashiell's complaint, it is true that they incidentally would reveal how Sgt. Maiello behaved in communicating with Ms. Dashiell as a potential witness in a criminal case and why that behavior resulted in a "sustained" finding of misconduct. Sgt. Maiello, however, has no reasonable expectation of privacy in records describing such behavior. These are, after all, records that reveal *proven misconduct* by a state trooper during his *on-duty interaction with a Maryland citizen in an official MSP investigation.* Confirmed misconduct by a state trooper in his official interactions with a member of the public is not "private." As the Court of Special Appeals observed below, an officer's privacy interests "weigh much less against the public's interest in disclosure" of records regarding the investigation of "confirmed allegations of racist comments [made] in the course of his official duties." *Dashiell*, 219 Md. App. at 673 n.8. The *en banc* Court of Special Appeals similarly observed that as to even certain *unsustained* complaints:

> Racial profiling complaints against Maryland State Troopers do not involve private matters concerning the intimate details of the trooper's private life. Instead, such complaints involve events occurring while the trooper is on duty and engaged in public service. As such, the files at issue concern public actions by agents of the State concerning affairs of government, which are exactly the types

> of material the Act was designed to allow the public to see. *A.S. Abell*, *supra*, 297 Md. at 32. A State Trooper does not have a reasonable expectation of privacy as to such records. [citations omitted].

Maryland NAACP, 190 Md. App. at 368; s*ee also Baltimore Sun Co.*, 381 Md. at 102-103 (none of coaches' financial arrangements with State university were exempt because, consistent with the MPIA's goal, citizens are entitled to know amounts State employees earn by virtue of their public employment).[7]

Sgt. Maiello also enjoys no reasonable expectation of privacy in the requested records because both his identity and the conduct the requested records would reveal is already a matter of public record. Ms. Dashiell knows it—which is why she filed her complaint—and, by virtue of media reports, the general public knows it.

Notably, courts in numerous other jurisdictions have concluded that records of investigations resulting in sustained findings of police misconduct are not protected from disclosure as personnel records because they do not have a reasonable expectation of privacy.

In *Cowles Publishing Co. v. State Patrol*, 748 P.2d 597 (Wash. 1998), for instance, a newspaper publisher requested the names of law enforcement officers against whom administrative complaints had been sustained. Unlike the MSP here, the agencies

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[7] *Cf.* Letter of Advice from Attorney General's Office to Del. Samuel I. Rosenberg, (July 7, 2010) at 5, available at http://www.oag.state.md.us/Opinions/index.htm (citing *inter alia*, *Fearnow v. C&P Telephone*, 104 Md. App. 1, 33, *aff'd in relevant part,* 342 Md. 363, 376 (1996); *Malpas v. State,* 116 Md. App. 69, 83-84 (1997); *Hawes v. Carberry,* 103 Md. App. 214, 220 (1995); *Benford v. Am. Broadcasting Co.*, 649 F. Supp. 9, 11 (D. Md. 1986), and concluding that the Wiretap Act does not prohibit citizens from recording trooper conduct during traffic stops because traffic stops do not implicate any reasonable expectation of privacy).

provided copies of all investigative documents. The only information they withheld (via redaction) was information reflecting the identities of the officers involved, the complaining parties and other witnesses. *Id.* at 598. The agencies claimed the right to withhold such information based on the provision in Washington's public records law that, like GP § 4-311, protects individual privacy interests. *Id.* at 605 (citing RCW 42.17.310(1)(b)). Rejecting the agencies' claims, the Supreme Court of Washington found:

> [T]he information contained in the police investigatory reports in the present case does not involve private matters, but does involve events which occurred in the course of public service. Instances of misconduct of a police officer while on the job are not private, intimate, personal details of the officer's life . . . [t]hey are matters with which the public has a right to concern itself.

Id. at 605; *see also Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 787 N.E.2d 602, 607-08 (Mass. App. Ct. 2003) (materials from internal affairs investigation were not subject to exemption because they were not of a personal nature); *Burton v. York Cnty. Sheriff*, 594 S.E.2d 888, 895 (S.C. Ct. App. 2004) (disclosing sheriff's department records regarding investigation of employee misconduct is not an invasion of privacy because the public has a right to know how public employees are performing their jobs and how the department handles employee misconduct allegations); *State of Hawaii Org. of Police Officers v. Soc'y of Prof'l Journalists*, 927 P.2d 386, 408 (Haw. 1996) (information regarding public employee's employment-related misconduct and discipline is afforded less privacy protection because it involves what a public official does in the performance of her official duties); *Amoco Prod. Co. v. Landry*, 426 So. 2d 220, 223 (La. Ct. App. 1982) (finding that disciplinary hearing records

involving employee misconduct do not give rise to a reasonable expectation of privacy); *Herald Co. v. Kent Cnty. Sheriff's Dep't*, 680 N.W.2d 529, 534-35 (Mich. Ct. App. 2004) (finding that disclosing an internal affairs investigation report did not constitute an unwarranted invasion of privacy because the report sheds "light on the official acts and workings of the government"); *Portland v. Anderson*, 988 P.2d 402, 406 (Or. Ct. App. 1999) (noting that any invasion of privacy that would result from disclosing information pertaining to a police officer's conduct while performing official duties is not unreasonable); *Kureczka v. Freedom of Info. Comm'n*, 636 A.2d 777, 781 (Conn. 1994) (disclosure may be denied only "when the information sought does not pertain to legitimate matters of public concern and is highly offensive to a reasonable person and not merely offensive to the person the data concerns").

Because Sgt. Maiello does not have a reasonable expectation of privacy in his confirmed, official misconduct toward Ms. Dashiell, he does not have a reasonable expectation of privacy in the records of the investigation that resulted in a sustained complaint regarding that misconduct, especially because those records principally show what the MSP, as a government agency, did to address the complaint. With the exception of personal identifiers like home addresses, dates of birth, and social security numbers, the records Ms. Dashiell requested are, in their entirety, subject to disclosure.

This conclusion is bolstered by the canons of statutory construction. The records Ms. Dashiell requested concerning a sustained police misconduct complaint are hardly in the "same class" as "an application, performance rating, or scholastic achievement information," the documents expressly identified as personnel records in GP § 4-311.

See In re Wallace M., 333 Md. at 190 (explaining *ejusdem generis* principle of construction); *Rucker v. Harford Cnty.*, 316 Md. 275, 295 (1989) (same); *State v. One Hundred Fifty-Eight Gaming Devices*, 304 Md. 404, 429 n.12 (1985) (same). Unlike the requested records, the statutorily-identified records pertain to job qualifications, and have nothing to do with a government employee's conduct toward a private citizen while carrying out his official duties. Under the *ejusdem generis* principle of statutory construction, the requested records do not qualify as personnel records. *See Kirwan*, 352 Md. at 82-83 (parking tickets are not of the same class as the records identified in GP§ 4-311). The "common sense meaning" of the term "personnel record" likewise compels this result. *Id.* at 84.

Shropshire is not to the contrary. As explained above, *Shropshire* involved an MPIA request by an Inspector General for investigative records regarding an unsustained complaint of an administrative rule violation by local police officers, and it expressly left open the question of whether investigative records regarding a sustained complaint would be exempt from disclosure under GP § 4-311. Unlike *Shropshire*, this case involves a request by a private citizen who possesses no other means of obtaining the documents; confirmed racist remarks directed toward that person during an official criminal investigation, as opposed to an alleged administrative rule violation resulting from an officer's purported lack of thoroughness of an accident investigation; and importantly, a sustained complaint.

If the MSP's position were to prevail here, the public would be left with no means of assessing the sufficiency of a law enforcement agency's response to proven misconduct toward a civilian by one of its own officers. That result is neither required

nor permitted by the personnel records exemption. Indeed, that result would defy the MPIA's presumptive disclosure mandate, undermine the MPIA's broader goal of open government, and create substantial public policy problems, including diminishing public trust in law enforcement. GP § 4-311 does not shield the requested records from disclosure.

II. THE COURT OF SPECIAL APPEALS CORRECTLY DETERMINED THAT THE LEOBR DOES NOT BAR DISCLOSURE OF THE REQUESTED RECORDS.

This Court should affirm the Court of Special Appeals' ruling that disclosure of the requested records "would not be contrary to the LEOBR under SG § 10-615(2)(i)," which prohibits releasing records if the inspection would be contrary to a State statute. *Dashiell*, 219 Md. App. at 664. The Court of Special Appeals correctly determined that § 3-104(n) of the LEOBR does "not govern whether documents from an internal investigation are subject to disclosure to third parties under the MPIA." *Id.* at 663. Neither a fair reading of § 3-104(n) under basic principles of statutory construction, nor the cases interpreting § 3-104(n), support the MSP's position that Ms. Dashiell may not receive the requested records under the MPIA.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature . . . begin[ning] with the plain language of the statute, and ordinary, popular understanding of the English language." *Kushell v. Dep't of Natural Res.*, 385 Md. 563, 576 (2005). "If statutory language is unambiguous when construed according to its ordinary and everyday meaning, then [Courts] give effect to the statute as it is written." *Id.* at 577. This plain language analysis does not occur in isolation, but rather in the context of the statutory scheme as a whole. *Id.*

A plain reading of the text of § 3-104(n) of the LEOBR, in conjunction with the LEOBR's statutory scheme, shows that § 3-104(n) is confined to ensuring the due process rights of officers facing potential disciplinary action. It does not establish a general rule of confidentiality for internal investigations records across all contexts.

The LEOBR's purpose is "to guarantee law enforcement officers certain procedural safeguards *during any investigation and subsequent hearing* which could lead to disciplinary action, demotion, or dismissal." *Ocean City Police Dep't v. Marshall*, 158 Md. App. 115, 123 (2004) (emphasis added); *see also Robinson*, 354 Md. at 308 ("[t]hese [LEOBR] provisions deal only with the rights of the officer and serve as a protection for them"). By its terms, the statute's sole concern is the process afforded to a police officer who is the subject of potential disciplinary action. *Fraternal Order of Police Montgomery Cnty. Lodge 35 Inc. v. Manger*, 175 Md. App. 476, 496 (2007) ("The procedural safeguards afforded to the officer during the official inquiry into his conduct constitute the heart of the [LEOBR]'s protections.").

Nonetheless, the MSP claims that § 3-104(n) of the LEOBR establishes that all records pertaining to internal affairs investigations are confidential, regardless of context. But the text of § 3-104(n) does no such thing. The statutory language simply guarantees the right of an officer to inspect certain evidence in an investigatory file in advance of an administrative hearing. And in furnishing this right, § 3-104(n) requires the officer to sign an agreement committing not to disclose its contents except to aid in his or her own defense. The section does nothing more. The provision states:

(n) Information provided on completion of investigation.

> (1) On completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be:
> (i) notified of the name of each witness and of each charge and specification against the law enforcement officer; and
> (ii) provided with a copy of the investigatory file and any exculpatory information, if the law enforcement officer and the law enforcement officer's representative agree to:
> 1. execute a confidentiality agreement with the law enforcement agency not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the law enforcement officer; and
> 2. pay a reasonable charge for the cost of reproducing the material.
> (2) The law enforcement agency may exclude from the exculpatory information provided to a law enforcement officer under this subsection:
> (i) the identity of confidential sources;
> (ii) nonexculpatory information; and
> (iii) recommendations as to charges, disposition, or punishment.

The Court of Special Appeals correctly concluded that nothing in the text of this provision generally confers confidential status on internal investigation records. Indeed, the text does not even purport to address that question. As this Court observed in *Robinson*, § 3-104(n) "deal[s] only with the rights of the officer and serve[s] as a protection for them." *Robinson*, 354 Md. at 308. Nothing in its "plain language" confers confidential status on all internal investigation records. *See Kushell,* 385 Md. 563 at 576; *Dep't of Health v. Kelly*, 397 Md. 399, 419 (2007).

If the General Assembly had intended the LEOBR to shield all records of internal investigations from disclosure, regardless of their status or context, it would have included such language in the statute. *Witte v. Azarian,* 369 Md. 518, 525 (2002) ("[T]he Legislature is presumed to have meant what it said and said what it meant."); *Md. Nat'l Capital Park & Planning Comm'n v. Anderson*, 395 Md. 172, 189 (2006) (legislature

knows how to craft provision for judicial review in LEOBR and, had it wanted to do so, could have included right to appeal not guilty determinations; the fact that it did not shows no such right was intended); *Kushell,* 385 Md. 563 at 580-81 (legislature knows how to craft personal property tax provisions to ensure they do not depend on owner's intent for property at time of purchase; fact that tax provision at issue was not worded that way demonstrated that exclusion was purposeful). It did not. In fact, § 3-103, which describes the "[r]ights of law enforcement officers generally," sets forth privacy protections for certain types of information, such as income and debts, but makes *no* reference to a general right of confidentiality in internal affairs records. Md. Code Ann., Pub. Safety § 3-103(c).

The legislative history of § 3-104(n) confirms its narrow scope. *See* Appendix to MSP Br. at 14-15. Confronted with officers' inability to obtain exculpatory evidence because law enforcement agencies were treating internal investigation records as confidential, the General Assembly acted to ensure that officers facing disciplinary action had access to such evidence. *Id.* In so doing, the legislature was not establishing blanket confidentiality for all internal investigation records. Rather, it was recognizing restrictive and unfair practices within law enforcement agencies and crafting a compromise in answer to the specific question of which information must be provided to an officer facing disciplinary action. The legislature adopted this provision to provide a floor for the disclosure of internal investigation records—a minimum requirement—in advance of disciplinary hearings; it did not establish any rule about the confidentiality of such records generally and in all contexts.

Contrary to the MSP's arguments, the case law interpreting § 3-104(n) has not deviated from either the statutory text or the legislative purpose. In fact, the case law further demonstrates why MSP's reliance on the LEOBR to withhold the requested records is misplaced.

MSP points to *Robinson*, 354 Md. 287 at 313, to support its argument that § 3-104(n) creates blanket confidentiality for internal investigation records. MSP Br. at 28. But, as noted, the *Robinson* Court expressed skepticism that the LEOBR established *any* rule of confidentiality outside the specific context of a pending disciplinary proceeding: "These provisions deal only with the rights of the officer and serve as a protection for them." *Id.* at 308. The Court went on: "[The LEOBR's provisions] do not address, or even purport to address, the due process concerns that are at the heart of the Jencks/Carr principle and are critical to the resolution of this case." *Id.* Likewise, § 3-104(n) "do[es] not address, or even purport to address" the right of access to public records, which is "at the heart of [the MPIA] and [is] critical to the resolution of *this* case." *Id.* (emphasis added).

Moreover, the Court in *Robinson* resolved the requested disclosure issue before it without reaching the question of the LEOBR's effect outside the confines of a pending disciplinary proceeding. The Court assumed that, even if the records *were* confidential, such purported confidentiality "d[id] not guarantee insulation of the confidential matter from disclosure. The confidentiality must be *balanced* . . . ." *Id.* at 309 (emphasis added); *see also Baltimore City Police Dep't v. State*, 158 Md. App. 274, 284-86 (2004) (discussing *Robinson*). "[I]n [the] context [of *Robinson*]," the assumed confidentiality

interest had to be balanced against "the due process and confrontation rights of [a criminal] defendant." *Robinson*, 354 Md. at 309. In the context of this case, any such assumed interest—again, Ms. Dashiell disputes that the LEOBR creates one—would have to be balanced against the statutory right of access to public records that the MPIA guarantees.[8] And as in *Robinson*, where the Court found that the defendant's interest in obtaining investigation records regarding *unsustained* allegations of misconduct would have prevailed, the countervailing right here would prevail. That is because, for the reasons explained in Section I, *supra*, the public interest in assessing how the MSP addressed *sustained* allegations of demonstrably racist behavior by a state trooper would outweigh the negligible or nonexistent privacy interest the trooper has in his official, on-duty interactions with a Maryland citizen.

In sum, § 3-104(n) of the LEOBR does not shield the requested records from disclosure. By its plain terms, it does not even apply to the requested records. Even if it did, the public interest in disclosure would far outweigh Sgt. Maiello's interest in non-disclosure.

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[8] That the countervailing interests in *Robinson* happened to be a criminal defendant's confrontation and due process rights does not confine the universe of such interests to those rights and, contrary to the MSP's assertions, nothing in *Robinson* comes close to saying it does. Indeed, the Court in *Robinson* expressly observed that the balance, "*in this context*," *Robinson*, 354 Md. at 309 (emphasis added), was between an officer's assumed confidentiality interest and a criminal defendant's constitutional rights. The Court did not confine the required balancing to that context.

III. BECAUSE MS. DASHIELL IS "*A* PERSON IN INTEREST" AS TO THE RECORDS GENERATED BY HER COMPLAINT, THE MPIA's INVESTIGATORY RECORDS EXEMPTION DOES NOT PRECLUDE HER FROM OBTAINING THEM.

Ms. Dashiell's cross-appeal presents, as a matter of first impression, the question this Court left open over 20 years ago in *Gun Ban II*: "whether a complaining witness may be a 'person in interest'" entitled to heightened access to information pursuant to GP §4-351 of the MPIA.[9] *Gun Ban II,* 329 Md. at 90. For the reasons that follow, the answer is "yes." Under the investigatory records exemption in GP § 4-351—yet another exemption the MSP has invoked—a complainant like Ms. Dashiell is "a person in interest." As such, she may not be denied access to the requested records created as a result of her own complaint under GP § 4-351.

A. The Text, History, and Purpose of the Phrase "A Person in Interest" in the Investigatory Records Exemption Establish that the Phrase Is Not Limited to the Target of the Investigation.

While the MPIA promotes open access to government information for all Marylanders, it also recognizes that "persons in interest" are entitled to even greater access, as it excepts them from application of certain exemptions. One of the exemptions providing for such an exception is the investigatory records exemption in GP § 4-351. The text, history, and purpose of the phrase "a person in interest" in that exemption

[9] It will be necessary for the Court to resolve this question if the MSP's personnel records and LEOBR arguments are rejected, given that the MSP also refused disclosure under the investigatory records exemption and, in the process, denied that Ms. Dashiell was "a person in interest" under that exemption. Although the trial court did not reach this issue, the Court of Special Appeals did, erroneously adopting the position that Ms. Dashiell does not qualify as "a person in interest" under GP § 4-351, even with respect to the records arising from her own complaint.

shows that the phrase includes victims of misconduct who, like Ms. Dashiell, lodge complaints that trigger investigations.

1. The Plain Language Used in the Investigatory Records Exemption, "*A* Person in Interest," Includes MPIA Requesters Whose Complaints Trigger Investigations.

"'The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.'" *Degren v. State*, 352 Md. 400, 417 (1999) (quoting *Oaks v. Connors*, 339 Md. 24, 35 (1995)). Accordingly, if the language of a statute "is unambiguous when construed according to its ordinary and every day meaning," then a court must "give effect to the statute as it is written." *Magnetti v. Univ. of Maryland*, 402 Md. 548, 565 (2007).

The meaning of the person-in-interest exception in the investigatory records exemption is clear and unambiguous. The General Assembly employed the indefinite article "a," rather than the definite article "the," to exclude "***a*** person in interest" from certain of the exemption's strictures, and to permit "***a*** person in interest" access to investigatory records unless one of seven conditions exists. The General Assembly's choice of the indefinite article is significant. Whereas "the" is "used, especially before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an," "a" means "not any particular or one of a class or group." *See* Dictionary.com (last visited March 11, 2015). As this Court has observed, "[t]he articles 'a' or 'an' are indefinite articles, in contrast to the definite article 'the'. . . . *Most courts have construed "a" or "an" as meaning "any" and as not restricted to just one*." *Evans v. State,* 296 Md. 256, 341 (2006) (emphasis added), (*citing Lindley v. Murphy,* 56 N.E.2d 832, 838 (Ill. 1944) ("The article 'a' is generally not

used in a singular sense unless such an intention is clear from the language of the statute."); *Chavira v. State,* 319 S.W.2d 115, 120 (Tex. Crim. App. 1958) ("a" means the same as "any"); *First Am. Nat'l Bank v. Olsen,* 751 S.W.2d 417, 421 (Tenn. 1987) (same); *Application of Hotel St. George Corp.,* 207 N.Y.S.2d 529 (Sup. Ct. 1960)), *State v. Snyder,* 78 N.E.2d 716, 718 (Ohio 1948).

So it is with GP § 4-351's use of the word "a." "A person in interest" means not just one person—the target of the investigation—but "any" person who is the subject the investigation. That includes the complaining witness-victim, without whom the investigation never would have occurred.

Importantly, when the General Assembly wanted to restrict the "person in interest" limitation in an exemption to a particular person by using the definite article "the," rather than the indefinite article "a," it did so. Specifically, the General Assembly excepted only "*the* person in interest" from the personnel records exemption: "A custodian shall allow inspection by *the* person in interest." GP § 4-311(b)(1). It did the same for "*the* person in interest" in retirement records (GP § 4-312), student records (GP § 4-313) and alarm or security system owners' records (GP § 4-339). The General Assembly's decision to except "*the* person in interest" from several exemptions, while at the same time excepting "*a* person in interest" from the investigatory records exemption, demonstrates conclusively that the phrase "a person in interest" in the investigatory records exemption is *not* limited only to the target of the investigation.[10]

[10] Two other exemptions similarly except "*a* person in interest." They are the exemptions for (i) parts of marriage and recreational license applications containing social security numbers, GP § 4-334; and (ii) parts of records containing "the name, address, telephone number, or electronic mail address of any individual enrolled in or any member of a

The recent decision in *In re AJR*, 852 N.W.2d 760 (Mich. 2014), illustrates the point. In *AJR*, the termination of a father's parental rights hung upon the Michigan Supreme Court's interpretation of "a," as opposed to "the," in a particular provision of Michigan's custody law. While the provision at issue referred to "*a* parent having legal custody," a separate provision referred to "*the* parent having legal custody." Citing with approval the analysis of the intermediate appellate court, the Michigan Supreme Court summarized:

> [T]he articles "the" and "a" have different meanings and . . . the Legislature uses the term "the," rather than "a" or "an," to refer to something particular. . . . [W]hen possible, every word and phrase in a statutory provision must be given effect and . . . a court "should not ignore the omission of a term from one section of a statute when that term is used in another section of the statute.

Id. at 762. The Court then concluded that the legislature's use of the word "a" in the provision at issue, rather than "the," was determinative of the legislature's intentions:

> We presume that the Legislature intended to use the more general phrase "*a* parent" to refer to either of the child's parents in MCL 710.51(5) and that the omission of a general article in MCL 710.51(6) was intentional.

Id. Based on the different uses of "a" and "the" in the text of the statute, the Court rejected the argument that "the" and "a" had the same meaning, and overturned the trial court's termination of the father's parental rights. *Id.* at 769.

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senior citizen activities center," GP § 4-340. As with investigatory records, there are conceivably more than just one person in interest for these kinds of records, as there are two people in a married couple and multiple members of a senior citizen activities center. That the General Assembly excluded "*the* person in interest" from several exemptions and "*a* person in interest" from several others demonstrates that use of the term "*a* person in interest" in the investigative records exemption was not accidental.

The identical principle applies here. The use of "a" in the investigatory records exemption, as contrasted with the use of "the" in other exemptions, confirms the General Assembly's recognition that, unlike individualized personnel, retirement, or student records, records of investigation often will involve more than one interested party. Specifically, they might involve not only the target of an investigation, but the complaining witness-victim as well, inasmuch as the investigation never would have occurred but for her decision to come forward. By using the indefinite article "a" in GP § 4-351, the General Assembly chose language to allow that, depending on the circumstances, more than one "person in interest" could access investigatory records.

Compounding the MSP's statutory construction error, the MSP's restrictive interpretation of GP § 4-351's "a person in interest" exception would render the exception nugatory. That is because, if interpreted as the MSP suggests, the exception would duplicate the "person in interest" exception in the personnel records exemption. This Court presumes, however, that "the Legislature intends its enactments to operate together as a consistent and harmonious body of law, so that no part of the statute is rendered meaningless or nugatory." *Baltimore Sun*, 381 Md. at 93 (citations omitted) (internal quotations omitted).

The person-in-interest exemption in the personnel records exemption explicitly states that access to personnel records otherwise exempt from disclosure "*shall*" be granted to "*the* person in interest," *i.e.,* the single employee who is the subject of those records. With this dispensation, investigated employees, including police officers, do not need any additional mechanism to access records of an investigation targeting them. Why would the General Assembly have expended time and care to craft the separate

person-in-interest exception in GP § 4-351, using the indefinite article "a" and creating a separate test for disclosure, if it intended to provide access *only* to individuals who *already* had access? Quite simply, it would not have.

2. The History and Purpose of the Investigatory Records Exemption Establishes that "A Person in Interest" Includes MPIA Requesters Whose Complaints Trigger Investigations.

In the course of reaching the unremarkable conclusion that a third party political action committee was not a "person in interest" with respect to investigatory records, this Court in *Gun Ban II* discussed at length the term's legislative history. *Gun Ban II*, 329 Md. at 94. That history shows the General Assembly intended to differentiate between persons who are parties to an investigation and unrelated third parties: "[T]he Senate Committee deemed it both necessary and preferable to provide for some type of outside vigilance wherein citizens are afforded the right to view those materials in the possession of law enforcement agencies *respecting them personally*." *Id.* (emphasis in original)).[11] The use of the word "respecting" in the Senate Committee report shows that the General Assembly intended to afford a person the right to view materials that *concerned* or *related to* him or her. Accordingly, the relevant question in applying the "a person in interest" provision in GP § 4-351 here is whether the investigation records being sought relate "personally" to the requester or whether, instead, the requester is an unrelated third party.

Records of an investigation triggered by the complaint of a citizen who alleges to be the victim of police misconduct doubtlessly relate to, or "respect," the complainant

[11] The MSP's administrative interpretation of the Act makes the same distinction. *Id.* at 94.

"personally." Therefore, like the text of the person-in-interest exception in GP § 4-351, the legislative history of the exception establishes that the exception includes citizens who lodge internal affairs complaints.

At least one purpose of the "person in interest" exception in GP § 4-351 is consistent with this history. As recent events demonstrate, the right to "wide-ranging access to public information concerning the operation of the government" is critical for those who have experienced misconduct at the hands of law enforcement officials. Police departments face a compelling challenge to foster public trust and promote cooperation by complaining witnesses such as Ms. Dashiell. The MSP's suppression of information about how it responds to citizen complaints will undermine—indeed, already has undermined—public trust in its performance. Should the MSP's interpretation of GP § 4-351 stand, victims of police abuse would be far less likely to report misconduct and cooperate in investigations, as they will understand that they will never be permitted to know anything more than whether their complaints were sustained.

Indeed, citizen complaint procedures could become a dead letter if a police agency could refuse to disclose to the complainant *every* single record relating to its investigation of her complaint, even when the complaint is sustained. The MSP's position that a citizen should simply "trust" that it has acted appropriately in investigating a citizen civil rights complaint disregards its own history of racial discrimination. In fact, the very nature of Ms. Dashiell's complaint raises concerns about the MSP's culture, given that Sgt. Maiello believed it was safe to use racial slurs to denigrate a witness to a crime because he thought no one, except another MSP employee, was listening.

President Obama's "Task Force on 21st Century Policing" emphasized just this month that "[b]uilding trust and nurturing legitimacy on both sides of the police/citizen divide is not only the first pillar of this task force's report but also the foundation principle underlying this inquiry into the nature of relations between law enforcement and the communities they serve." Task Force Report at 7. Consistent with the history and purpose of GP § 4-351's person-in-interest exception, a decision recognizing that the exception includes citizens whose complaints trigger internal investigations would help foster a law enforcement "culture of transparency and accountability" that would "[b]uild[] public trust and legitimacy." *Id.*

* * *

The MSP's cramped interpretation of the "a person in interest" provision in GP § 4-351, which the Court of Special Appeals erroneously accepted, contradicts the statutory text, violates the canons of statutory construction by rendering the provision nugatory, ignores the history and purpose of the provision, and flouts sound public policy. The Court should reject the MSP's reading of the person-in-interest provision in GP § 4-351 in favor of an interpretation that faithfully embraces the provision's text, history, and purpose, as well the overarching purpose of the MPIA—to provide "citizens of the State of Maryland" with "*wide-ranging access* to public information concerning the operation of the government." *Kirwan*, 352 Md. at 81 (emphasis in original).

B. Ms. Dashiell Is "A Person in Interest" under the Investigatory Records Exemption

Faithful adherence to the text, history, and purpose of the person-in-interest provision in GP § 4-351 establishes that parties to a police department internal

investigation qualify as persons in interest while unrelated third parties do not. Such faithful adherence to text, history, and purpose thus establishes that "a person in interest" includes not only officers who are the subjects of a citizen complaint, but citizens who make the complaint or were otherwise the victims of the alleged misconduct.

Ms. Dashiell plainly qualifies as "a person in interest" under GP § 4-351. The investigation in this case centered on a racially derogatory message made about her and left on her home voice mail. But for the message and Ms. Dashiell's complaint about it, there would have been no investigation. Ms. Dashiell is the victim of the investigated misconduct, and she is the complainant who brought the misconduct to the attention of the MSP. The records arising from the MSP's investigation of her complaint "respect[] [her] personally." *Gun Ban II*, 329 Md. at 92-94.

Although, even five years later, Ms. Dashiell remains in the dark about the specific records her complaint generated, there is a general understanding about what records likely exist. *Dashiell*, 219 Md. App. at 658-59 (listing documents MSP policies indicate internal investigation files include). Among them are documents containing Ms. Dashiell's personal information, Ms. Dashiell's statement to the MSP, evaluations of Ms. Dashiell's candor, information about the status of the complaint, and corrective measures taken to address the complaint. These documents show that Ms. Dashiell was a party to the investigation no less than Sgt. Maiello was. Both had stories to tell, and both had those stories investigated and evaluated. The requested records thus relate to Ms. Dashiell as much as Sgt. Maiello. Each one qualifies as "a person in interest" under GP § 4-351.

C. The Investigatory Records Exemption Does Not Preclude Ms. Dashiell from Obtaining the Records Arising from her Complaint.

When "a person in interest" like Ms. Dashiell seeks access to investigatory records, the custodian can withhold those records only if permitting inspection would:

> (1) interfere with a valid and proper law enforcement proceeding;
> (2) deprive another person of a right to a fair trial or an impartial adjudication;
> (3) constitute an unwarranted invasion of personal privacy;
> (4) disclose the identity of a confidential source;
> (5) disclose an investigative technique or procedure;
> (6) prejudice an investigation; or
> (7) endanger the life or physical safety of an individual.

GP § 4-351(b).

None of these circumstances prevents disclosure here. There is no ongoing or pending investigation, trial, or other law enforcement proceeding that could be compromised by disclosure, nor does the MSP claim there is.[12] The MSP also does not and cannot claim that disclosure would reveal any confidential source or technique or endanger any individual's life or physical safety. Finally, as established in Section I above, disclosure would not result in unwarranted invasion of Sgt. Maiello's privacy. Accordingly, GP § 4-351 does not permit the MSP to refuse to produce the requested records to Ms. Dashiell.

[12] Where an investigation is closed, disclosure of the records is far less likely to be considered contrary to the public interest. MPIA Manual at 3-34 (*City of Frederick v. Randall Family, LLC*, 154 Md. App. 543, 562-67 (2004); *Prince George's Cnty. v. Washington Post Co.*, 149 Md. App. 289, 333 (2003)).

CONCLUSION

The Court should find that (1) with the exception of private, personal identifiers like home addresses, social security numbers and the like, the personnel records exemption in GP § 4-311 does not shield any portion of the requested records from disclosure, (2) § 3-104(n) of the LEOBR does not qualify as a state law that, under GP § 4-301(2)(i), shields the requested records from disclosure, and (3) Ms. Dashiell is "a person in interest" under the investigatory records exemption in GP § 4-351 and, as such, she is permitted to obtain the requested records. Further, the Court should remand the case to the Circuit Court for further proceedings consistent with its opinion.

Dated: March 13, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Maryland Rule 8-504(a)(9), I hereby certify that the attached brief is proportionately spaced, and uses 13-point "Times New Roman," with greater than 1.5 spacing between lines.

Dated: March 13, 2015

By: _____

Maryland Public Information Act

Md. Code Ann., General Provision § 4-103(a)
General Right to Information

In general
(a) All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.
....

Md. Code Ann., General Provisions § 4-203
Timeliness of Decision on Application

In general
(a) The custodian shall grant or deny the application promptly, but not more than 30 days after receiving the application.
Procedure for approval
(b) A custodian who approves the application shall produce the public record immediately or within a reasonable period that is needed to retrieve the public record, but not more than 30 days after receipt of the application.

Procedure for denial
(c) A custodian who denies the application shall:
(1) immediately notify the applicant;
(2) within 10 working days, give the applicant a written statement that gives:
(i) the reasons for the denial;
(ii) the legal authority for the denial; and
(iii) notice of the remedies under this title for review of the denial; and
(3) allow inspection of any part of the record that is subject to inspection and is reasonably severable.

Extension by consent
(d) With the consent of the applicant, any time limit imposed under this section may be extended for not more than 30 days.

Md. Code Ann., General Provision § 4-312
Retirement Records

In general
(a) Subject to subsections (b) through (e) of this section, a custodian shall deny inspection of a retirement record for an individual.

Required inspections
(b)(1) A custodian shall allow inspection:
(i) by the person in interest;
(ii) by the appointing authority of the individual;

(iii) after the death of the individual, by a beneficiary, a personal representative, or any other person who satisfies the administrators of the retirement and pension systems that the person has a valid claim to the benefits of the individual;
(iv) by any law enforcement agency to obtain the home address of a retired employee of the agency when contact with the retired employee is documented to be necessary for official agency business; and
(v) subject to paragraph (2) of this subsection, by the employees of a county unit that, by county law, is required to audit the retirement records for current or former employees of the county.
(2)(i) The information obtained during an inspection under paragraph (1)(v) of this subsection is confidential.
(ii) The county unit and its employees may not disclose any information obtained during an inspection under paragraph (1)(v) of this subsection that would identify a person in interest.

Required release of information
(c) A custodian shall allow release of information as provided in § 21-504 or § 21-505 of the State Personnel and Pensions Article.
Required statements and disclosures
(d)(1) On request, a custodian shall state whether the individual receives a retirement or pension allowance.
(2) On written request, a custodian shall:
(i) disclose the amount of the part of a retirement allowance that is derived from employer contributions and that is granted to:
1. a retired elected or appointed official of the State;
2. a retired elected official of a political subdivision; or
3. a retired appointed official of a political subdivision who is a member of a separate system for elected or appointed officials; and
(ii) disclose the benefit formula and the variables for calculating the retirement allowance of:
1. a current elected or appointed official of the State;
2. a current elected official of a political subdivision; or
3. a current appointed official of a political subdivision who is a member of a separate system for elected or appointed officials.

Required disclosure in Anne Arundel County
(e)(1) This subsection applies only to Anne Arundel County.
(2) On written request, a custodian of retirement records shall disclose:
(i) the total amount of the part of a pension or retirement allowance that is derived from employer contributions and that is granted to a retired elected or appointed official of the county;
(ii) the total amount of the part of a pension or retirement allowance that is derived from employee contributions and that is granted to a retired elected or appointed official of the county if the retired elected or appointed official consents to the disclosure;
(iii) the benefit formula and the variables for calculating the retirement allowance of a current elected or appointed official of the county; and
(iv) the amount of the employee contributions plus interest attributable to a current elected or appointed official of the county if the current elected or appointed official consents to the disclosure.

(3) A custodian of retirement records shall maintain a list of those elected or appointed officials of the county who have consented to the disclosure of information under paragraph (2)(ii) or (iv) of this subsection.

Md. Code Ann., General Provision § 4-334
Social Security Numbers

In general
(a) Except as provided in subsection (b) of this section, a custodian shall deny inspection of the part of an application for a marriage license under § 2-402 of the Family Law Article or a recreational license under Title 4 of the Natural Resources Article that contains a Social Security number.

Inspection required
(b) A custodian shall allow inspection of the part of an application described in subsection (a) of this section that contains a Social Security number by:
(1) a person in interest; or
(2) on request, the State Child Support Enforcement Administration.

Md. Code Ann., General Provision § 4-339
Alarm or Security System

In general
(a) Except as provided in subsection (b) of this section, a custodian shall deny inspection of the part of a public record that identifies or contains personal information about a person, including a commercial entity, that maintains an alarm or security system.

Required inspection
(b) A custodian shall allow inspection by:
(1) the person in interest;
(2) an alarm or security system company if the company can document that it currently provides alarm or security services to the person in interest;
(3) law enforcement personnel; and
(4) emergency services personnel, including:
(i) a career firefighter;
(ii) an emergency medical services provider, as defined in § 13-516 of the Education Article;
(iii) a rescue squad employee; and
(iv) a volunteer firefighter, a rescue squad member, or an advanced life support unit member.

Md. Code Ann., General Provision § 4-340
Senior Citizen Activities Center

"Senior citizen activities center" defined
(a) "Senior citizen activities center" has the meaning stated in § 10-513 of the Human Services Article.

In general
(b) Except as provided in subsection (c) of this section, a custodian shall deny inspection of the part of a public record that contains the name, address, telephone number, or electronic mail address of any individual enrolled in or any member of a senior citizen activities center.

Required inspection
(c) A custodian shall allow inspection by:
(1) a person in interest;
(2) law enforcement personnel; or
(3) emergency services personnel, including:
(i) a career firefighter;
(ii) an emergency medical services provider, as defined in § 13-516 of the Education Article;
(iii) a rescue squad employee; and
(iv) a volunteer firefighter, a rescue squad member, or an advanced life support unit member.

The Law Enforcement Officers' Bill of Rights

Md. Code Ann., Public Safety, § 3-103
Rights of Law Enforcement Officers Generally

Right to engage in political activity
(a)(1) Subject to paragraph (2) of this subsection, a law enforcement officer has the same rights to engage in political activity as a State employee.
(2) This right to engage in political activity does not apply when the law enforcement officer is on duty or acting in an official capacity.

Regulation of secondary employment
(b) A law enforcement agency:
(1) may not prohibit secondary employment by law enforcement officers; but
(2) may adopt reasonable regulations that relate to secondary employment by law enforcement officers.

Disclosure of property, income, and other information
(c) A law enforcement officer may not be required or requested to disclose an item of the law enforcement officer's property, income, assets, source of income, debts, or personal or domestic expenditures, including those of a member of the law enforcement officer's family or household, unless:
(1) the information is necessary to investigate a possible conflict of interest with respect to the performance of the law enforcement officer's official duties; or
(2) the disclosure is required by federal or State law.

Retaliation
(d) A law enforcement officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to the law enforcement officer's employment or be threatened with that treatment because the law enforcement officer:
(1) has exercised or demanded the rights granted by this subtitle; or
(2) has lawfully exercised constitutional rights.

Right to sue
(e) A statute may not abridge and a law enforcement agency may not adopt a regulation that prohibits the right of a law enforcement officer to bring suit that arises out of the law enforcement officer's duties as a law enforcement officer.

Waiver of rights
(f) A law enforcement officer may waive in writing any or all rights granted by this subtitle.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on this 13th day of March 2015, that copies of the foregoing Brief of Respondent /Cross-Petitioner Teleta Dashiell was served by (check one)

- ☐ 1. hand
- ☒ 2. first-class mail, postage prepaid to:
- ☐ 3. certified mail, or
- ☐ 4. other via e-mail

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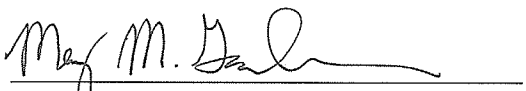

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