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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-114

October 25, 2024

Maryland Department of Natural Resources, Custodian/Complainant
Justin Holder, Applicant

The Maryland Department of Natural Resources (“DNR”) alleges that Justin Holder’s pattern of more than sixty Public Information Act (“PIA”) requests is frivolous, vexatious, and in bad faith under § 4-1A-04(b).¹ DNR acknowledges that Mr. Holder’s first PIA requests, sent over the summer in 2020, were not themselves frivolous, vexatious, or in bad faith. But, DNR contends, as they have continued and evolved over the last four years, Mr. Holder’s PIA requests and conduct meet the standard set out in that provision. Mr. Holder, for his part, denies that his requests are frivolous, vexatious, or in bad faith. Rather, he contends that he is a “persistent applicant,” and that his PIA requests represent his good faith efforts to “retarget” and “narrow” his requests to inspect public records. As explained below, we find that DNR has failed to meet its burden to show that Mr. Holder’s PIA requests or pattern of PIA requests are frivolous, vexatious, or in bad faith.

Background

Before providing some factual context for this dispute, we feel it important to set out the boundaries of what disputes our Board can and, perhaps more importantly, cannot resolve. We cannot resolve land disputes or determine who owns what property. We cannot decide whether certain statements or conduct constitute perjury or witness tampering as defined in criminal and civil law. We cannot say whether a statement is legally defamatory. We cannot review or reverse the findings or rulings of a circuit court. Section 4-1A-04 of the PIA provides the confines of our jurisdiction. That is, we may resolve complaints from PIA applicants that a custodian wrongfully denied inspection of public records, charged an unreasonable fee higher than \$350 for inspection of public records, or failed to respond to a request for public records within certain statutory time limitations. We may also resolve complaints from custodians that a PIA applicant’s “request or pattern of requests is frivolous, vexatious, or in bad faith.” § 4-1A-04(b)(1). Here, DNR has filed a complaint alleging the latter. Thus, we set out the following facts relevant to that allegation, which are taken from the voluminous submissions in this matter. As we do so, we keep in mind that our ultimate focus is, as it must be, only on the PIA.

¹ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise stated.

Mr. Holder and his wife own property in or near the town of Keedysville in Washington County, Maryland. Over at least the last four years, multiple disputes have arisen concerning that property. Those disputes have involved numerous parties, including Mr. Holder's neighbors, the Town of Keedysville, Washington County, and DNR. Many disputes have led to litigation in the circuit and appellate courts. In the course of addressing those disputes—through litigation or otherwise—Mr. Holder has made numerous PIA requests to various units of government, including (but not limited to) the Town of Keedysville, Washington County, and DNR. Mr. Holder has filed a number of PIA actions in circuit court related to those PIA requests, including actions against DNR. *See* § 4-362(a)(1) (providing for complaints in circuit court “whenever a person or governmental unit is denied inspection of a public record or is not provided with a copy, printout, or photograph of a public record as requested”).

According to the submissions, Mr. Holder sent his first PIA request to DNR on June 1, 2020.² That request sought “emails, correspondence, and phone call notes” exchanged between DNR employees and six individuals between August 1, 2017, to the date of the request. One month later, on July 1, 2020, Mr. Holder sent a detailed PIA request seeking a variety of records related to “the [DNR] rail corridor known as the [W]eaverton [sic] Roxbury rail and trail.” Specifically, Mr. Holder asked DNR to “please provide”:

[A]ll agreements with abutting land owners, or other parties in which the [DNR] or state has agreed to usage, maintenance, driving on state land. Please provide any agreement with Mary [I]ronside for property owners to mow, drive on or plant crops on state property in General. Specifically Austin [F]look, provide an agreement that allows him or his agents to farm the land and use it as a farm lane, Jeff [Y]oung provide the agreement that allows him to use the corridor as a farm lane, the property owners on mt briar and trees road. Provide the agreement in which they use the corridor as a driveway, parking lot, put fence through it, and place buildings and sheds on it. I do have photos and videos of all of this. If no agreements are in place please provide the complaint, cease and desist demand letters or fines residents abutting the [W]eaverton [sic] Roxbury rail and trail have been sent in the last 5 years.

Over the next thirty days, DNR received three more PIA requests from Mr. Holder, including one sent on the same day (July 1, 2020), which asked for “all emails from Jan 1st through present” from a specific email address to “any [DNR] or land acquisition

² Both parties included copies of certain PIA requests as exhibits with their submissions. In addition, DNR included an exhibit containing a chart of the PIA requests it has received from Mr. Holder between June 2020 and January 2024, including the verbatim language of each request. The chart shows that Mr. Holder made more than sixty PIA requests over that time period.

personnel including [A]ttorney General to the extent that there is [sic] not attorney client privileges.”³

In August 2020, DNR received three more PIA requests from Mr. Holder, and then, in September, seven more. Some of those requests were relatively straightforward and sought a discrete record—for example, “the video [M]ary [I]ronside took on June 1st, 2020)” or “the voicemail left on DNR officer Cody Littons [sic] phone” from a specific phone number. Others, though, sought a large volume of records and/or records that would likely require an extensive search (and, in some cases, research) to find. For instance, Mr. Holder’s August 24, 2020, PIA request asked for “all documents” related to a specific easement, including “all correspondence, the initial application or contact, all subsequent correspondence and appraisals.” His August 28, 2020, PIA request sought “all documents, letters and correspondence with Harry Hutzell and Mary Jane Hutzell . . . from 1991 until 2014.” And, on September 17, 2020, Mr. Holder requested “[a]ll documents records communication” related to “compliance with icc^[4] docket AB 19 Sub 20 and Railroad abandonment,” including “correspondence with icc showing states [sic] intent for alternative use of condemned path and continued eminent domain.”

Based on the chart provided by DNR, it appears that, of the sixteen PIA requests DNR received from Mr. Holder between June and the end of September 2020, four received responses within a thirty-day timeframe. Several others received responses within about six weeks. In October and November of 2020, DNR received eight more PIA requests from Mr. Holder. Those requests sought a variety of records. For example, one request, which DNR received on October 7, 2020, cited the minutes of a September 2017 meeting of the Washington County Board of County Commissioners, which apparently contained a reference to “research conducted by County staff to clarify ownership of property that would be a part of the proposed Civil War Rail Trail.” The PIA request asked for “all documents evidencing the research conducted by said County staff, including, without limitation, records that would indicate”:

- Who conducted the research
- What records were reviewed, copied or gathered in conducting the research

³ The other requests also sought communication records, specifically: (1) “[a]ll correspondence” in Mary Ironside’s inbox and outbox from May 10 to June 24, 2020 and a phone call log for Mary Ironside’s “[DNR] mobile number”; and (2) “call logs all sms text messages” between two phone numbers “in the last 6 months” and “call logs and sms text between” a specific phone number and a DNR officer’s “state issue mobile phone for the last 3 months.”

⁴ Given the context, we assume “ICC” refers to the Interstate Commerce Commission, a federal regulatory commission that was “established as a result of mounting public indignation in the 1880s against railroad malpractices and abuses.” See Federal Register, Interstate Commerce Comm’n, <https://www.federalregister.gov/agencies/interstate-commerce-commission> (last visited Oct. 22, 2024).

- The identities of any person consulted or interviewed by said County staff in conducting the research
- Copies of any communications by said County staff related to said research
- Any reports generated as a result of said research

Other PIA requests sought records of email correspondence between specific individuals and DNR employees. Several sought records related in some way to the Weverton Roxbury Rail and Trail, e.g., records that “discuss” the trail and “soil contamination in critical bay watershed, or e[x]cavating contaminated soil from the rail bed, or the danger of contaminated soil and the porous nature of blasted limestone” (Oct. 18, 2020), or “[a]ll Surveys, reports, studies, title searches, 3rd party consultation, forestry reports, storm water reports, soil conservation reports, drawings, valuation maps, railroad bed construction experts, and any railroad document whatsoever . . . Used in the survey of the Weaverton [sic] Roxbury Rail and Trail in the early 1990s,” (Nov. 27, 2020).

According to DNR’s chart, Mr. Holder sent at least twenty-three PIA requests to DNR between June and the end of November, 2020. DNR responded to almost all of those requests before the year ended. DNR addressed and produced records for five of Mr. Holder’s PIA requests on December 18, 2020,⁵ when DNR’s PIA Coordinator sent Mr. Holder an email as a “follow up” to the “google drive accumulation of documents that were recently shared with [him].” The PIA Coordinator indicated that a 1995 cover letter from the Office of the Attorney General to DNR had been withheld on attorney-client privilege grounds, and that personal addresses and phone numbers had been redacted from certain records. DNR indicated its belief that it had addressed all of Mr. Holder’s PIA requests except “the one requesting water quality publications from the 1970s,” which DNR was still trying to locate, assuming they existed. DNR did not charge any fees. The next day, at 12:29 a.m., Mr. Holder sent DNR an email stating that DNR’s response was incomplete. Mr. Holder listed DNR file numbers corresponding to each of his five PIA requests and indicated specific records he believed had not been produced.

Mr. Holder continued to send PIA requests to DNR in 2021 (six requests), 2022 (thirteen requests), and 2023 (thirteen requests). As with the requests sent in 2020, the language of these PIA requests reflected an interest in communications that DNR employees had had with certain neighbors and records related to the Weverton Roxbury Rail and Trail. Some requests sought records that were old,⁶ while other requests appeared

⁵ The December 18, 2020, response addressed PIA requests that DNR received on July 1, August 24, August 28, September 17, and November 27, 2020.

⁶ See, for example, July 12, 2022, “There was a public hearing in 1992 or 1993 regarding the Weaverton [sic] Roxbury rail trail plan, Mr. Austin Flook and Jeffrey Young appeared at the meeting. The DNR should have records of that meeting and communication,” and October 17, 2022, “All correspondence, letters, emails, notes, memorandum and communications sent to the Department of Natural Resources from D. Bruce Poole from January 1st, 1987 until present.”

on their face to seek a large volume of records.⁷ A handful of the PIA requests indicated that they were revisions of previous requests. DNR's chart indicates that, at this point, DNR has responded to nearly all of Mr. Holder's PIA requests. Some of the requests received responses within the thirty-day time frame provided in the PIA, or close to it. *See* § 4-203(a)(1). Other PIA requests did not.⁸ Generally, though, it appears that DNR responded to nearly every PIA request Mr. Holder has sent, and often produced records (sometimes with redactions).

In addition to PIA requests, Mr. Holder sent emails to DNR's PIA coordinators at various points to follow up on the status of his many requests. Some of those emails demonstrated growing frustration on Mr. Holder's part. For instance, on Saturday, November 21, 2020, at 10:33 a.m., and as DNR was working on responses for at least seven of Mr. Holder's PIA requests, Mr. Holder sent the following to DNR's PIA coordinator, copying one of DNR's attorneys:

At this time Mr. Deems you have failed to respond in the statutory limit of time, you have failed to provide any formal or legal authority to deny the request. I must opine you are "knowingly and willfully" violating the law or being directed to do so by a supervisor. It is always my last resort to provide notice and litigate a matter that can be decided in good faith. However in the MPIA I am encouraged by the statutes [sic] \$1000 retaliation clause, and the states [sic] obligation to pay legal fees. Furthermore I am rarely inspired to file a statement charging a crime, I do humble ask you Mr. Deems to provide me with an explanation for this criminal behavior such that I may provide discretion. I have asked you 4 times at least for a lawful explanation of why

⁷ See, for example, October 31, 2022, "Any and All correspondence, letters, emails, notes, memorandum, communications, transcripts, recordings, records, and/or files that relate to any and all Public Meetings/hearings/discussions relating to and or regarding the abandoned branch of the Washington County Railroad, a.k.a. Weaverton [sic] Roxbury Rail Trail," and December 5, 2023, "any/all correspondence, writings, text messages/ social media messages, voicemails, emails, letter, memoranda, memos, notes, social media messages, call logs, (the 'communications') between/to/from/sent/received/with the parties to this email, or their agents, council and assigns (except for those communications between a party and their own attorney, e.g. Mr. Burrows and Mr. Wolfe etc.) regarding/discussing/relating to Justin Holder's MPIA requests and/or criminal charges being prosecuted/investigated/dismissed against Justin Holder . . . any/all communications with D. Bruce Poole, esq" with "the date range March 1, 2020 through December 4, 2023."

⁸ Mr. Holder filed suit against DNR regarding some of these PIA requests. *See In the Matter of Justin Holder*, C-02-CV-22-001474 (Cir. Ct. Anne Arundel County) (filed Sept. 4, 2022); *In the Matter of Justin Holder*, C-21-CV-23-000503 (Cir. Ct. Wash. County) (filed Dec. 3, 2023). We understand that the Anne Arundel County Circuit Court found in DNR's favor, and that Mr. Holder has appealed this ruling to the Appellate Court of Maryland. The Washington County suit is still pending.

you are “knowingly and willfully” denying me public information unlawfully.

DNR’s PIA coordinator responded by email the next business day, explaining that DNR was “working on [his] remaining [PIA] requests, and they are in varying stages of review and completion.” DNR explained further that “[t]he remaining requests involve the manual review of thousands of pages of documents to find those responsive to [the] request, and to determine whether or not they are protected from disclosure, before [DNR] can respond.” DNR’s PIA coordinator stated that it appreciated Mr. Holder’s patience “during these COVID times.”

About two weeks later, Mr. Holder sent another email to DNR’s PIA coordinator. In that email, Mr. Holder stated that he intended to file criminal charges against the PIA coordinator:

You have blatantly, obviously, knowingly, and willfully shown no respect for Maryland Law. Your criminal behavior in this matter is disheartening. You have been respectful and cordial throughout our communications. I appreciate that respect and I do hope you have enjoyed the same from me.

You are purposefully and intentional [sic] withholding public information for what I perceive to be malicious [sic] reasons. I will be filing suit and a statement of charges with the Commissioners in order to find justice. I do hope Ms. Kovacs has competently advised you in these matters.

If you sense my displeasure in this email you are correct. I made a legitimate request for information that was ignored. However I do not like filing suit or charges 1 bit. I really want the information that [sic] it. I also have a good idea why the state does not want me to have the information. I can assure you Mr. Deems if your liberty was at stake you would be just as dissatisfied with the custodian.

I do wish we had better terms as you were very helpful on June 2nd, 2020. The law is the law, I have exhausted all my efforts to negotiate in good faith. I am left with no choice in the matter.

Please have a good holiday. I will not be filing the statement's [sic] of charges until the new year. I will hold out hope the PIA gets answered before that and I just don't have the will to before Christmas.

(Dec. 8, 2020, 12:41 a.m.).

DNR responded to this email by noting that it had “responded to numerous of [Mr. Holder’s PIA] requests this year,” and that it has been “working on many others under unusual conditions in these unprecedented times.” DNR stated that it would “continue to work on the others as fast as [it could].” (Dec. 8, 2020, 8:47 a.m.). Less than three hours later, Mr. Holder responded with an email in which he “inquire[d] further into process and time spent.” He asked the PIA coordinator to provide certain information, including the “estimated total records” the search entailed, whether DNR had kept “a log sheet of time spent,” and whether DNR had found:

1 Citation, fine, ticket, charge, or other civil legal action, other than on June 8th, 2020, issued, filed, or otherwise delivered to any person that is directly related to land use, driving, clearing, damage to rocks minerals and vegetation at or near the Weaverton [sic] Roxbury Rail Trail/civil war rail trail/abandoned line of the Washington County Railroad, from 1991 to present?

(Dec. 8, 2020, 11:23 a.m.). Mr. Holder asked for answers to these questions “by weeks end.”⁹

In 2023, after DNR had received approximately sixty PIA requests from Mr. Holder (and responded to many of them), and after Mr. Holder had initiated two PIA actions against DNR, *see supra*, note 8, Mr. Holder sent several emails directly to DNR’s PIA coordinator in an effort to get records he felt were outstanding. The first, sent December 14, 2023 (11:19 p.m.), recognized that the PIA coordinator had legal counsel but stated: “I think it is better that we talk directly. I do not think your lawyers are very good, and I think you know you can trust me.” The email contained a screenshot of an affidavit by the PIA coordinator filed in one of the PIA actions that attested that the PIA coordinator had “not been served with a summons, complaint, or discovery.” Mr. Holder indicated that he “just [did] not believe that is true based on the evidence [he] intend[ed] to present at trial.” Mr. Holder closed the email with his “continuing request”:

At the end of the day, I am just kindly requesting to inspect my records with the least cost and delay as possible. You, Anthony Burrows, are the “final decision maker” in the “knowing and willful” denial of my right to inspect my documents. I am not discouraging you from seeking advice from [counsel] but I will take the position that you do so to your own detriment. I

⁹ In this email, Mr. Holder also included three questions that he indicated were for one of DNR’s attorneys. Those questions focused on certain DNR employees and implicitly suggested that they violated the law. For example, one question asked why the employees sent or posted or “otherwise disseminate[d] defamatory media . . . when they had public and private knowledge the content of said media was slanderous and fraudulent?”

personally do not believe that [counsel] care about you, I think they will do anything to “defend” the corrupt state government.

I think you should trust us (we the people) Mr. Burrows. I think you should use your discretion to allow us to inspect each and every record, unredacted, so we can expose the corruption in our state government. You have the authority, and the power, and [counsel] work for you.

Pretend you told the Director, or [counsel] that you think I should get the documents and you are going to give them to me. Then they terminate you as “official custodian.” If you told me that happened, I would scream bloody murder and that the state wrongfully terminated you. I would be highly offended by the state's actions, because I think you are competent at the job, and “know” exactly what you “willfully” do!

Please just give me the records Mr. Burrows, I got your back if the state comes for you.

Counsel for DNR sent a letter dated December 15, 2023, to Mr. Holder in response directing him to communicate with counsel and not with the PIA coordinator. Counsel stated that if Mr. Holder failed to “cease and desist from sending such communications [to the PIA coordinator], we will seek appropriate relief from the courts.”

Counsel’s letter notwithstanding, Mr. Holder sent the PIA coordinator another email with the subject line “You can trust me” stating:

I wish we were on different terms. You see the documents, and you understand what me and my family have went through.

If the AG and high ups are telling you know, you don’t have to listen. (I don’t want records with peoples [sic] addresses that you can’t give me.) But you are top Dawgs, and can do whatever you want. You can also just tell me that someone else is encouraging you, and I can drop my suits and go after those people.

I am a man of my word. I have your back if someone at DNR is pressuring you. Just send a text or call and tell me what to ask for to prove it, I will get the records.

I don’t want money out of this, I want the truth, a better life for our children in free society.

It’s a may be [sic] a leap of faith, but I will catch you.

(Dec. 18, 2023, 3:43 p.m.).

In mid-December, 2023, as DNR continued to receive frequent PIA requests and other communications from Mr. Holder, DNR contacted the Office of the Public Access Ombudsman for assistance with what DNR believed to be Mr. Holder's pattern of frivolous, vexatious, and bad faith PIA requests.¹⁰ Ultimately, the Ombudsman issued a final determination stating that the dispute was not resolved and DNR filed this complaint with our Board.

In its complaint, DNR states that it seeks relief based on "a pattern of over 60 [PIA] requests sent to DNR by Justin Holder that have become 'frivolous, vexatious, or in bad faith.'" Counsel for DNR contends that many of Mr. Holder's PIA requests are "extremely broad and request records dating back decades." Counsel for DNR describes the requests as "confusing, repetitive, and redundant," noting that Mr. Holder "alters and adds to his requests while they are still pending." Counsel for DNR states that DNR has expended "thousands of hours of time from DNR staff" responding to Mr. Holder's PIA requests, yet Mr. Holder is still "searching for some 'smoking gun' evidence that DNR does not have valid legal title to a rail trail adjacent to his property." Counsel for DNR asserts that DNR has produced all responsive records but that "Mr. Holder shows no signs of curtailing his extremely broad, repetitive records requests."

DNR also alleges that Mr. Holder has used inappropriate methods in his attempts to "obtain records that DNR has determined are not in its custody." These methods include, counsel for DNR states, accusing DNR's custodian of records of perjury despite knowing that the accusation was false and "secretly" contacting the custodian in an effort to "persuade him to give up the identities of individuals Mr. Holder believed were instructing the custodian to withhold records." Counsel for DNR describes Mr. Holder as a "conspiracy theorist," and, quoting the judge from a hearing in one of Mr. Holder's PIA suits, *see supra*, note 8, suggests that Mr. Holder "seems to be exceedingly suspicious of how the government interacts with him."

According to DNR, there are three pending PIA requests from Mr. Holder that have not received responses yet.¹¹ The first is a PIA request that DNR received on December 5, 2023, which DNR describes as "another large request for records of communications

¹⁰ The PIA charges the Public Access Ombudsman with making "reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records." § 4-1B-04(a). Before filing a complaint with our Board, a complainant must attempt to resolve a dispute through the Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a).

¹¹ The time for responding to these PIA requests has tolled while DNR's dispute has been pending with the Ombudsman and our Board. *See* § 4-203(d)(2).

between DNR and other government officials about his land disputes and criminal citations.”¹² The second request is an “unnumbered request for records relating to the ‘investigation’ referenced in [counsel’s] cease-and-desist letter.”¹³ The third PIA request, received by DNR on April 8, 2024, asked for “records that DNR would classify as ‘status updates’ to Justin Holder” and “records that inform [Mr. Holder] of the total hours spent by the DNR staff, and OAG on these MPIO request[s], starting in June 2020, and the rate of pay per hour for those employees.”^{14, 15}

DNR argues that, based on the “totality of the circumstances,” which include “the number and scope” of Mr. Holder’s past requests, DNR’s responses to those requests, and DNR’s “efforts to cooperate with [Mr. Holder],” Mr. Holder’s PIA requests and pattern of requests are frivolous, vexatious, and in bad faith. Recognizing that Mr. Holder’s initial PIA requests were not frivolous, vexatious, or made in bad faith, DNR contends that “[o]ver time, [Mr. Holder’s] conduct and requests became such after he became unsatisfied with DNR’s responses and resorted to bombarding DNR with requests, harassing [the PIA coordinator], and filing baseless lawsuits.” DNR argues that Mr. Holder’s requests are frivolous and without legal merit because he continued to send repetitive requests “after DNR had produced everything it had.” Counsel for DNR also notes that some of Mr. Holder’s requests “on their face asked for attorney-client communications”—e.g., his

¹² Portions of this request are quoted *supra*, note 7.

¹³ That letter, which is dated December 15, 2023, and is mentioned *supra*, was sent by counsel for DNR to Mr. Holder after Mr. Holder contacted DNR’s PIA coordinator and urged him to “just give me the records,” stating “I got your back if the state comes for you.” The letter indicated, “[w]e are also investigating the accuracy [Mr. Holder’s] allegations” that DNR’s PIA coordinator had lied in an affidavit filed in court. On December 26, 2023, at 8:18 p.m., Mr. Holder wrote to counsel and asked for “any/all communications, notes, memorandum, documents, files, videos, photographs, call logs, investigative reports, interview notes, text messages, emails, correspondence, writings, letters, and/or social media messages; related to/regarding/generated from; the ‘investigation’ that you referenced in the attached [letter].” Mr. Holder indicates that this was a PIA request to the Office of the Attorney General, not DNR.

¹⁴ Mr. Holder states that that this was not PIA request to DNR but rather “a discovery email between parties.” After counsel responded that Mr. Holder’s email violated the instruction to cease and desist communicating with DNR’s PIA coordinator, Mr. Holder sent a lengthy email in which he countered that he has “the constitutional right to ask my government if it lied under oath, respect those rights!” (Apr. 9, 2024, at 10:14 p.m.).

¹⁵ Mr. Holder contends that there is a fourth outstanding PIA request—namely one he sent on December 17, 2023, which asks for an “unmarked copy of the ‘Merlin Map’” and “any conversations/communications/emails/texts discussing/instructing/relating to placing the text ‘Vegetation and ground clearing in this area,’ (the ‘white typeface text’) on the ‘Merlin Map.’” We understand that Mr. Holder has paid an estimated fee of \$400 for this request, which DNR intends to refund should it be relieved of its obligation to respond under the PIA.

December 26, 2023, for records of counsel's "investigation"—and suggests Mr. Holder knew this.

DNR argues that Mr. Holder's PIA requests, which he "constantly reworded and resubmitted," were "recurring, repetitive, and unrelenting," and thus vexatious in nature. Counsel for DNR points out that Mr. Holder's "discourse" with DNR's counsel has been "incredibly disparaging," and asserts that some requests are "clearly intended to harass and annoy" the PIA coordinator. DNR cites as example a July 30, 2022, PIA request for "proof" that the PIA coordinator was "inquiring within DNR about records," and a December 28, 2022, request for records related to how the PIA coordinator did his job. Counsel for DNR also argues that "Mr. Holder's MPIA conduct, when viewed in totality, makes a complete mockery of the MPIA," and is thus in bad faith. Counsel for DNR states that DNR has "spent thousands of hours and produced tens of thousands of records in response to [Mr. Holder's] requests, only for Mr. Holder to continue his bombardment of DNR with requests." Though counsel for DNR does not suggest that there is "some clear 'dishonesty' in Mr. Holder's motives behind *his requests*," counsel takes the position that "Mr. Holder is motivated by delusional conspiracy theories that DNR is hiding something."

In sum, counsel for DNR asserts that "Mr. Holder is on a scavenger hunt chasing a unicorn in the form of records that either do not exist or are not in DNR's custody," noting that the judge in Anne Arundel County agreed that DNR has conducted good-faith searches for records responsive to Mr. Holder's PIA requests that were before the court in that proceeding. DNR asks us to take note of that judge's finding that DNR went "above and beyond" what was required to respond to Mr. Holder's requests, and argues that DNR has made great efforts to cooperate with Mr. Holder, to no avail. Instead, counsel for DNR asserts that its PIA coordinator has been "under constant siege from Mr. Holder," even while fulfilling Mr. Holder's PIA requests. DNR urges us to grant relief and issue an order "permitting DNR to ignore presently pending and future requests that are substantially the same or relate to the same subject matter as the requests that DNR has already responded to."

Mr. Holder vigorously denies that his PIA requests to DNR are frivolous, vexatious, or in bad faith. Mr. Holder suggests that, by filing this complaint, DNR is seeking to "chill [his] right to public records because he has been so successful in obtaining them." Disagreeing that he has "abused his rights" under the PIA, Mr. Holder contends that his PIA requests "are made in good faith, seeking to retarget, narrow, or broaden in order to inspect public records," and suggests that the submissions here will show that he was "polite and respectful to DNR, and made good faith attempts to work with DNR." Mr. Holder stresses that he "[j]ust wants to receive his records with the least cost and delay possible."

In his response to the complaint, Mr. Holder makes two basic arguments. One, he contends that we are barred from reviewing or resolving DNR's complaint because DNR

could have raised the claim in the PIA action in the Circuit Court for Anne Arundel County and that, in any event, the judge there declined to find him a “vexatious MPIA’er” after DNR suggested to the court that he was. Mr. Holder argues that “DNR deserves no rematch with [our Board] as to this claim.” Mr. Holder urges us to issue a decision stating that we are unable to resolve the complaint on these grounds.

Mr. Holder’s second argument is that the pending PIA requests are “insufficient to warrant relief” under § 4-1A-04(b). Maintaining that DNR’s exhibit of his PIA requests illustrates Mr. Holder’s “efforts in retargeting/narrowing/broadening in good faith to inspect records with the least cost/ delay,” Mr. Holder suggests that, to grant relief, we must find that he “acted inappropriately in correspondence with his adversary during litigation.” Mr. Holder argues that we are not equipped to make such a finding because we do not have experience with “Md. Rule 1-341, adjudication of criminal matters, tort, civil rights, or title to real property.” Describing himself as a “persistent applicant who just wants to receive his documents with the least cost and delay possible,” Mr. Holder asserts that “[i]t is not that [he] is vexatious, he just expects accountability from his government.” According to Mr. Holder, DNR has offered him no assistance with refining or narrowing his PIA requests and therefore cannot meet its burden here.

In reply, DNR contends that Mr. Holder’s arguments about our jurisdiction and authority are “misplaced,” and that his response “fails to squarely refute the key facts” that warrant DNR relief. DNR also provides an “update” on Mr. Holder’s “continued . . . course of frivolous, vexatious, and bad-faith conduct.”¹⁶ DNR emphasizes that it is not seeking to adjudicate, e.g., “who owns the railroad” through this complaint, and argues that “the issues in this proceeding focusing on Mr. Holder’s conduct are distinct from those pending in litigation focusing on DNR’s conduct” with respect to Mr. Holder’s PIA requests. As to Mr. Holder’s substantive arguments about why we should not grant DNR the relief it seeks, counsel for DNR offers “selective rebuttals” to those contentions, including that “Mr. Holder seeks to take advantage of the chaos he created with his countless MPIA requests by trying to confuse the Board as to which requests are before it.” Counsel for DNR asks us to “reject Mr. Holder’s invitation to hair split relief based on the chaotic number and manner of his requests.”¹⁷

¹⁶ Specifically, counsel for DNR states that Mr. Holder has: (1) sued a DNR Assistant Attorney General and a Service Park Manager for, among other things, malicious prosecution, conspiracy, and civil rights violations; (2) continued to contact DNR’s PIA coordinator by email regarding a request DNR has responded to and for which it “produced all the records it had”; and (3) in appellate proceedings, “tried to leverage [counsel’s] extension request to get the records he wanted, which by now he should know DNR cannot locate despite its reasonable search efforts.”

¹⁷ After DNR sent its reply, Mr. Holder submitted a “Sur-Reply-Objection-Request to Strike New Evidence.” DNR then sent a “Sur Reply Response.” In addition, the parties engaged in further correspondence with the Board on August 14 and 27, 2024, September 24 and 25, 2024, and

Analysis

The PIA authorizes us to review and resolve complaints that allege certain violations of its provisions. *See* § 4-1A-04. In 2021, the Legislature amended § 4-1A-04 so that custodians may file complaints that “an applicant’s request or pattern of requests is frivolous, vexatious, or in bad faith.” § 4-1A-04(b); *see* 2021 Md. Laws, ch. 658. Though the statute does not specifically define the terms “frivolous,” “vexatious,” or “bad faith,” it directs us to consider “the totality of the circumstances including the number and scope of the applicant’s past requests and the custodian’s responses to past requests and efforts to cooperate with the applicant.” § 4-1A-04(b)(3). If we find a PIA request or a pattern of PIA requests frivolous, vexatious, or made in bad faith, we must “issue an order authorizing the custodian to . . . ignore the request that is the subject of the custodian’s complaint” or “respond to a less burdensome version of the request within a reasonable time frame, as determined by the Board.” § 4-1A-04(b)(3). In addition, we may order that the custodian may “[i]gnore any future requests that are substantially the same as the request that is the subject of the custodian’s complaint.” COMAR 14.02.07.04D(2).

We have considered two complaints from custodians under § 4-1A-04(b). *See* PIACB 24-29 (Mar. 29, 2024); PIACB 24-106 (Sept. 26, 2024). The first complaint, from the Office of the State’s Attorney for Baltimore City (“BCSAO”), alleged that a pattern of more than sixty PIA requests in a period of about three months sent from numerous email accounts seeking records related to James Alford and his district court matters was frivolous, vexatious, and in bad faith. After considering an extensive record, which included copies of the PIA requests that the BCSAO received, the responses it issued, and other communications sent by the requesters, we found those PIA requests vexatious and in bad faith. We ordered that “the BCSAO need not respond to any of the Alford-related requests identified in its complaint, nor need it respond to any subsequent or future requests for records related to James Alford, Louis Leibowitz, and the matters between them heard in the District Court of Maryland for Baltimore City from early 2022 through the end of 2023.”¹⁸ PIACB 24-29, at 25 (Mar. 29, 2024).

In our decision for PIACB 24-29, we determined that a custodian bears the burden of demonstrating, by a preponderance of the evidence, that a PIA request (or pattern of PIA requests) is frivolous, vexatious, or in bad faith. *See id.* at 14-15 & n.18. Thus, to obtain relief here, DNR must prove that it “is more likely so than not so,” *Romero v. Perez*, 463

October 16 and 17, 2024. We have reviewed these additional filings and correspondence, but do not detail them here.

¹⁸ Our decision was appealed to the Circuit Court for Baltimore City. *See In the Matter of William Hernandez*, No. C-24-CV-24-000368 (Cir. Ct. Balt. City). On September 4, 2024, the Circuit Court affirmed our decision after a hearing. Mr. Hernandez has appealed the Circuit Court’s ruling to the Appellate Court of Maryland.

Md. 182, 197 n.20 (2019), that “based on the totality of the circumstances” the PIA requests identified in its complaint are “frivolous, vexatious, or in bad faith,” § 4-1A-04(b).

The PIA does not define “frivolous,” “vexatious,” or “bad faith.” In PIACB 24-29, we looked to several different sources to find their meaning for purposes of § 4-1A-04(b), including dictionaries, Maryland cases interpreting the terms in other legal contexts, and a decision from Connecticut’s Freedom of Information Commission (“FOIC”) that involved a similar vexatious request provision.¹⁹ See PIACB 24-29, at 19-22 (Mar. 29, 2024). From those sources, we determined that a PIA request may be “frivolous” when “it has no basis in law and lacks in legal merit or foundation.” *Id.* at 22. We found that requests may be “vexatious” when “they are intended to harass or annoy a custodian, and when they are ‘recurring, repetitive and unrelenting,’ and contain abusive, disparaging, or profane language.” *Id.* (internal citation omitted). Finally, we said that PIA requests may be made in “bad faith” when “they ‘make a mockery of public access’ by, for example, ‘pretending to be someone else when making a request,’” or when they “do not seem to be truly concerned with obtaining public records,” but rather “more intended to harass . . . and to serve as a vehicle for invectives and other unsupported accusations of serious misconduct.” *Id.* at 24 (internal citation omitted).

Before we apply the legal principles outlined above to the facts in this extensive record, we must resolve Mr. Holder’s claim that DNR is precluded from seeking relief before our Board because it could have (or should have) done so in the actions heard in circuit court. We reject that claim. The PIA provides that “[a] person or governmental unit need not exhaust the administrative remedy under this subtitle before filing suit.” § 4-1A-10(a). We have taken this to mean that “we share concurrent jurisdiction with the circuit courts.” See PIACB 24-04, at 6 (Oct. 5, 2023). So, Mr. Holder was able to file his PIA actions in the circuit courts as he did without resorting first to the Ombudsman and our Board. This does not mean, however, that DNR was required to do the same. In fact, it unlikely that DNR could have done the same—at least not under the PIA. The PIA provides a right of action in circuit court “whenever a person or governmental unit is denied inspection of a public record or is not provided with a copy, printout, or photograph of a public record.” § 4-362(a)(1). Unlike § 4-1A-04, which provides the boundaries of our jurisdiction, § 4-362 affords no right to a *custodian* to file a petition in circuit court against an *applicant* alleging that the applicant’s PIA requests are frivolous, vexatious, or in bad faith.²⁰

¹⁹ See *Town of East Lyme v. Godbout*, FOIC PRVR #1 (Feb. 26, 2020), https://portal.ct.gov/-/media/foi/finaldecisions/2020/feb26/prvr_1.pdf?la=en.

²⁰ We note that § 4-358 permits a custodian to “petition a court to order authorization for the continued denial of inspection” when the PIA “authorizes inspection of a public record but the official custodian believes that inspection would cause substantial injury to the public interest.” Our Board has no similar jurisdiction.

The doctrine of res judicata is “an affirmative defense that precludes the same parties from relitigating any suit based upon the same cause of action.” *Powell v. Breslin*, 430 Md. 52, 63 (2013). In Maryland, the doctrine applies if three conditions are present: “(1) the parties in the present litigation are the same or in privity with the parties to the earlier action; (2) the claim in the current action is *identical to the one determined in the prior adjudication*; and (3) there was a final judgment on the merits in the previous action.” *Id.* at 63-64 (emphasis added). Here, the second and third conditions are not present because the claim in the circuit court action was that DNR had “knowingly and willfully” violated the PIA by failing to timely produce public records, not that Mr. Holder’s PIA requests were frivolous, vexatious, and in bad faith. Though at the hearing DNR referred to Mr. Holder as “vexatious” and suggested that the court would agree after seeing the evidence,²¹ that statement was argument in DNR’s defense against Mr. Holder’s claim that DNR knowingly and willfully failed to respond or delayed responses to his PIA requests. That Mr. Holder was “vexatious” was not the actual claim being litigated. True, the court did not render any “final judgment” that Mr. Holder’s conduct was “vexatious,” but neither did the court render judgment that it was *not* vexatious. The court could not have rendered such judgment because that was not the claim before the court.²²

Thus, having determined that DNR’s allegations are properly before our Board, we move to our resolution of those allegations. Based on the submissions, we find that DNR has not met its burden to show, by a preponderance of the evidence, that Mr. Holder’s PIA requests or pattern of PIA requests are frivolous, vexatious, or in bad faith. First, broadly speaking, we observe that the submissions demonstrate that Mr. Holder has been involved with protracted disputes regarding his property in Washington County. Though it is clear that we cannot resolve or otherwise comment on the merits of those disputes, we sense from the volume and plain language of Mr. Holder’s PIA requests that he is an active requester trying to get at the nugget of information he needs to support his theories in those disputes. There is nothing illegitimate about that. Though counsel for DNR makes some rather naked conclusory characterizations of Mr. Holder’s actions and intent, we do not discern support for those conclusions in the exhibits DNR and Mr. Holder provide as evidence. Counsel for DNR points repeatedly to the judge’s observation, in the Anne Arundel County action, that Mr. Holder is “exceedingly suspicious of how the government

²¹ See DNR Exhibit A, Transcript of Hearing, at 15, *In the Matter of Justin Holder*, Civil No. C-02-CV-22-001474 (Cir. Ct. Anne Arundel County Apr. 5, 2024) (“Holder Transcript”).

²² In addition to barring relitigation of claims decided by a court, res judicata may also bar consideration of “matters which with propriety could have been litigated in the first suit.” *Powell*, 430 Md. at 63 (quotation and citation omitted). As noted above however, the PIA does not permit custodians to file a complaint in circuit court that a requester’s request or pattern of PIA requests is frivolous, vexatious, or in bad faith. Instead, the PIA permits requesters to file a complaint in circuit court whenever they are denied inspection or are not provided with a copy of a public record. See § 4-362(a)(1). Thus, DNR’s claim could not have been litigated “with propriety” in Mr. Holder’s court action.

interacts with him,”²³ and suggests that Mr. Holder is a “conspiracy theorist.” While Mr. Holder may have certain suspicions or beliefs about government, in our view those suspicions or beliefs make him no less entitled to inspect public records than anyone else.

Turning next to the specific terms themselves, we do not think DNR has shown, by a preponderance of the evidence, that Mr. Holder’s PIA requests or pattern of PIA requests are frivolous. Counsel for DNR argues that “the repetitive nature of his requests after DNR had produced everything it had rendered them without legal merit or foundation.” We disagree. The record demonstrates that Mr. Holder’s PIA requests do not lack “in legal merit or foundation.” PIACB 24-29, at 22 (Mar. 29, 2024). Though many of Mr. Holder’s requests certainly related back to the same subject—i.e., the Weverton Roxbury Rail and Trail—the language of the requests shows that they evolved as DNR produced records. We agree with Mr. Holder’s assertion that the subsequent requests were meant to “retarget” and refine prior requests that did not produce all the records he sought. In short, though numerous, they were not frivolous.

Next, DNR alleges that Mr. Holder’s PIA requests are vexatious because “as testified to by Mr. Burrows, Mr. Holder’s 60-plus requests, which he constantly reworded and resubmitted, are undoubtedly ‘recurring, repetitive and unrelenting.’” Counsel for DNR also contends that Mr. Holder’s “discourse with DNR’s counsel has been incredibly disparaging,” and that some PIA requests, such as a request for “records relating to how Mr. Burrows did his job,” were “clearly intended to harass or annoy Mr. Burrows.” Again, we disagree. We do not think Mr. Holder’s PIA requests are “recurring, repetitive, and unrelenting” to the same degree or in the same way as the requests in PIACB 24-29, at 22-23 (Mar. 29, 2024), nor do we find evidence of intent to harass either DNR’s PIA coordinator or DNR’s counsel. To be sure, Mr. Holder sent a relatively high volume of PIA requests over the course of several years. But the submissions most suggest that those requests were intended to get at records Mr. Holder genuinely believed existed but that DNR had not produced, based on the language of his previous requests. And, although some of Mr. Holder’s communications with DNR may have laid bare some frustration and irritation (whether warranted or not), we do not view his repeated PIA requests and other communications as evidence of harassment but rather an indication of mistrust or a breakdown in communication. It is not unfathomable that a PIA requester who suspects that an agency is not taking their requests seriously might, in good faith, make PIA requests for records that show whether the agency is indeed doing the work it says it is doing.

Finally, DNR argues that Mr. Holder’s PIA requests are in bad faith “when viewed in totality” because they make “a complete mockery of the MPIA.” Of all of DNR’s allegations, this one troubles us the most. Counsel for DNR suggests that Mr. Holder is “on a scavenger hunt chasing a unicorn in the form of records that either do not exist or are not in DNR’s custody,” and that his “documented history of litigiousness and relentlessness

²³ See Holder Transcript, at 199.

suggests he will not stop with his requests and conduct.” We see no mockery here. Rather, Mr. Holder is using the PIA—actively—to gain “access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(b). That is his right under the PIA. We note that the PIA places no limits on the number of PIA requests a requester can make, thus volume alone cannot possibly be sufficient to show bad faith. This situation is a far cry from what we confronted in PIACB 24-29, where one requester either posed as or worked with other people to make it seem as though many PIA requests were coming from separate individuals while simultaneously denying any knowledge of such scheme. *See* PIACB 24-29, at 15-19 (Mar. 29, 2024); *see also* PIACB 24-106 (Sept. 26, 2024) (involving the same requester(s)). Mr. Holder has employed no such tactics here. Unlike PIACB 24-29, at 25 (Mar. 29, 2024), where there was “a certain amount of deception present,” Mr. Holder has been straightforward in who he is and what he is seeking. We find no bad faith on his part.

Before concluding, we note that the submissions show that DNR’s PIA coordinators consistently took the high road, even in the face of Mr. Holder’s growing frustration and occasionally inappropriate tone. We agree that DNR has responded to his requests in good faith, even if not in always in a timely fashion. The coordinators having exhibited such professionalism throughout, we cannot determine that responding to the few requests that remain pending would be an undue burden. In light of our determinations here, DNR must respond to any of Mr. Holder’s PIA requests that are still outstanding.²⁴ *See* § 4-203(d)(2) (providing that the PIA’s time limitations are extended only “pending resolution of [a] dispute” with the Ombudsman and our Board). To the extent that Mr. Holder has stated in his response here that certain communications, e.g., his emails of December 26, 2023 (*see supra*, note 13) and April 6, 2024 (*see supra*, note 14), were *not* PIA requests to DNR, DNR has no obligation under the PIA to produce records in response.

Conclusion

After careful review of the parties’ submissions, we find that DNR has failed to prove, by a preponderance of the evidence, that Mr. Holder’s PIA requests or pattern of PIA requests are frivolous, vexatious, or in bad faith.

Public Information Act Compliance Board*

²⁴ Our resolution of this complaint was a close call on the facts. Our decision here is based in part on the extraordinary nature of the remedy DNR seeks, an expansive interpretation of which could greatly undermine the very purpose of the PIA. Yet, at the same time, Mr. Holder’s position that he is simply an “active” requester gives us pause as it is not entirely consistent. He states that only a handful of requests remain outstanding, yet he has apparently continued to submit several more. Mr. Holder would be well advised to moderate his tone in all of his communications lest we be called upon to revisit this close call based on future conduct.

*Sareesh Rawat, Chair***
Samuel G. Encarnacion
Debra Lynn Gardner

** For the reasons outlined briefly below, Board Chair Sareesh Rawat does not join fully in the Board's decision.

I agree with a majority of the Board that Mr. Holder's PIA requests are not frivolous, vexatious, or in bad faith. However, I write separately to express my view that the Board is precluded from considering DNR's complaint in the first instance.

The PIA authorizes this Board to review and resolve complaints from custodians "alleging that an applicant's request or pattern of requests is frivolous, vexatious, or in bad faith." § 4-1A-04(b)(1). A custodian may file such a complaint with the Board if the custodian has attempted to resolve the dispute through the Office of the Public Access Ombudsman, and if the Public Access Ombudsman has issued a final determination stating that the dispute was not resolved. § 4-1A-05(a). Our review is thus limited to those disputes that are presented for mediation with the Ombudsman. *Id.*; see also COMAR 14.02.02.01B(1) (complaint shall "[p]ertain only to the dispute described in the Final Determination"); PIACB 23-23, at 3 n.4 (June 20, 2023) (noting that "[w]e use the term 'presented for mediation' rather than 'mediated' in recognition of the fact that not all Board-eligible disputes are *actually* mediated through the Ombudsman," and that in some instances "a custodian may decline to mediate a dispute").

Additionally, a governmental unit need not exhaust the administrative remedy under this subtitle before filing suit. § 4-1A-10(a). Therefore, the Board has neither exclusive nor primary jurisdiction *over PIA-related disputes*. See PIACB 24-04, at 5-6 (October 5, 2023) (citing *Zappone v. Liberty Life Ins. Co.*, 349 Md. 45, 60 (1998) (explaining that an administrative remedy is exclusive when it "preclude[s] any resort to an alternative remedy," and primary when "a claimant must invoke and exhaust the administrative remedy, and seek judicial review of an adverse administrative decision, before a court can properly adjudicate the merits of the alternative judicial remedy"). Instead, the Board shares concurrent jurisdiction with the circuit courts—i.e., "the administrative remedy and the alternative judicial remedy" are "fully concurrent, with neither remedy being primary, and the plaintiff at his or her option may pursue the judicial remedy without the necessity of invoking and exhausting the administrative remedy." *Zappone*, 349 Md. at 61.

Meanwhile, "*res judicata* is an affirmative defense that precludes the same parties from relitigating any suit based upon the same cause of action because the second suit involves a judgment that is conclusive, not only as to all matters that have been decided in the original suit, *but as to all matters which with propriety could have been litigated in the first suit.*" *Powell v. Breslin*, 430 Md. 52, 63 (2013) (citing *Alvey v. Alvey*, 225 Md. 386,

390 (1961); *Mackall v. Zayre Corp.*, 293 Md. 221, 228 (1982)) (stating that “if a proceeding between parties involves the same cause of action as a previous proceeding between the same parties, the principle of res judicata applies and all matters actually litigated or that could have been litigated are conclusive in the subsequent proceeding”). Thus, *res judicata* necessarily encompasses the related doctrines of issue and claim preclusion—barring from relitigation not only all matters that were actually litigated and decided in the previous suit, but also matters that *could have been litigated with propriety in the first suit*.

The Anne Arundel County Circuit Court issued its decision in C-02-CV-22-001474 on April 5, 2024. In that case, Mr. Holder brought an action under the PIA alleging that DNR had violated the PIA by failing to produce public records. Out of the underlying PIA requests that were at issue in that case, DNR presented six requests to the Ombudsman for mediation which the Ombudsman was unable to resolve. These requests were 102723, 120523, 120723, 121723, 122623, and 010524, all titled for the date on which Mr. Holder submitted these PIA requests to DNR—except for 120523, which Mr. Holder submitted on December 04, 2023 but presumably after business hours. Based on the parties’ submissions, only two of these PIA requests (120523 and 121723) remain outstanding.

As established, the Board has concurrent jurisdiction with the circuit courts in PIA-related disputes over which it has jurisdiction. Additionally, in accordance with § 4-1A-10(a), a governmental unit need not exhaust the administrative remedy before filing suit. Therefore, it follows that DNR could have properly litigated whether Mr. Holder’s 120523 and 121723 requests were frivolous, vexatious, or in bad faith during the prior PIA-related litigation before the Anne Arundel County Circuit Court. Since the final decision in that litigation was issued on April 5, 2024—and DNR has apparently failed to raise, on cross-appeal, the issue that Mr. Holder’s requests are frivolous, vexatious, or in bad faith—I would find that this Board may not again issue a decision regarding any PIA requests made by Mr. Holder before that date. In other words, *res judicata* should bar DNR from challenging as frivolous, vexatious, or in bad faith, any PIA requests made by Mr. Holder before the Circuit Court’s decision in C-02-CV-22-001474. For such requests, this Board should issue a decision stating that it is unable to resolve the complaint as permitted under § 4-1A-07(2)(i).

Finally, as noted, the Board does not have jurisdiction over PIA requests that were not first submitted to the Ombudsman for meditation. Thus, DNR may not challenge any underlying PIA requests made by Mr. Holder as frivolous, vexatious, or in bad faith that were not first submitted to the Ombudsman for mediation. As for communications that Mr. Holder contends were not PIA requests e.g., his emails of December 26, 2023 (*see supra*, note 13) and April 6, 2024 (*see supra*, note 14), the Board correctly concludes that DNR is under no obligation to produce records under the PIA.

Sareesh Rawat, Chair

* For the reasons outlined briefly below, Board members Quinton M. Herbert and Nivek M. Johnson do not join fully in the Board's decision.

Though we agree that our Board is not precluded from reviewing DNR's complaint and concur with the Board's conclusion that DNR has not demonstrated, by a preponderance of the evidence, that Mr. Holder's PIA requests are frivolous or in bad faith, in our view there is substantial evidence that the requests are vexatious. This Board may resolve complaints from custodians that a PIA applicant's "request or pattern of requests is frivolous, vexatious, or in bad faith." § 4-1A-04(b)(1). More specifically, § 4-1A-04(b)(3) provides the basis by which this Board should consider whether a particular request or, in this case, set of requests are frivolous or vexatious as the analysis must be "based on the totality of the circumstances including the number and scope of the applicant's past requests and the custodian's responses to past requests and efforts to cooperate with the applicant."

While there is virtually no case law on what constitutes a frivolous, vexatious, or bad faith request under the PIA, we are guided by the "cardinal rule of statutory interpretation" that we endeavor to "ascertain and effectuate the intention of the legislature." *Md. Dep't of the Env't v. Underwood*, 368 Md. 160, 175 (2002) (quoting *Oaks v. Connors*, 339 Md. 24, 35 (1995) (citation omitted)). In that attempt, "our first recourse is to the words of the statute, giving them their ordinary and natural import." *Garnett v. State*, 332 Md. 571, 585 (1993) (citing *Fairbanks v. McCarter*, 330 Md. 39, 46 (1993); *NCR Corp. v. Comptroller*, 313 Md. 118 (1988)). Thus, "where statutory provisions are clear and unambiguous, no construction or clarification is needed or permitted, it being the rule that a plainly worded statute must be construed without forced or subtle interpretations designed to extend or limit the scope of its operation." *Giant Food, Inc. v. Dep't of Labor, Licensing and Regulation*, 356 Md. 180, 189 (1999) (quoting *Tucker v. Fireman's Fund Ins. Co.*, 308 Md. 69, 73–75 (1986)).

Here, in considering weighing a custodian's claim that a request or pattern of requests is frivolous, vexatious, or in bad faith, the legislature has clearly articulated that this Board's consideration give substantial weight to the "totality of the circumstances including the number and scope of the applicant's past requests and the custodian's responses to past requests and efforts to cooperate with the applicant." § 4-1A-04(b)(3). In the past, this Board has found requests to be vexatious when "they are intended to harass or annoy a custodian, and when they are 'recurring, repetitive and unrelenting,' and contain abusive, disparaging, or profane language." PIACB 24-29, at 22 (Mar. 29, 2024). As we see it, an applicant's subjective belief about whether his requests are frivolous, vexatious, or in bad faith is immaterial to the calculus of whether those requests are in fact frivolous, vexatious or in bad faith.

In the instant case, it is undisputed that Mr. Holder submitted more than sixty requests to DNR over an approximately three-year period.¹ In addition to PIA requests, Mr. Holder sent emails to DNR's PIA coordinator at various points to follow up on the status of his many requests. Some of those emails were rather antagonistic and provocative in tone. That notwithstanding, DNR has provided Mr. Holder thousands of pages of documents in response to his voluminous PIA requests and has spent over one thousand hours searching for documents responsive to Mr. Holder's requests. Under a totality of circumstances analysis, the case before the Board presents a prima facie case for vexation.

Quinton M. Herbert
Nivek M. Johnson

¹ A dispute remains over two to four outstanding requests.