

Kirk C. Downey
County Attorney



Kendall A. McPeak
Deputy County Attorney

B. Andrew Bright
Assistant County Attorney

OFFICE OF THE COUNTY ATTORNEY

June 23, 2020

Re: Public Information Act Request
dated 6/15/2020

jholder2004@gmail.com
Justin Holder
25 Antietam Drive
Keedysville, MD 21756

Dear Mr. Holder:

Our office is in receipt of your email dated **June 15, 2020** requesting records pursuant to the Maryland Public Information Act, MD. Code, Gen'l Prov. Art. §§4-101 et seq. ("PIA"). Your request is set forth below.

"Please provide all emails between the email address blevey@washco-md.net for the past 3 years. Please respond in 10 days with a time and cost."

The Director of Information Systems has determined that, as written, a search of all emails sent to and from blevey@washco-md.net during the requested period, resulted in 45,239 emails. Such a list of emails would require review by the County Attorney's office to determine which emails or portions of emails are privileged or otherwise shielded from production. The cost of review and duplication of the emails which are not exempt from production is estimated at **\$10,000.00.**

As indicated in a previous letter, our office requires a deposit of one half the estimated amount in order to commence the search and retrieval of these records.

Sincerely,

B. Andrew Bright
Assistant County Attorney

IN THE CIRCUIT COURT FOR Washington County

(City or County)

C-21-CV-21-000097

CIVIL - NON-DOMESTIC CASE INFORMATION REPORT

DIRECTIONS

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a).

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS A PLEADING

FORM FILED BY: <input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT		CASE NUMBER _____ (Click to insert)
CASE NAME: Justin Kyle Holder Plaintiff		vs. Washington County Board of County Co Defendant
PARTY'S NAME: Justin Kyle Holder		PHONE: 301-662-9122
PARTY'S ADDRESS: 308 West Chapline Street, Sharpsburg, Maryland 21782		
PARTY'S E-MAIL: _____		
If represented by an attorney:		
PARTY'S ATTORNEY'S NAME: Jacob I. Weddle, Esq.		PHONE: 301-662-9122
PARTY'S ATTORNEY'S ADDRESS: 1050 Key Pkwy, Ste. 101, Frederick, MD 21702		
PARTY'S ATTORNEY'S E-MAIL: jweddle@gordonsimmons.com		
JURY DEMAND? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
RELATED CASE PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, Case #(s), if known: _____		
ANTICIPATED LENGTH OF TRIAL?: _____ hours _____ days		

PLEADING TYPE

New Case: ☒ Original ☐ Administrative Appeal ☐ Appeal
Existing Case: ☐ Post-Judgment ☐ Amendment
If filing in an existing case, skip Case Category/ Subcategory section - go to Relief section.

IF NEW CASE: CASE CATEGORY/SUBCATEGORY (Check one box.)

TORTS <input type="checkbox"/> Asbestos <input type="checkbox"/> Assault and Battery <input type="checkbox"/> Business and Commercial <input type="checkbox"/> Conspiracy <input type="checkbox"/> Conversion <input type="checkbox"/> Defamation <input type="checkbox"/> False Arrest/Imprisonment <input type="checkbox"/> Fraud <input type="checkbox"/> Lead Paint - DOB of Youngest Plt: _____ <input type="checkbox"/> Loss of Consortium <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Malpractice-Medical <input type="checkbox"/> Malpractice-Professional <input type="checkbox"/> Misrepresentation <input type="checkbox"/> Motor Tort <input type="checkbox"/> Negligence <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability <input type="checkbox"/> Specific Performance <input type="checkbox"/> Toxic Tort <input type="checkbox"/> Trespass <input type="checkbox"/> Wrongful Death	<input type="checkbox"/> Government <input type="checkbox"/> Insurance <input type="checkbox"/> Product Liability PROPERTY <input type="checkbox"/> Adverse Possession <input type="checkbox"/> Breach of Lease <input type="checkbox"/> Detinue <input type="checkbox"/> Distress/Distrain <input type="checkbox"/> Ejectment <input type="checkbox"/> Forcible Entry/Detainer <input type="checkbox"/> Foreclosure <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Currency or Vehicle <input type="checkbox"/> Deed of Trust <input type="checkbox"/> Land Installments <input type="checkbox"/> Lien <input type="checkbox"/> Mortgage <input type="checkbox"/> Right of Redemption <input type="checkbox"/> Statement Condo <input type="checkbox"/> Forfeiture of Property / Personal Item <input type="checkbox"/> Fraudulent Conveyance <input type="checkbox"/> Landlord-Tenant <input type="checkbox"/> Lis Pendens <input type="checkbox"/> Mechanic's Lien <input type="checkbox"/> Ownership <input type="checkbox"/> Partition/Sale in Lieu <input type="checkbox"/> Quiet Title <input type="checkbox"/> Rent Escrow <input type="checkbox"/> Return of Seized Property <input type="checkbox"/> Right of Redemption <input type="checkbox"/> Tenant Holding Over	PUBLIC LAW <input type="checkbox"/> Attorney Grievance <input type="checkbox"/> Bond Forfeiture Remission <input type="checkbox"/> Civil Rights <input type="checkbox"/> County/Mncpl Code/Ord <input type="checkbox"/> Election Law <input type="checkbox"/> Eminent Domain/Condemn. <input type="checkbox"/> Environment <input type="checkbox"/> Error Coram Nobis <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Mandamus <input type="checkbox"/> Prisoner Rights <input checked="" type="checkbox"/> Public Info. Act Records <input type="checkbox"/> Quarantine/Isolation <input type="checkbox"/> Writ of Certiorari	<input type="checkbox"/> Constructive Trust <input type="checkbox"/> Contempt <input type="checkbox"/> Deposition Notice <input type="checkbox"/> Dist Ct Mtn Appeal <input type="checkbox"/> Financial <input type="checkbox"/> Grand Jury/Petit Jury <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Perpetuate Testimony/Evidence <input type="checkbox"/> Prod. of Documents Req. <input type="checkbox"/> Receivership <input type="checkbox"/> Sentence Transfer <input type="checkbox"/> Set Aside Deed <input type="checkbox"/> Special Adm. - Atty <input type="checkbox"/> Subpoena Issue/Quash <input type="checkbox"/> Trust Established <input type="checkbox"/> Trustee Substitution/Removal <input type="checkbox"/> Witness Appearance-Compel
CONTRACT <input type="checkbox"/> Asbestos <input type="checkbox"/> Breach <input type="checkbox"/> Business and Commercial <input type="checkbox"/> Confessed Judgment (Cont'd) <input type="checkbox"/> Construction <input type="checkbox"/> Debt <input type="checkbox"/> Fraud		EMPLOYMENT <input type="checkbox"/> ADA <input type="checkbox"/> Conspiracy <input type="checkbox"/> EEO/HR <input type="checkbox"/> FLSA <input type="checkbox"/> FMLA <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Wrongful Termination	PEACE ORDER <input type="checkbox"/> Peace Order
		INDEPENDENT PROCEEDINGS <input type="checkbox"/> Assumption of Jurisdiction <input type="checkbox"/> Authorized Sale <input type="checkbox"/> Attorney Appointment <input type="checkbox"/> Body Attachment Issuance <input type="checkbox"/> Commission Issuance	EQUITY <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Equitable Relief <input type="checkbox"/> Injunctive Relief <input type="checkbox"/> Mandamus
			OTHER <input type="checkbox"/> Accounting <input type="checkbox"/> Friendly Suit <input type="checkbox"/> Grantor in Possession <input type="checkbox"/> Maryland Insurance Administration <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Specific Transaction <input type="checkbox"/> Structured Settlements

IF NEW OR EXISTING CASE: RELIEF (Check All that Apply)

- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Abatement | <input type="checkbox"/> Earnings Withholding | <input checked="" type="checkbox"/> Judgment-Interest | <input type="checkbox"/> Return of Property |
| <input type="checkbox"/> Administrative Action | <input type="checkbox"/> Enrollment | <input type="checkbox"/> Judgment-Summary | <input type="checkbox"/> Sale of Property |
| <input type="checkbox"/> Appointment of Receiver | <input type="checkbox"/> Expungement | <input type="checkbox"/> Liability | <input type="checkbox"/> Specific Performance |
| <input type="checkbox"/> Arbitration | <input type="checkbox"/> Findings of Fact | <input type="checkbox"/> Oral Examination | <input type="checkbox"/> Writ-Error Coram Nobis |
| <input type="checkbox"/> Asset Determination | <input type="checkbox"/> Foreclosure | <input checked="" type="checkbox"/> Order | <input type="checkbox"/> Writ-Execution |
| <input type="checkbox"/> Attachment b/f Judgment | <input type="checkbox"/> Injunction | <input type="checkbox"/> Ownership of Property | <input type="checkbox"/> Writ-Garnish Property |
| <input type="checkbox"/> Cease & Desist Order | <input type="checkbox"/> Judgment-Affidavit | <input type="checkbox"/> Partition of Property | <input type="checkbox"/> Writ-Garnish Wages |
| <input type="checkbox"/> Condemn Bldg | <input checked="" type="checkbox"/> Judgment-Attorney Fees | <input type="checkbox"/> Peace Order | <input type="checkbox"/> Writ-Habeas Corpus |
| <input type="checkbox"/> Contempt | <input type="checkbox"/> Judgment-Confessed | <input type="checkbox"/> Possession | <input type="checkbox"/> Writ-Mandamus |
| <input checked="" type="checkbox"/> Court Costs/Fees | <input type="checkbox"/> Judgment-Consent | <input checked="" type="checkbox"/> Production of Records | <input type="checkbox"/> Writ-Possession |
| <input checked="" type="checkbox"/> Damages-Compensatory | <input type="checkbox"/> Judgment-Declaratory | <input type="checkbox"/> Quarantine/Isolation Order | |
| <input type="checkbox"/> Damages-Punitive | <input type="checkbox"/> Judgment-Default | <input type="checkbox"/> Reinstatement of Employment | |

If you indicated **Liability** above, mark one of the following. This information is not an admission and may not be used for any purpose other than Track Assignment.

☐ Liability is conceded. ☐ Liability is not conceded, but is not seriously in dispute. ☒ Liability is seriously in dispute.

MONETARY DAMAGES (Do not include Attorney's Fees, Interest, or Court Costs)

☐ Under \$10,000 ☐ \$10,000 - \$30,000 ☒ \$30,000 - \$100,000 ☐ Over \$100,000

☐ Medical Bills \$ _____ ☐ Wage Loss \$ _____ ☐ Property Damages \$ _____

ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

A. Mediation ☒ Yes ☐ No C. Settlement Conference ☒ Yes ☐ No
 B. Arbitration ☐ Yes ☒ No D. Neutral Evaluation ☐ Yes ☒ No

SPECIAL REQUIREMENTS

- ☐ If a Spoken Language Interpreter is needed, **check here and attach form CC-DC-041**
- ☐ If you require an accommodation for a disability under the Americans with Disabilities Act, **check here and attach form CC-DC-049**

ESTIMATED LENGTH OF TRIAL

*With the exception of Baltimore County and Baltimore City, please fill in the estimated **LENGTH OF TRIAL**.*

(Case will be tracked accordingly)

- | | |
|---|---|
| <input type="checkbox"/> 1/2 day of trial or less | <input type="checkbox"/> 3 days of trial time |
| <input checked="" type="checkbox"/> 1 day of trial time | <input type="checkbox"/> More than 3 days of trial time |
| <input type="checkbox"/> 2 days of trial time | |

BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-308 is requested, attach a duplicate copy of complaint and check one of the tracks below.

- | | |
|---|---|
| <input type="checkbox"/> Expedited - Trial within 7 months of Defendant's response | <input type="checkbox"/> Standard - Trial within 18 months of Defendant's response |
|---|---|

EMERGENCY RELIEF REQUESTED

**COMPLEX SCIENCE AND/OR TECHNOLOGICAL CASE
MANAGEMENT PROGRAM (ASTAR)**

*FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO ASTAR RESOURCES JUDGES under
Md. Rule 16-302, attach a duplicate copy of complaint and check whether assignment to an ASTAR is requested.*

☐ **Expedited** - Trial within 7 months of Defendant's response ☐ **Standard** - Trial within 18 months of Defendant's response

**IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, OR BALTIMORE COUNTY,
PLEASE FILL OUT THE APPROPRIATE BOX BELOW.**

CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)

- | | |
|--|---|
| <input type="checkbox"/> Expedited | Trial 60 to 120 days from notice. Non-jury matters. |
| <input type="checkbox"/> Civil-Short | Trial 210 days from first answer. |
| <input type="checkbox"/> Civil-Standard | Trial 360 days from first answer. |
| <input type="checkbox"/> Custom | Scheduling order entered by individual judge. |
| <input type="checkbox"/> Asbestos | Special scheduling order. |
| <input type="checkbox"/> Lead Paint | Fill in: Birth Date of youngest plaintiff_____. |
| <input type="checkbox"/> Tax Sale Foreclosures | Special scheduling order. |
| <input type="checkbox"/> Mortgage Foreclosures | No scheduling order. |

CIRCUIT COURT FOR BALTIMORE COUNTY

- | | |
|---|--|
| <input type="checkbox"/> Expedited
(Trial Date-90 days) | Attachment Before Judgment, Declaratory Judgment (Simple),
Administrative Appeals, District Court Appeals and Jury Trial Prayers,
Guardianship, Injunction, Mandamus. |
| <input type="checkbox"/> Standard
(Trial Date-240 days) | Condemnation, Confessed Judgments (Vacated), Contract, Employment
Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort,
Other Personal Injury, Workers' Compensation Cases. |
| <input type="checkbox"/> Extended Standard
(Trial Date-345 days) | Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or
Personal Injury Cases (medical expenses and wage loss of \$100,000, expert
and out-of-state witnesses (parties), and trial of five or more days), State
Insolvency. |
| <input type="checkbox"/> Complex
(Trial Date-450 days) | Class Actions, Designated Toxic Tort, Major Construction Contracts, Major
Product Liabilities, Other Complex Cases. |

March 15, 2021

Date

1050 Key Parkway, Suite 101

Address

Frederick

City

MD

State

21702

Zip Code

 / Plaintiff Justin Kyle Holder

Signature of Counsel / Party

Jacob I. Weddle, Esq.

Printed Name

CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JUSTIN KYLE HOLDER
308 West Chapline Street
Sharpsburg, Maryland 21782

Plaintiff

v.

WASHINGTON COUNTY
BOARD OF COUNTY COMMISSIONERS
100 West Washington Street
Hagerstown MD 21740

Serve: Kirk C. Downey, Esq.
100 West Washington Street
Hagerstown MD 21740

KIRK C. DOWNEY, ESQ.
Serve: Kirk C. Downey, Esq.
17929 Pin Oak Road
Hagerstown MD 21740

and

B. ANDREW BRIGHT, ESQ.
Serve: B. Andrew Bright, Esq.
100 West Washington Street
Hagerstown MD 21740

Defendants

Case No. C-21-CV-21-000097

COMPLAINT

Plaintiff Justin Kyle Holder ("Mr. Holder"), by and through his undersigned counsel, hereby file this Complaint against Defendants Washington County Board of County Commissioners, Kirk C. Downey, Esq. and B. Andrew Bright, Esq., and in support thereof alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Mr. Holder is an adult resident of Washington County, Maryland.

2. Mr. Holder is an “applicant” as defined by Maryland Code Ann., General Provisions Article (“GP”) § 4-101(b) since he asked Defendants to inspect certain public records, as that term is defined by GP §4-101(j). Moreover, Mr. Holder is a person in interest as defined by GP §4-101(g), and as admitted in writing by Defendant County, since Mr. Holder is a person that is the subject of a public record.

3. Defendant, Washington County Board of County Commissioners (“Defendant County”) is a political subdivision as defined by GP §4-101(i).

4. Kirk C. Downey, Esq. is the County Attorney. At all times relevant to this Complaint, Downey has been listed as the contact for Washington County, Maryland in the Maryland Public Information Act Manual (“MPIA Manual”). Downey is/was the official custodian, as defined by GP §4-101(f), for the public records of Washington County since he is an officer or employee of Defendant County who is responsible for keeping a public record whether or not the officer or employee has physical custody and control of the public record. Under the Maryland Public Information Act, Downey, as the custodian of the public records, is/was responsible for receiving and responding on behalf of Defendant County to requests for public records made pursuant to the Maryland Public Information Act.

5. B. Andrew Bright, Esq. is the Assistant County Attorney. At all times relevant to this Complaint, Bright was an officer or employee of Defendant County, and is/was responsible for receiving and responding on behalf of Defendant County to requests for public records made pursuant to the Maryland Public Information Act.

6. Jurisdiction is proper in the State of Maryland under MD. CODE ANN. CTS. & JUD. PROC. § 6-103 because all Defendants transact business in this State.

7. Venue is proper in the Circuit Court for Washington County, Maryland pursuant to MD. CODE ANN. CTS. & JUD. PROC. § 6-201 and 6-202 because Defendants carry on regular business in Washington County and because Mr. Holder's claim arose from acts or conduct that occurred in Washington County, Maryland. Moreover, this Court has jurisdiction over this matter pursuant to GP § 4-362 because Defendant County is the legal custodian of the public records at issue in this lawsuit, the public records at issue in this lawsuit are located within Washington County, Defendant County maintains its primary place of business at 100 West Washington Street, Hagerstown, MD 21740, is a legal resident of Washington County, Maryland, and is amenable to service of process in Washington County.

**COUNT 1: VIOLATION OF THE
MARYLAND PUBLIC INFORMATION ACT ("MD PIA")**

8. Mr. Holder incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint as if fully stated herein.

9. Mr. Holder brings this action to enjoin Defendant County from unlawfully continuing to withhold public records and in order to better inform a vigorous public debate (a debate which has been shrouded in secrecy), and to vindicate the Maryland Public Information Act's guarantee of open, honest and transparent governance. All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. *See* GP § 4-103(a). To carry out these rights, the Maryland General Provisions shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person that requests the inspection. *See* GP § 4-103(b).

10. Defendant County is a political subdivision and Defendant Downey is a custodian, and as such, are governed by the public disclosure requirements of the Maryland Public Information Act. Except as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time. GP § 4-201(a).

11. On or about August 3, 2020, Mr. Holder submitted written application to Defendant Downey and Andrew Bright to inspect “all email correspondence from the following email address ‘Morral7@msn.com’ and any sheriff, deputy, county official from May 19th to present.”

12. The very next day, August 4, 2020 at 4:49 pm, Defendant Bright, on behalf of himself and the other Defendants, responded to Mr. Holder’s request, in pertinent part, as follows:

Your request is denied. Pursuant to Gen’l Prov. Art. § 4-351, a custodian may deny inspection, by a person in interest, of records of investigations conducted by a State’s Attorney. The State’s Attorney’s Office had advised that the records you have requested are, in fact, records of an ongoing investigation and involve current prosecution. Therefore, I must deny your request.

13. In so denying Mr. Holder’s request, Defendants took the position that pursuant to GP § 4-351(a), a custodian may deny inspection, by a person in interest, of records of investigations conducted by a State’s Attorney. Further, Defendants denied Mr. Holder’s application for records because, purportedly, the State’s Attorney’s Office has advised that the records Mr. Holder has requested are records of a still ongoing investigation and involve current prosecution.

14. Fifteen minutes later, Mr. Holder responded to Defendants’ denial, by writing: “Please note if the emails are for case Dc-112-cr-20-001393, than my intent was to gather them for states attorney Joe Michael’s. Please advise prosecution has all evidence of record.”

15. Neither Messrs. Bright or Downey, nor anyone else on behalf of the County, responded in writing to this message.

16. Further to Defendants' position that Mr. Holder's request sought the State's Attorney's "records of an ongoing investigation [that] involve current prosecution," by e-mail dated October 14, 2020 at 1:49 p.m., Mr. Holder advised Defendants that the criminal case against Christine Morral, Case No. Dc-112-cr-20-001393, previously pending in the District Court for Washington County, Maryland, had been dismissed as of 9:00 a.m. that same day. Mr. Holder advised that the Washington County Sheriff, Douglas W. Mullendore, had confirmed that there was no active investigation open against Mr. Holder. In the same e-mail communication, Mr. Holder, again, submitted written application to Defendants to inspect public records of Defendant County as follows: "Please provide all email correspondence from the following email address 'Morral7@msn.com' and any sheriff, deputy, county official from May 19th to present."

17. By e-mail and letter dated the next day, October 15, 2020, Defendants denied Mr. Holder's application for public records for the same reason given on August 4, 2020 (despite the fact that there was no longer any "ongoing investigation that involves current prosecution").

18. Approximately 30 minutes after receiving the Defendants' denial of his request, Mr. Holder responded in writing, by e-mail, to Defendant Bright. Mr. Holder requested that Bright "disclose the specific investigation" which was referred to as Defendants' purported basis for denying Mr. Holder's request for a records inspection. Mr. Holder also advised Defendants that he is a "person [in] interest" with respect to the records request, a fact already twice acknowledged by Defendants in its/his denial letters dated August 4, 2020 and October 15, 2020.

19. Neither Messrs. Bright or Downey, nor anyone else on behalf of the County, responded to Mr. Holder's request for Defendants to "disclose the specific investigation" which was referred to as Defendants' purported basis for denying Mr. Holder's request for a records inspection.

20. Later that same day, by e-mail dated October 15, 2020 at 12:31 p.m., Mr. Holder advised Bright that he is requesting the aforementioned records, in part, under *Brady v. Maryland*, 373 U.S. 83 (1963), which requires that the prosecution must turn over all exculpatory evidence to the defendant in a criminal case. Mr. Holder further informed Bright that his “rights are being trampled on” and “[a]ny citizen should not have to fight so hard.” *See, e.g.*, GP § 4-103.

21. Neither Messrs. Bright or Downey, nor anyone else on behalf of the County, responded to Mr. Holder’s e-mail dated October 15, 2020 at 12:31 p.m.

22. By e-mail dated January 21, 2021 at 8:58 a.m., Mr. Holder, again, advised Defendants that the subject matter of his previous August 3, 2020 request to inspect County records, which was renewed on October 14, 2020, would produce exculpatory materials related to the criminal charges pending against him and, thus, must be produced to him under the *Brady* doctrine and public interest.

23. Less than two (2) hours later, by e-mail dated January 21, 2021 at 10:23 a.m., Mr. Holder, provided Defendants with citations to GP 4-351(b), and excerpts from the current Maryland Public Information Act Manual, advising that Defendants’ denial was unlawful, and requested that Defendants reverse their unlawful denial and permit inspection of the records. Specifically, Mr. Holder took care to conspicuously highlight, in red and/or yellow typeface, the applicable law contained in the Manual and under Maryland law which informs Defendants that their denial of his request was unlawful.

24. Bright responded by e-mail dated January 21, 2021 at 11:24 a.m. He admitted that “[f]or better or worse” “the County is in possession of the Sheriff’s email server.” Moreover, Bright admitted that “[i]f there is exculpation evidence in possession of the Sheriff’s department or the office of the State’s Attorney, the obligations under *Brady v. Maryland* must be honored by the State’s Attorney’s Office.” Bright continued, “It is not my prerogative to act on behalf of the State’s Attorney.” (Emphasis supplied).

25. Despite acknowledging that the County “is in possession of the Sheriff’s email server”, Bright’s e-mail, specifically, his uses of the phrase “[i]f there is exculpation evidence in possession of the Sheriff’s department”, makes plain that Defendants did not search the records in its possession related to Mr. Holder’s request.

26. Moreover, Bright’s e-mail stating that “[i]t is not my prerogative to act on behalf of the State’s Attorney” is in direct contravention to his letters dated August 4, 2020 and October 15, 2020, denying Mr. Holder’s records inspection request because, purportedly, the request sought “records of investigations conducted by the State’s Attorney” and purportedly the “State’s Attorney’s Office has advised that the records . . . requested are, in fact, records of a still ongoing investigation and involve current prosecution.”

27. Approximately one hour later, at 12:30 p.m., Mr. Holder responded to Bright’s e-mail dated January 21, 2021 at 11:24 a.m. Therein, Mr. Holder highlighted that Bright was acting on behalf of the State’s Attorney despite Bright’s bald assertion to the contrary. Again, therein, Mr. Holder advised Bright that he (Holder) is a “person [in] interest” in an investigation, to which a different legal standard is applied pursuant to GP § 4-351(b)(1)-(7). Mr. Holder informed Bright that he (Bright) is “required to choose a reason from 1 through above as the reason that you denied the information request.” Mr. Holder reiterated that “[t]he State’s Attorney’s desire to preclude myself from Brady Doctrine exculpatory evidence is an unlawful denial of due process.” Mr. Holder, again, implored Bright to provide the public information as requested by Mr. Holder.

28. Neither Messrs. Bright or Downey, nor anyone else on behalf of the County, responded to Mr. Holder’s request for the County to support its denial of his records request.

29. Mr. Holder’s request, as being made by a “person in interest”, enjoys a favored status under Maryland law. Under GP § 4-351(b), Mr. Holder, as a “person in interest” is entitled to inspect investigatory records of which he is the subject unless production 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.

30. Because a person in interest enjoys a favored status, a custodian of records must point out precisely which of the seven grounds enumerated in GP § 4-351(b) justifies the withholding of an investigatory record and explain precisely why it would do so. *Blythe v. State*, 161 Md. App. 492, 531 (2005).

31. Defendants' denials of Mr. Holder's repeated requests to inspect the County's records admit that he is a person in interest, but neither precisely state which, if any, of the seven grounds enumerated in GP § 4-351(b) justifies the withholding of an investigatory record nor explain precisely why Defendants would do so.

32. Moreover, Defendants do not aver that granting Mr. Holder's request would be contrary to the public interest. GP § 4-343.

33. Defendants' denial of Mr. Holder's request to inspect records did not indicate that the denial was made only after careful consideration to the public interest involved.

34. Defendants' denial of Mr. Holder's request to inspect records did not carefully balance the possible consequences of disclosure against the public interest in favor of disclosure.

35. Defendants' denial of Mr. Holder's request to inspect records neither provides Mr. Holder with a brief explanation of why the denial is necessary nor an explanation of why redacting information would not address the reasons for the denial.

36. Rather, Defendants denied Mr. Holder's request to inspect records on a purported basis of their own creation, not one of the seven (7) bases for denial enumerated in GP § 4-351(b).

37. Defendants violated Mr. Holder's right "to have access to information about the affairs of government and the official acts of public officials and employees." GP § 4-103(a).

38. Defendants violated the Maryland Public Information Act by refusing to permit Mr. Holder "to inspect any public record at any reasonable time." GP § 4-201(a).

39. There is no statutory exemption under the Maryland Public Information Act, or other law, that allows the Defendants to deny Mr. Holder's requests for inspection of public records or to deny Mr. Holder a copy, printout, or photograph of a public record.

40. Pursuant to GP §4-362(b), Defendants have "the burden of sustaining a decision to deny inspection of a public record" or to "deny [Mr. Holder] a copy, printout, or photograph of a public record." Defendants cannot sustain its/his burden because its/his decision to deny Mr. Holder's right to inspect the requested documentary materials is unlawful.

41. Defendants knowingly and willfully failed to disclose or fully to disclose a public record that Mr. Holder was entitled to inspect under the Maryland Public Information Act.

42. Defendants knowingly and willfully failed to provide a copy, printout, or photograph of a public record that Mr. Holder requested under § 4-205 of the Maryland Public Information Act.

43. After temporarily denying Mr. Holder inspection of a public record, Defendant Downey failed to petition this court for an order to continue the denial.

WHEREFORE, Mr. Holder respectfully requests that this Court:

- A. Assume jurisdiction over this matter pursuant to GP § 4-362;
- B. Give this matter "precedence on the docket", a hearing "at the earliest practicable date" and expedite this matter "in every way" pursuant to GP § 4-362(c)(1)(i)-(iii);
- C. Enjoin Defendants County, Kirk C. Downey and B. Andrew Bright from: (1) withholding the public records requested by Mr. Holder; or (2) withholding a copy, printout, or photograph of the public records requested by Mr. Holder;

D. Issue an order for the production of the public record or a copy, printout, or photograph of the public record that was withheld from Mr. Holder;

E. Order Defendants to waive all fees associated with disclosing and providing the requested records to Mr. Holder;

F. Order Defendants to fully comply with the Maryland Public Information Act in regards to future requests from Plaintiff Justin Kyle Holder;

G. Award Mr. Holder statutory damages not to exceed \$1,000.00;

H. Award Mr. Holder actual damages that this court considers appropriate since Defendant(s) knowingly and willfully failed to disclose or fully to disclose a public record that Mr. Holder was entitled to inspect under the Maryland Public Information Act;

I. Award Mr. Holder actual damages that this court considers appropriate since Defendant(s) knowingly and willfully failed to provide a copy, printout, or photograph of a public record that Mr. Holder requested under § 4-205 of the Maryland Public Information Act;

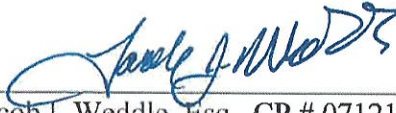
J. Award Mr. Holder actual damages against Defendant Downey that the court considers appropriate for temporarily denying Mr. Holder inspection of a public record without petitioning this court for an order to continue the denial;

K. Find that Defendant Downey acted arbitrarily or capriciously in withholding the public record or the copy, printout, or photograph of the public record, and send a certified copy of its finding to the appointing authority of the custodian;

L. Order that Mr. Holder has “substantially prevailed” in this action, award Mr. Holder litigation costs and reasonable attorneys’ fees reasonably incurred in this action, as provided by GP § 4-362(g), and allow Mr. Holder thirty (30) days to submit fees and costs application to this Court; and/or

M. Grant any other relief this Court deems just and appropriate.

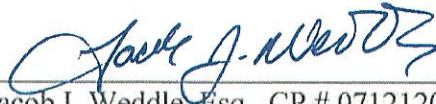
Respectfully submitted,



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CERTIFICATE REGARDING RESTRICTED INFORMATION

I HEREBY CERTIFY that this document does not contain any restricted information.



Jacob I. Weddle, Esq., CP # 0712120390