View metadata, citation and similar papers at core.ac.uk

brought to you by CORE

provided by Digital Commons @ UM Law

Maryland Law Review

Volume 71 | Issue 3 Article 8

Montgomery County v. Shropshire: Trying to Shoehorn Police Intradepartmental Disciplinary Files into the Wrong Cabinet

Wayne Heavener

Follow this and additional works at: http://digitalcommons.law.umaryland.edu/mlr

Part of the Labor and Employment Law Commons

Recommended Citation

Wayne Heavener, *Montgomery County v. Shropshire: Trying to Shoehorn Police Intradepartmental Disciplinary Files into the Wrong Cabinet*, 71 Md. L. Rev. 925 (2012)
Available at: http://digitalcommons.law.umaryland.edu/mlr/vol71/iss3/8

This Casenotes and Comments is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

Note

MONTGOMERY COUNTY v. SHROPSHIRE: TRYING TO SHOEHORN POLICE INTRADEPARTMENTAL DISCIPLINARY FILES INTO THE WRONG CABINET

WAYNE HEAVENER*

In *Montgomery County v. Shropshire*,[1] the Maryland Court of Appeals considered whether two police officers' intradepartmental disciplinary files were exempt from disclosure to the Montgomery County Inspector General, pursuant to the Maryland Public Information Act ("MPIA").[2] The court held that the officers' Internal Affairs Division ("IAD") files were "personnel files" under the MPIA, not "investigations," and therefore the Montgomery County Police Department ("MCPD") could deny disclosure of the records.[3]

The distinction between "investigations" and "personnel records" is significant: while investigations afford a record custodian some level of discretion in deciding whether to disclose,[4] personnel records require mandatory denials with few, very circumscribed, exceptions.[5] The Court of Appeals erred in finding that the IAD files were personnel files; instead, the court should have found that the IAD files were investigations based upon the plain meaning of the MPIA.[6] Concerned with the practical implications of disclosing IAD files, the court broadened the application of the personnel records exemption

Copyright © 2012 by Wayne Heavener.

* Wayne Heavener is a second-year student at the University of Maryland Francis King Carey School of Law, where he is a staff member on the *Maryland Law Review*. The author thanks Professor Thiruvendran Vignarajah for his guidance. He also thanks the editors of the *Maryland Law Review*, including Charles Austin, Michele Listokin, Natalie Waryck, Steve Kiehl, Jeffrey Quinn, and Kristina Foehrkolb, for their help developing this Note. Finally, the author would like to thank his parents, Jeffrey and Tonya Heavener, for their continued advice and support.

1. 420 Md. 362, 23 A.3d 205 (2011).
2. MD. CODE ANN., STATE GOV'T §§ 10-611 to 10-630 (LexisNexis 2009).
3. *Shropshire*, 420 Md. at 383–84, 23 A.3d at 218.
4. *See infra* Part II.A.2.
5. *See infra* Part II.A.1.
6. *See infra* Part V.A.

under the MPIA beyond the scope of its plain meaning.[7] The court could have reached the same outcome with a more logical interpretation of the statute by acknowledging that the IAD records were investigations under the MPIA,[8] as substantiated by a public interest in confidentiality supplied by the Law Enforcement Officers' Bill of Rights ("LEOBR").[9]

I. THE CASE

The Montgomery County Inspector General requested the MCPD Internal Affairs Division files of officers Edward Shropshire and Willie E. Parker-Loan as part of an investigation into the Montgomery County Police Department's handling of a traffic accident involving a member of the county's fire and rescue service.[10] Shropshire and Parker-Loan were among the officers who responded to an accident on November 30, 2008, that involved Montgomery County Assistant Fire Chief Gregory J. DeHaven.[11] Soon thereafter a complaint was filed with the IAD,[12] which prompted an investigation[13] to examine whether Shropshire or Parker-Loan had committed any administrative violations in conducting their accident investigation.[14] Ultimately, the IAD found that Parker-Loan and Shropshire committed no administrative violations. Concurrently, the Montgomery County Inspector General launched an investigation into the acci-

7. *See infra* Part V.B.

8. *See infra* Part V.C.

9. MD. CODE ANN., PUB. SAFETY §§ 3-101 to 3-113 (LexisNexis 2011).

10. Montgomery County v. Shropshire, 420 Md. 362, 364–65, 23 A.3d 205, 206–07 (2011).

11. *Id.* at 366, 23 A.3d at 207.

12. Any form of complaint against an officer triggers an IAD investigation. At the end of an IAD investigation, the involved officer's manager examines the file and makes a written finding regarding the allegation. The case is concluded if the commander and IAD director agree the allegations are unfounded. If the director and commander disagree, however, the Internal Investigative Review Panel ("IIRP") examines the case. If the IIRP affirms the allegations, it makes written findings and proposals regarding disciplinary action to the police chief; if the IIRP finds the allegation unfounded, the case is closed. If the officer is charged, the officer can either accept the charges or have an administrative hearing governed by the Law Enforcement Officers' Bill of Rights pursuant to Pub. Safety § 3-101. *See* Br. for Appellee at 4–6, Montgomery County v. Shropshire, 2010 Md. App. Ct. Briefs (No. 84) (Md. Jan. 3, 2011).

13. IAD files are indexed by an officer's name and include complaints, the officer's photograph, birth date, education level, Internal Investigation Notification to the officer, investigative report, investigator's synopsis, witness transcripts, findings, and disciplinary recommendations. *See* Br. for Appellee at 6–7, *Shropshire*, 2010 Md. App. Ct. Briefs (No. 84).

14. Br. for Appellant at 2, *Shropshire*, 2010 Md. App. Ct. Briefs (No. 84).

dent, which included the conduct of Shropshire and Parker-Loan. The Inspector General submitted a request to the Chief of Police, as custodian of police records, for the officers' internal investigation file.[15]

Before the requested records could be released, Shropshire and Parker-Loan filed a complaint seeking declaratory judgment prohibiting the IAD custodian from disclosing the internal investigation records to the Inspector General, and a writ of mandamus to prohibit the Inspector General from accessing the IAD files.[16] The officers predicated their action upon the theories that the IAD files were "personnel files" pursuant to the Maryland Public Information Act[17] and were confidential.[18] Montgomery County then filed a motion for summary judgment, basing its argument on the theory that IAD files were "investigatory records"[19] pursuant to the MPIA, and therefore not afforded such exemption from disclosure.[20] Shropshire and Parker-Loan asserted that the IAD files were personnel files, or alternatively, that the Law Enforcement Officer's Bill of Rights protected their IAD files from disclosure.[21]

The Circuit Court for Montgomery County found that the files in question were investigation records under the MPIA, and that all information except "that of a personal nature" should be disclosed to the Inspector General.[22] The Circuit Court relied largely upon *Maryland Department of State Police v. Maryland State Conference of NAACP Branches*[23] in holding that most of the information contained in the IAD files could be disclosed as investigation records pursuant to Section 10-618(f) of the Maryland Code,[24] with the exception of any of

15. Montgomery County v. Shropshire, 420 Md. 362, 366–67, 23 A.3d 205, 208 (2011). Among those records requested were: the name, rank, assignment, and station of all police department employees who assisted in the November 30th accident; the duty status, shift, and pay status for each responding individual; and duplicates of all applicable Montgomery County government and police department policies regarding the processing of an accident scene, documenting field sobriety tests, issuing traffic citations, and completing the State of Maryland Motor Vehicle Accident Report. *Id.* at 367, 23 A.3d at 208.

16. Br. for Appellant at 1, *Shropshire*, 2010 Md. App. Ct. Briefs (No. 84).

17. MD. CODE ANN., STATE GOV'T § 10-618(i) (LexisNexis 2009).

18. *Shropshire*, 420 Md. at 367–68, 23 A.3d at 208.

19. STATE GOV'T § 10-618(f).

20. *Shropshire*, 420 Md. at 368–69, 23 A.3d at 209.

21. *Id.* at 369, 23 A.3d at 209.

22. Shropshire v. Montgomery County, No. 319081, 2010 WL 3843051, at *1 (Md. Cir. Ct. Apr. 30, 2010).

23. 190 Md. App. 359, 370–71, 988 A.2d 1075, 1081 (Md. Ct. Spec. App. 2010), *cert. granted* Maryland State Police v. NAACP Branches, 415 Md. 38, 997 A.2d 789 (2010).

24. MD. CODE ANN., STATE GOV'T § 10-618(f) (LexisNexis 2009).

the officers' personal information.[25] Montgomery County appealed the decision of the Circuit Court to the Court of Special of Appeals, asserting that the Inspector General should be granted access to the whole IAD file.[26] At this point, Shropshire and Parker-Loan filed a writ of certiorari to the Court of Appeals of Maryland.[27] The Court of Appeals granted certiorari before the Court of Special Appeals could decide whether the MPIA or the LEOBR protected the IAD records from disclosure.[28]

II. LEGAL BACKGROUND

The Maryland Court of Appeals has struggled with how to classify records of an intradepartmental investigation under the MPIA.[29] This particular question would render the files either largely immune from disclosure or subject to discretionary disclosure, depending on whether the court considered the files personnel records[30] or investigations.[31] While the court has always recognized some level of confidentiality conferred upon intradepartmental investigations, it remained largely unclear whether that confidentiality was derived from the MPIA[32] or the LEOBR.[33]

A. *The MPIA's Personnel Records and Investigations Exceptions*

The MPIA stands for the general proposition that citizens "are entitled to have access to information about the affairs of government and the official acts of public officials and employees."[34] There are, however, exceptions to the MPIA's general policy of disclosure,[35]

25. Br. for Appellee at 3–4, Montgomery County v. Shropshire, 2010 Md. App. Ct. Briefs (No. 84) (Md. Jan. 3, 2011).

26. *See* Br. for Appellant at 1, Montgomery County v. Shropshire, 2010 Md. App. Ct. Briefs (No. 84) (Md. Nov. 19, 2011).

27. *See id.* at 1–2.

28. Montgomery County v. Shropshire, 420 Md. 362, 371, 23 A.3d 205, 207, 210 (2011).

29. *See infra* Part III.A.1.

30. *See infra* Part III.A.1.

31. *See infra* Part III.A.2.

32. *See infra* Part III.B.

33. *See infra* Part III.C.

34. MD. CODE ANN., STATE GOV'T § 10-612(a) (LexisNexis 2009).

35. Exceptions to the MPIA fall into three classifications: exceptions in State Gov't § 10-615 permit non-disclosure if another law, outside the MPIA, prevents disclosure; the required denial of State Gov't §§ 10-616 and 10-617 impose exceptions to disclosure regarding specific records and specific information, respectively; the permissible denials in State Gov't § 10-618 provide the custodian of a document some discretion in whether to

which serve to either categorically bar disclosure or permit a file's custodian some degree of discretion in whether to disclose.[36] The source of discretion comes from the text of the statute itself.[37] Despite their distinct natures, there is a degree of commonality between mandatory and permissible denials.[38] While a document may not fall within both the permissible and mandatory exceptions concurrently,[39] both statute[40] and case law have engendered an imperative upon the custodian to sever parts of a record that are subject to disclosure from those that are not.[41] Moreover, the Court of Appeals has held that courts should construe these exceptions narrowly, given the MPIA's broader policy in favor of disclosure.[42] With respect to police departments' intradepartmental disciplinary files, there are two relevant MPIA provisions that courts have interpreted as justifying the denial of disclosure: the "required denial" of "personnel records" and the "permissible denial" of "investigations."

1. Personnel Records Are Mandatory Denials to the General MPIA Rule of Disclosure of Government Records

Personnel records are among those denials to disclosure that the MPIA holds as "required." Section 10-616, denoted "Required denials—Specific records" by the MPIA, states that "[u]nless otherwise provided by law, a custodian shall deny inspection of a public record,

deny access. Attorney General of Maryland, *Maryland Public Information Act Manual*, 3-1 (12th ed. 2011).

36. STATE GOV'T §§ 10-615, 10-616, 10-617. In particular, § 10-615 states that a "custodian shall deny inspection of a public record" if enumerated by law. STATE GOV'T § 10-615. Section 10-616 deals with specific records and includes the "personnel records" exclusion. STATE GOV'T § 10-616(i). Also, § 10-617 implicates the exception for specific information, and is not pertinent to the subject at hand. Montgomery County v. Shropshire, 420 Md. 362, 375 n.13, 23 A.3d 205, 213 n.13 (2011) (stating "*Section 10-617 of the State Government Article*, governing exemptions from disclosure for 'specific information,' is not implicated in the present case").

37. STATE GOV'T §§ 10-615 & 10-618. Whereas the mandatory provisions state that a custodian "shall" deny inspection under an enumerated exception, the permissible provision states that a custodian "may" deny the inspection. Att'y General v. Gallagher, 359 Md. 341, 353–54, 753 A.2d 1036, 1043 (2000).

38. *Gallagher*, 359 Md. at 354–55, 753 A.2d at 1043–44 (holding that "if any exemption under §§ 10-615, 10-616, or 10-617 is applicable to a particular record, then it must be withheld" and that the Court of Special Appeals "erred in holding that a person in interest can avoid all other exemptions under the [MPIA] simply because he is seeking disclosure of an investigatory file pursuant to § 10-618(f)").

39. *Id.* at 354–55, 753 A.2d at 1043.

40. MD. CODE ANN., STATE GOV'T § 10-614(b)(3)(iii) (LexisNexis 2009).

41. *Gallagher*, 359 Md. at 350, 753 A.2d at 1041.

42. Office of the Governor v. Washington Post Co., 360 Md. 520, 544–45, 759 A.2d 249, 262–63 (2000).

as provided in this section;"[43] among those records provided under 10-616 is "personnel records." Section 10-616(i) states:

> (1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information.
> (2) A custodian shall permit inspection by:
> (i) the person in interest; or
> (ii) an elected or appointed official who supervises the work of the individual.[44]

Subsection (2) of Section 10-616 has received some definitional guidance from the courts,[45] but the MPIA itself largely provides strict definitional guidance respective to persons in interest[46] and elected or appointed officials who supervise the work of the individual.[47] Contrastingly, the statute does not define the term "personnel record" in any particularity.[48] Rather, the statute simply lists categories of documents that qualify as a personnel record.[49]

The Court of Appeals received its first opportunity to substantively define the meaning of "personnel records" in *Kirwan v. The Diamondback*.[50] In *Kirwan*, the University of Maryland, College Park's newspaper—*The Diamondback*—sought, among other documents,[51] copies of parking tickets belonging to the university's basketball coach, Gary Williams.[52] The university denied the newspaper's re-

43. STATE GOV'T § 10-616(a).

44. *Id.*

45. *See* Prince George's County v. Washington Post Co., 149 Md. App. 289, 330–31, 815 A.2d 859, 883 (2003) (holding that the Prince George's County Human Relations Commission had no actual supervisory authority over the individual police officers).

46. *See* MD. CODE ANN., STATE GOV'T § 10-611(e)(1) (LexisNexis 2009) (narrowly defining "person in interest"—in that part pertinent to personnel files—as "a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit").

47. MD. CODE ANN., STATE GOV'T § 10-616(i)(2)(ii) (LexisNexis 2009).

48. Kirwan v. The Diamondback, 352 Md. 74, 82, 721 A.2d 196, 200 (1998) (stating that "[t]he term 'personnel record' is not expressly defined in the statute").

49. MD. CODE ANN., STATE GOV'T § 10-616(i)(1) (LexisNexis 2009) (identifying as a personnel record "an application, performance rating, or scholastic achievement information").

50. 352 Md. 74, 82–83, 721 A.2d 196, 200 (1998).

51. *The Diamondback* also requested copies of all correspondence between the University of Maryland and the NCAA regarding a suspended student-athlete and campus parking violations records of basketball team members. *Id.* at 79, 721 A.2d at 198–99.

52. *Id.* The Circuit Court for Prince George's County granted *The Diamondback's* request for the documents. Both parties filed appeals to the Court of Special Appeals, but

quest, citing the MPIA.[53] In particular, the university took the position that Coach Williams' tickets were personnel files.[54]

Citing the MPIA's broader goal of transparency,[55] the Court of Appeals held that Coach Williams' parking tickets did not constitute personnel records.[56] Upon noting that Section 10-616(i) enumerated certain examples of what would constitute a personnel record, the Court of Appeals explained that while this "list was probably not intended to be exhaustive, it does reflect a legislative intent that 'personnel records' mean those documents that directly pertain to employment and an employee's ability to perform a job."[57] The court observed that "[r]ecords of tickets issued by the campus police do not relate to Coach William's hiring, *discipline*, promotion, dismissal, or any matter involving his status as an employee. Accordingly, they do not fit within the commonly understood meaning of the term 'personnel records.'"[58] Moreover, the court found that the legislature intended that the term "personnel records" should keep its "common sense meaning."[59] Hence, the court found that parking tickets did not fall within the province of "personnel records."[60]

Kirwan became the measuring stick by which courts interpreted denials based upon the "personnel records" exception.[61] In subsequent interpretations of *Kirwan*, the Court of Appeals put particular emphasis on the concept of "personnel records" as documents "that directly pertain to employment and an employee's ability to perform

the Court of Appeals issued a writ of certiorari before the Court of Special Appeals could hear the case. *Id.*

53. Additionally, the university argued that the requested parking tickets were "financial information," MD. CODE ANN., STATE GOV'T § 10-617(f) (1998), and that the tickets relating to students were protected under the Family Educational Rights and Privacy Act. 20 U.S.C.A. § 1232g (1998). Ultimately, the court rejected both arguments. *Kirwan*, 352 Md. at 89, 96–97, 721 A.2d at 203, 206–07.

54. *Kirwan*, 352 Md. at 89, 96–97, 721 A.2d at 203, 206–07.

55. *Id.* at 80–81, 721 A.2d at 199.

56. *Id.* at 84, 721 A.2d at 200–01.

57. *Id.* at 82–83, 721 A.2d at 200.

58. *Id.* at 83, 721 A.2d at 200 (emphasis added). In subsequent cases, the court preserved the *Kirwan* court's use of the word "discipline" as one of the factors indicative of a personnel record. Office of the Governor v. Washington Post Co., 360 Md. 520, 547–57, 759 A.2d 249, 264 (2000); Montgomery County v. Shropshire, 420 Md. 362, 378–79, 23 A.3d 205, 215 (2011).

59. *Kirwan*, 352 Md. at 84, 721 A.2d at 200.

60. *Id.*, 721 A.2d at 200–01.

61. *See Office of the Governor*, 360 Md. at 543–44, 759 A.2d at 263–64 (interpreting *Kirwan* to find that the identification of a telephone number did not amount to a "personnel record" under the MPIA). *See also* Univ. Sys. of Md. v. Balt. Sun Co., 381 Md. 79, 98, 847 A.2d 427, 438 (2004) (citing *Kirwan* to find that an employment contract setting out the terms and conditions of an employee's salary was not a "personnel record").

a job."[62] In using this language, the court found that neither the governor's scheduling records[63] nor a police commander's roster of names, ranks, badge numbers, dates of hire, and job assignments constituted personnel records under the MPIA.[64] Hence, *Kirwan* operated as the Court of Appeals' defining statement on what constituted a personnel record, and therefore a mandatory denial, under the MPIA.

2. *Investigations Are Permissible Denials to the General MPIA Rule of Disclosure of Government Records.*

Documents falling within Section 10-618(f) "permissible denials" category are subject to the custodian's discretion as whether to disclose a document.[65] The text of the statute makes clear that "[u]nless otherwise provided by law," the custodian has discretion to deny inspection when the "custodian believes that inspection . . . *would be con-*

62. *Office of the Governor*, 360 Md. at 547, 759 A.2d at 264 (quoting *Kirwan*, 352 Md. at 82–83, 721 A.2d at 200). The Court of Appeals also placed emphasis upon the following language of *Kirwan*: "records which 'do not relate to [the employee's] hiring, discipline, promotion, dismissal, or any matter involving his status as an employee . . . do not fit within the commonly understood meaning of the term 'personnel records.'" *Id.* (quoting *Kirwan*, 352 Md. at 83, 721 A.2d at 200). The Court of Special Appeals arguably put greater emphasis upon *Kirwan*'s use of "discipline," as opposed to a broader document-occupation relationship. Dep't of State Police v. Md. State Conf. of NAACP Branches, 190 Md. App. 359, 374–75, 988 A.2d 1075, 1084 (2010), *cert. granted* Maryland State Police v. NAACP Branches, 415 Md. 38 (2010) (interpreting *Office of the Governor*, 360 Md. at 547, 759 A.2d at 264). *See infra* Part II.B.

63. *Office of the Governor* 360 Md. at 547, 759 A.2d at 264 (finding that requested telephone records did not amount to personnel records). In *Office of the Governor*, agents of the Washington Post requested telephone and scheduling records of Governor Parris Glendening and his staff over a two-year period. The requested telephone records included all phones in the Governor's Mansion, State House office, Annapolis annex office, Washington and Baltimore offices, and cellular and car phones. The requested scheduling records included all of the governor's calendars over a two-year period, indicating persons, times, dates, and locations. The Office of the Governor provided the newspaper with the aggregate cost of the calls and the governor's public agendas, but denied the rest of the records pursuant to Md. Code Ann., State Gov't §§ 10-611(g), 10-618(b). When the newspaper brought suit, the Office of the Governor also argued that public disclosure was barred under Md. Code Ann., State Gov't §§ 10-616(d), (i), 10-617(d), (e), and (f). The Governor also argued a broad claim of executive privilege, which the court rejected. Emily R. Sweet, Note, Office of the Governor v. Washington Post Co.—*The Hamilton Balancing Test Revisited: A Further Restriction on the Use of Executive Privilege Under the Public Information Act*, 61 MD. L. REV. 961, 961–63 (2002).

64. Prince George's County v. Washington Post Co., 149 Md. App. 289, 322–23, 815 A.2d 859, 878–79 (2003).

65. MD. CODE ANN., STATE GOV'T § 10-618(f) (LexisNexis 2009).

trary to the public interest."[66] Investigations are included under Section 10-618.[67]

The breadth of a custodian's discretion in deciding whether to disclose is dependent upon the nature of the "public interest" at issue.[68] First, a local ordinance can waive the custodian's discretion as to permissible denials.[69] Second, the burden of the custodian is typically reflective of the type of investigation held by the custodian, given that the "public interest" underlying "investigations" is often a concern for non-interference with law-enforcement-type proceedings.[70] When a requested document is in the custody of a non-enumerated agency within the text of Section 10-618(f)(1), the custodian has both the burden of demonstrating that the organization was conducting an investigation and a particularized showing that disclosure would prejudice that investigation.[71] When a requested document is in the custody of an enumerated agency,[72] there is a presumptively valid law en-

66. STATE GOV'T § 10-618(a) (emphasis added). *See also* Att'y General v. Gallagher, 359 Md. 341, 353–54, 753 A.2d 1036, 1043 (2000) (stating that "Section 10-618 . . . is a discretionary provision").

67. STATE GOV'T § 10-618(f).

68. *See* Office of the State Prosecutor v. Judicial Watch, Inc., 356 Md. 118, 140–41, 737 A.2d 592, 604 (1999) (holding that, whereas non-enumerated agencies under § 10-618 need to make a particularized showing of public interest, enumerated agencies do not).

69. Caffrey v. Dep't of Liquor Control for Montgomery County, 370 Md. 272, 305, 805 A.2d 268, 287–88 (2002) (finding that "[t]he permissible denials of the MPIA are also subject to waiver by the County").

70. *See* Faulk v. State's Attorney for Harford County, 299 Md. 493, 508, 474 A.2d 880, 888 (1984) (concluding that "the General Assembly did not intend to preclude generic determinations of interference when the circumstances were such that disclosure of the requested materials necessarily 'would interfere' with law-enforcement proceedings."). *See also* Fioretti v. Md. State Bd. of Dental Examiners, 351 Md. 66, 75, 85, 716 A.2d 258, 262–63, 268 (1998) (holding that the State Board of Dental Examiners failed to show that the Board's investigation into a particular dental hygienist fell within the "investigations" exception of Md. Code Ann., State Gov't § 10-618(f) (1997)).

71. *Fioretti*, 351 Md. at 75, 85, 716 A.2d at 262–63, 268. *See also* Prince George's County v. Washington Post Co., 149 Md. App. 289, 332, 815 A.2d 859, 884 (2003) (permitting a custodian to deny disclosure of ongoing investigations under § 10-618(f) but ordering disclosure of closed investigations).

72. Those enumerated agencies are stated in Md. Code Ann., State Gov't § 10-618(f)(1) (LexisNexis 2009):

> (i) records of investigations conducted by the Attorney General, a State's Attorney, a city or county attorney, a police department, or a sheriff;
>
> (ii) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or
>
> (iii) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a city or county attorney, a police department, a State or local correctional facility, or a sheriff.

STATE GOV'T § 10-618 (f)(1).

forcement purpose.[73] However, whereas a broad claim of public interest by an enumerated agency would be sufficient to deny disclosure for an ongoing investigation, a closed investigation requires a particularized factual basis to support such a denial.[74]

The statute similarly heightens the burden upon the custodian where the person requesting a document is a "person in interest."[75] A "person in interest" respective to "investigations" is a person who "is the subject of a public record,"[76] the quintessential example of which is a criminal defendant.[77] Given this favored status, the custodian must point exactly to which of the seven enumerated exceptions in Section 10-618(f)(2) substantiates the custodian's denial.[78] If the person requesting a document is a person in interest, a custodian may deny inspection "only to the extent that the inspection would:"

> (i) interfere with a valid and proper law enforcement proceeding;
> (ii) deprive another person of a right to a fair trial or an impartial adjudication;
> (iii) constitute an unwarranted invasion of personal privacy;
> (iv) disclose the identity of a confidential source;
> (v) disclose an investigative technique or procedure;
> (vi) prejudice an investigation; or
> (vii) endanger the life or physical safety of an individual.[79]

Therefore, when the requesting party is qualified as a person in interest, the question "is not *whether* the reason for a § 10-618(f)(2) excep-

73. *Fioretti*, 351 Md. at 75 n.7, 716 A.2d at 262 n.7; Office of State Prosecutor v. Judicial Watch, Inc., 356 Md. 118, 140–41, 737 A.2d 592, 604 (1999). *See also* Superintendent, Md. State Police v. Henschen, 279 Md. 468, 475, 369 A.2d 558, 562 (1977) (holding that documents requested from an agency enumerated in Md. Code Ann., State Gov't § 10-618(f) need not be compiled for law enforcement or prosecution purposes for requested records to be exempt from disclosure).

74. City of Frederick v. Randall Family, LLC, 154 Md. App. 543, 567, 841 A.2d 10, 24, (2004) (finding that "where the police investigation is closed and where there is no danger that disclosure will interfere with ongoing law enforcement proceedings, a particularized factual basis for the 'public interest' denial must be put forth in order for the custodian of records to meet his/her burden of proof"). *See* Faulk v. State's Attorney for Harford County, 299 Md. 493, 511, 474 A.2d 880, 889 (1984) (finding that "the State is not required to make a particularized showing that the disclosure of investigatory police reports compiled for law-enforcement purposes to a defendant in a pending criminal proceeding would interfere with that pending criminal proceeding").

75. STATE GOV'T § 10-618(f)(2).

76. STATE GOV'T § 10-611(f)(1).

77. Blythe v. State, 161 Md. App. 492, 533, 870 A.2d 1246, 1269 (2005) (finding that a criminal defendant was the "person in interest").

78. *Id.* at 531, 870 A.2d at 1268.

79. MD. CODE ANN., STATE GOV'T § 10-618(f)(2) (LexisNexis 2009).

tion must be shown . . . [t]he question, rather, is *how* may it be shown."[80]

B. Characterizing Intradepartmental Disciplinary Files

The court's characterization of the confidentiality bestowed upon intradepartmental disciplinary files has fluctuated, paralleling the manner in which police departments have denied disclosure. While police departments initially advocated the denial of intradepartmental investigatory files as a discretionary "investigation" denial,[81] they ultimately began arguing that such files constituted mandatory "personnel record" denials.[82] Both the court and litigants have struggled with whether intradepartmental disciplinary files constitute "investigations" or "personnel files," and with the source of such confidentiality.[83]

Initially, the court did not have to directly address whether intradepartmental disciplinary files constituted personnel records or investigations; rather, police departments denied disclosure based upon only the "investigations" exception.[84] Both the Court of Appeals in *Mayor of Baltimore v. Maryland Committee Against the Gun Ban* ("*Gun Ban*")[85] and the Court of Special Appeals in *Briscoe v. Mayor Baltimore*[86] found that when a litigant does not constitute a person in interest, there is a sufficient public interest in protecting both an officer from needless publicity and future investigations from possible inhibiting effects as to deny disclosure of an intradepartmental investigation.[87]

80. *Blythe*, 161 Md. App. at 538, 870 A.2d at 1272.

81. Mayor of Balt. v. Md. Comm. Against the Gun Ban, 329 Md. 78, 86–87, 617 A.2d 1040, 1044 (1993).

82. Balt. City Police Dep't v. State, 158 Md. App. 274, 282–83, 857 A.2d 148, 153 (2004).

83. *Gun Ban*, 329 Md. at 95–96, 617 A.2d at 1048.

84. *See id.* at 80, 617 A.2d at 1041. *See also* Briscoe v. Mayor of Balt., 100 Md. App. 124, 129, 640 A.2d 226, 229 (1994).

85. *Gun Ban*, 329 Md. at 80, 617 A.2d at 1041. In *Gun Ban*, a political committee sought records generated in the course of an IID investigation that resulted from civilian complaints concerning the action of officers during the service of a subpoena. *Id.* at 84, 617 A.2d at 1042–43. The director of the IID denied disclosure of the files, in part, because he considered the records to be investigations. After first determining that the Committee was not a person in interest, the Court of Appeals held that the LEOBR provided an adequate public interest such that the IID custodian could permissibly deny disclosure of the requested records. *Id.* at 95–96, 617 A.2d at 1048.

86. 100 Md. App. 124, 129, 640 A.2d 226, 228 (1994). In *Briscoe*, an appellant sought an IID file, which the Baltimore City Police Department opened upon the appellant's own request. The department denied the request based upon the "investigations" exception. *Id.* at 126–27, 640 A.2d at 230.

87. *Id.* at 129–31, 640 A.2d at 229–30.

The *Gun Ban* court, in particular, rooted this public interest in the Law Enforcement Officers' Bill of Rights ("LEOBR").[88] The court, however, did not have to directly consider whether the IID files constituted strictly personnel records or investigations at the exclusion of the other because, in both cases, the police departments presented the requested documents as only investigations.[89]

Departments eventually changed their approach to handling MPIA disclosures, presenting intradepartmental investigations as personnel records, rather than investigations.[90] This change in tactics was gradual; rather than offering intradepartmental investigations as personnel records per se, the Prince George's County Police Department advocated that commanders' information reports ("CIRs") and duty rosters of police officers constituted *both* investigations *and* personnel records, concurrently.[91] While the court ultimately rejected the department's arguments regarding both the CIRs and the duty rosters, using the personnel records exception did mark a shift in the general tactics of police departments in denying disclosure.[92] Ultimately, in *Baltimore City Police Department v. State* ("*BPD*"), the Baltimore City Police Department asserted that IAD files were personnel records.[93] *Baltimore Police Department* grew out of a pre-trial order by the Circuit Court for Baltimore City that directed that portions of an officer's IAD file be disclosed to a pair of criminal co-defendants.[94] The Court of Special Appeals found that the trial court had performed an inadequate *in camera* review, and therefore reversed the

88. Mayor of Balt. v. Md. Comm. Against the Gun Ban, 329 Md. 78, 95, 617 A.2d 1040, 1048 (1993). Though the *Gun Ban* court interpreted the 1992 version of the LEOBR, at the time codified as Md. Code Ann., art. 27 §§ 727 to 734, the LEOBR is still in effect. MD. CODE ANN., PUB. SAFETY §§ 3-101 to 3-113 (LexisNexis 2011).

89. *Gun Ban*, 329 Md. at 94, 617 A.2d at 1047.

90. Balt. City Police Dep't v. State, 158 Md. App. 274, 282–83, 857 A.2d 148, 153 (2004).

91. Prince George's County v. Washington Post Co., 149 Md. App. 289, 316–17, 323–24, 815 A.2d 859, 875, 879 (2003). In this case, the *Washington Post* sought various police-related documents including commanders' information reports ("CIRs"), rosters of police officers, and intradepartmental disciplinary files compiled by the Prince George's County Police Department's Criminal Investigations Division ("CID"). *Id.* at 289–300, 815 A.2d at 864–66. Similar to the Baltimore City Police Department in both *Gun Ban* and *Briscoe*, the Prince George's County Police Department argued that the CID files were exempt as "investigations." Rejecting the department's argument, the Court of Special Appeals held that *closed* CID files did not carry a sufficient "public interest" by which to deny disclosure because there was no longer a danger that disclosure could inhibit the outcome of the investigation. *Id.* at 332–33, 815 A.2d at 884–85.

92. *Id.* at 316–17, 323–24, 815 A.2d at 875, 879.

93. 158 Md. App. 274, 282–83, 857 A.2d 148, 153 (2004).

94. The requested IAD files related to allegations of dishonesty unrelated to the facts underlying the criminal trial of the defendant. *Id.* at 277–78, 857 A.2d at 150.

case, allowing the co-defendants to seek a proper *in camera* review of the requested files.[95] Because the case was determined based upon the *in camera* review, the court never reached the question of whether the records constituted "personnel files."[96]

Following *BPD*, the question of what exactly constituted a personnel file, as opposed to an investigation record, in the context of an intradepartmental investigation was not explored again until *Maryland Department of State Police v. Maryland State Conference of NAACP Branches*.[97] The action spurred from a federal consent decree between the Maryland State Police ("MSP") and the NAACP that required the MSP to combat racial profiling.[98] Upon growing suspicious of the MSP's cooperation, the NAACP filed a request under the MPIA, which included:

> [D]ocuments obtained or created in connection with any complaint of racial profiling, including but not limited to any complaint filed with or investigated by the MSP's Department or Internal Affairs, including all complaints filed, all documents collected or created during the investigation of each complaint, and all documents reflecting the conclusion of each investigation.[99]

After the MSP rejected the NAACP's request on Section 10-616(i) grounds, the NAACP informed the MSP that the NAACP would accept a redacted version of the records with unique officer identification numbers, rather than with the officers' actual names.[100] Having failed to reach a consensus, the NAACP filed suit in the Circuit Court for Baltimore County; though the court found that the documents in question were personnel records, the court ordered the documents

95. *Id.* at 291–92, 857 A.2d at 158.

96. Balt. City Police Dep't v. State, 158 Md. App. 274, 282–83, 857 A.2d 148, 153 (2004). "The Department asserts that IAD's file concerning its investigation into allegations of dishonesty . . . qualifies as a personnel record, and appellee does not contend otherwise. Guided by *Kirwan*, we see no reason to disagree with the Department's position on this point." *Id.* at 282–83, 857 A.2d at 153.

97. 190 Md. App. 359, 988 A.2d 1075 (2010), *cert. granted* 415 Md. 38, 997 A.2d 789 (2010).

98. This order was part of a series of ongoing litigation between the NAACP and the State Police. *See generally* Md. State Conf. of NAACP Branches v. Md. Dep't of State Police, 72 F. Supp. 2d 560 (D. Md. 1999); Bridges v. Dep't of Md. State Police, 441 F.3d 197 (4th Cir. 2006); Md. State Conf. of NAACP Branches v. Md. State Police, 454 F. Supp. 2d 339 (D. Md. 2006).

99. *Md. Dep't of State Police*, 190 Md. App. at 362, 988 A.2d at 1077.

100. *Id.* at 363–64, 988 A.2d at 1077.

redacted[101] and disclosed per the NAACP's previous suggestion.[102] Both parties filed timely appeals to the Court of Special Appeals. The only records at issue before the Court of Special Appeals were the investigative files concerning the racial profiling complaints made by the MSP, not the actual complaints to the MSP's internal affairs division.[103]

Confronted with the issue of whether the circuit court erred in finding the records in question were personnel files, the Court of Special Appeals held that the records were "investigations."[104] Rejecting the MSP's claim that the records were personnel files, the court stated:

> It is illogical to believe that the General Assembly, when it adopted a permissible degree exception for "records of investigations conducted by . . . a police department," . . . also intended that a custodian of records must withhold investigatory files of a police department under the much more general "personnel record[s] of an individual" exception.[105]

The court also noted the nature of the documents in question; they were neither indexed by employee name nor by identification number, but rather were kept in one location within the MSP's Internal Affairs Office.[106] Observing that the Court of Appeals had recognized the concept of "discipline" as somewhat indicative of personnel records,[107] the Court of Special Appeals found that the records at issue did not directly pertain to discipline because the records were neither stored in the officers' files nor resulted in disciplinary action.[108] In his concurrence, Judge Kehoe further emphasized the particular nature of the documents in question as seeking to monitor the MSP's supervision of its officers, rather than the job performance of the officers.[109] Hence, the Court of Special Appeals vacated the por-

101. In order to avoid great expense in the redacting process, the court provided a procedure for disclosure, by which NAACP attorneys would review the records in unredacted form, and identify those records they wished the MSP to redact and disclose. *Id.* at 365–66, 988 A.2d at 1078–79.

102. *Id.* at 364–65, 988 A.2d at 1078.

103. *Id.* at 366–67, 988 A.2d at 1079.

104. *Id.* at 369–70, 988 A.2d at 1081.

105. *Id.* at 370, 988 A.2d at 1081.

106. *Id.* at 369, 988 A.2d at 1080.

107. *Id.*

108. *Id.* at 369, 988 A.2d at 1083.

109. *Id.* at 383–84, 988 A.2d at 1089 (Kehoe, J., concurring).

tion of the circuit court's order that qualified the records in question as personnel records.[110]

C. The LEOBR Has Served a Supporting Role in Engendering a Level of Confidentiality upon Intradepartmental Disciplinary Files

The history of the confidentiality surrounding intradepartmental disciplinary files is inextricably linked to arguments utilizing the LEOBR.[111] The LEOBR operates to guarantee certain procedural safeguards to members of law enforcement agencies during any investigation that could culminate in disciplinary action.[112] These procedural safeguards arise from an acknowledgement that "the nature of the duties of police officers is different from that of other public employees, [therefore] the establishment of different procedures covering any potential disciplinary action is justified."[113] While every inquiry regarding an officer's conduct does not necessarily trigger the LEOBR, the officer is protected by the LEOBR from the inception of a disciplinary action.[114]

Among those procedural safeguards guaranteed to officers by the LEOBR is a right to be provided with certain investigatory information upon the completion of the investigation and at least ten days before a hearing.[115] Pursuant to Section 3-104(n), the department must disclose the names of each witness, charge, and specification against the officer.[116] The department must also provide the officer with a copy of the investigatory record and any exculpatory background held by the department, but only contingent upon the officer's agreement to: "(1) execute a confidentiality agreement with the law enforcement agency not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the law enforcement officer; and (2) pay a reasonable charge for the cost of reproducing the material."[117] The agency may also exclude any information containing the identity of a confidential source, non-

110. *Id.* at 381, 988 A.2d at 1087 (majority opinion).

111. MD. CODE ANN., PUB. SAFETY §§ 3-101 to 3-113 (LexisNexis 2011).

112. Coleman v. Anne Arundel County Police Dep't, 369 Md. 108, 122, 797 A.2d 770, 778–79 (2002).

113. Cancelose v. City of Greenbelt, 75 Md. App. 662, 666, 542 A.2d 1288, 1290 (1988).

114. Fraternal Order of Police Montgomery County Lodge 35, Inc. v. Manger, 175 Md. App. 476, 497, 501, 929 A.2d 958, 970, 973 (2007).

115. PUB. SAFETY § 3-104(n)(1).

116. PUB. SAFETY § 3-104(n)(1)(i).

117. PUB. SAFETY § 3-104(n)(ii).

exculpatory material, and instructions as to charges, disposition, or discipline.[118]

Given that Section 3-104(n) discusses confidentiality, departments attempted from an early stage to deny disclosure of intradepartmental disciplinary file information under the LEOBR. As mentioned above,[119] the issue came before the Court of Appeals in *Gun Ban*.[120] The court recognized that Section 728(b),[121] a forerunner to the current Section 3-104(n),[122] served to provide the department with a public interest in confidentiality sufficient to deny disclosure of the requested documents as an investigation.[123] However, the court has made clear that the LEOBR does not engender the same degree of confidentiality when operating on its own.[124] In *Robinson v. State*,[125] a defendant convicted of various crimes, including robbery and assault with intent to murder, sought to obtain statements made to the Prince George's County Police Department's IAD regarding the incident in question.[126] Among those arguments raised by the State in opposition to disclosure was that the statements were rendered confidential by LEOBR, Section 728(b).[127] Finding that the LEOBR did engender the files with some confidentiality, the Court of Appeals stated that the "confidentiality interest must be balanced, in this context, against the confrontation and due process rights of the defendant."[128] The court ultimately found that due process concerns outweighed those confidentiality interests.[129] Later, in *BPD*, the Court of Appeals elaborated upon the *Robinson* court's opinion, stating that "the confidentiality protections . . . afforded [an officer under the LEOBR] . . . have been determined by the Court of Appeals to have very little bearing on the discoverability question we address in the

118. PUB. SAFETY § 3-104(n)(2).

119. *See supra* Part II.B.

120. Mayor of Balt. v. Md. Comm. Against the Gun Ban, 329 Md. 78, 95, 617 A.2d 1040, 1048 (1993).

121. MD. CODE (1957, 1992 REPL. VOL.) Art. 27, §§ 727–734D *repealed by* Acts 2003, c. 5, § 1, eff. Oct. 1, 2003.

122. PUB. SAFETY § 3-104(n).

123. *See supra* Part II.A.2.

124. Balt. City Police Dep't v. State, 158 Md. App. 274, 283, 857 A.2d 148, 153 (2004). Robinson v. State, 354 Md. 287, 308–09, 730 A.2d 181, 193 (1999).

125. 354 Md. 287, 730 A.2d 181.

126. *Id.* at 289, 292, 730 A.2d at 182–84.

127. MD. CODE (1957, 1992 REPL. VOL.) Art. 27, § 728, *repealed by* Acts 2003, c. 5, § 1, eff. Oct. 1, 2003.

128. *Robinson*, 354 Md. at 309, 730 A.2d at 193.

129. *Id.* at 311, 730 A.2d at 193–94.

case at bar."[130] Hence, the LEOBR buttressed the department's permissible denial, thereby operating in a supportive role to the MPIA.[131]

III. THE COURT'S REASONING

In *Montgomery County v. Shropshire*, the Maryland Court of Appeals found that the IAD files concerning Shropshire and Parker-Loan were personnel files under the MPIA, thereby vacating the judgment of the circuit court and remanding the case for entry of declaratory judgment for the officers.[132] Judge Battaglia wrote the opinion of the court, in which she explored the source of an IAD file's confidentiality.[133] The parties presented the court with issues concerning the effect of both the MPIA[134] and the LEOBR[135] upon the IAD files.[136] The court did not reach the issue of whether the LEOBR protected the files from disclosure because the court held that the IAD files constituted personnel files.[137]

The court held that Shropshire and Parker-Loan's IAD files fell within the concept of personnel records because the files dealt directly with matters of the officers' discipline.[138] Pointing to a lack of a statutory definition in the MPIA regarding personnel files, the court predominately centered its analysis upon case law.[139] The court found that two previous cases, *Kirwan v. The Diamondback*[140] and *Office of the Governor v. Washington Post Co.*,[141] in which the Court of Appeals held that parking violations and scheduling records were not personnel

130. Balt. City Police Dep't v. State, 158 Md. App. 274, 283, 857 A.2d 148, 153 (2004).

131. Mayor of Balt. v. Md. Comm. Against the Gun Ban, 329 Md. 78, 95–96, 617 A.2d 1040, 1048 (1993).

132. 420 Md. 362, 383–84, 23 A.3d 205, 218 (2011).

133. *Id.* at 378–83, 23 A.3d at 214–18.

134. MD. CODE ANN., STATE GOV'T §§ 10-616(i) & 10-618(f) (LexisNexis 2009).

135. MD. CODE ANN., PUB. SAFETY §§ 3-101 to 3-113 (LexisNexis 2011).

136. *Shropshire*, 420 Md. at 378–83, 23 A.3d at 214–18. In addition to the MPIA issue presented to the court, the Court of Appeals also examined the nature of the Montgomery County Inspector General's role and powers, along with the nature of the Inspector General's request. *Id.* at 371–73, 23 A.3d at 211–12. The court observed that the Inspector General had a role in "increas[ing] the legal, fiscal, and ethical accountability of County government departments and County-funded agencies" by conducting investigations. *Id.* at 372, 23 A.3d at 211. However, the court noted that while County government departments must comply with requests for information by the Inspector General, the Inspector General is still bound by "restrictions on public disclosure . . . required by . . . state law," the MPIA. *Id.* (citation and internal quotation marks omitted).

137. *Id.* at 365 n.4, 23 A.3d at 207 n.4.

138. *Id.* at 378–79, 23 A.3d at 215.

139. *Id.* at 378–83, 23 A.3d at 214–18.

140. 352 Md. 74, 721 A.2d 196 (1998).

141. 360 Md. 520, 759 A.2d 249 (2000).

files, respectively, stood for the proposition that personnel files often deal with an employee's disciplinary record.[142] Moreover, the court reasoned that personnel files derive confidentiality from the fact that the pertinent disciplinary information personally identifies the subject of the file.[143] In so doing, the court differentiated the IAD files in *Shropshire* from the files in question in *Maryland Department of State Police v. Maryland State Conference of NAACP Branches*,[144] in which the Court of Special Appeals held that disciplinary records were investigations, rather than personnel records, because the files in question were not indexed by name and stored in the aggregate.[145] Therefore, the *Shropshire* IAD files constituted personnel files rather than investigation records because the IAD files identified Shropshire and Parker-Loan's by name and dealt directly with disciplinary matters.[146]

In addition, the court predicated its decision to consider Shropshire and Parker-Loan's IAD files as personnel files upon issues of fairness.[147] The court highlighted its decision in *Gun Ban*, in which the court found that internal investigation files of "not sustained" complaints could not be disclosed under the MPIA "in the interests of fairness to the investigated officers as well as the integrity of the investigatory process."[148] The court found that such precedent stood for a "significant public interest in preserving the confidentiality of" both officers subject to investigation and the witnesses of those investigations.[149] While the *Shropshire* court did not directly address the LEOBR, it did find that the statute's requirement that investigated officers sign a confidentiality agreement before obtaining a copy of the IAD's investigatory record[150] reinforced a public interest in maintaining the investigation's confidentiality.[151]

In dissent, Judge Adkins found that the court's decision improperly frustrated the purpose of the MPIA because the public has a le-

142. *Shropshire*, 420 Md. at 378–79, 23 A.3d at 215.

143. *Id.* at 381, 382, 23 A.3d at 216–17.

144. 190 Md. App. 359, 988 A.2d 1075 (2010), *cert. granted* 415 Md. 38, 997 A.2d 789 (2010).

145. *Shropshire*, 420 Md. at 382–83, 23 A.3d at 217.

146. *Id.* at 381, 23 A.3d at 216–17. The court noted that the IAD files in *Shropshire* contained "no administrative violations" by the officers, and the court does not therefore "address whether records of 'sustained' complaints may be disclosed to a County's Inspector General." *Id.* at 374 n.12, 23 A.3d at 212 n.12.

147. *Shropshire*, 420 Md. at 381, 23 A.3d at 216–17.

148. *Id.* at 380, 23 A.3d at 216.

149. *Id.* at 380–81, 23 A.3d at 216.

150. MD. CODE ANN., PUB. SAFETY § 3-104(n) (LexisNexis 2011).

151. *Shropshire*, 420 Md. at 381, 23 A.3d at 216.

gitimate interest in protecting against abuse by police officers. Judge Adkins emphasized that the overarching goal of the MPIA is to facilitate disclosure, and the court's previous decisions to interpret the MPIA in such a way to favor disclosure.[152] Pointing to *Maryland State Conference of NAACP Branches*, Judge Adkins observed that the Court of Special Appeals ordered the disclosure of the State Police's records because the public had a legitimate interest in preventing racial profiling.[153] Similarly, Judge Adkins found that prevention of police abuses is a public interest that merits the disclosure of IAD files.[154] In juxtaposition to the court's opinion, Judge Adkins found that the divulgence of the officer's identity did not defeat disclosure because it did not thwart the respective public interest at hand.[155]

Judge Adkins also emphasized the text of the MPIA, as opposed to the court's focus on case law. Judge Adkins found that the IAD files, as records of the police department's internal investigation department, fell within the plain meaning of the MPIA's designation of investigation records.[156] Contrastingly, the IAD files did not fall within the three categories of personnel files enumerated by the MPIA: "(1) an application for employment; (2) performance rating; and (3) scholastic achievement."[157] Given that the IAD files fit squarely within the category of investigation records under the MPIA, Judge Adkins found disclosure proper because Montgomery County had otherwise directed county agencies and departments to comply with investigations by the Inspector General.[158] Moreover, pointing to *Gun Ban*, Judge Adkins demonstrated that police departments themselves have argued that internal disciplinary files were investigation records, thereby supporting her argument that such files fall logically within the plain meaning of investigation files under the MPIA.[159]

Finally, Judge Adkins gave some consideration to the LEOBR, and found that the LEOBR would not thwart disclosure.[160] Citing to *Robinson v. State*,[161] Judge Adkins performed a balancing test, weighing

152. *Id.* at 384, 23 A.3d at 218 (Adkins, J., dissenting).
153. *Id.* at 386–87, 23 A.3d at 219–20 (citing Md. Dep't of State Police v. Md. State Conf. of NAACP Branches, 190 Md. App. 359, 370–71, 988 A.2d 1075, 1081 (2010), *cert. granted* Maryland State Police v. NAACP Branches, 415 Md. 38 (2010)).
154. *Id.* at 387, 23 A.3d at 220.
155. *Id.* at 386–87, 23 A.3d at 219–20.
156. *Id.* at 388, 23 A.3d at 220.
157. *Id.* at 385–86, 23 A.3d at 219.
158. *Id.* at 389–90, 23 A.3d at 221.
159. *Id.*
160. *Id.* at 390–91 n.2, 23 A.3d at 222 n.2.
161. 354 Md. 287, 308, 730 A.2d 181, 192 (1999).

the police officer's confidentiality interest against the public interest in transparency.[162] Because the Inspector General's office was created with the express purpose to prevent and detect government fraud and abuse, the Inspector General was acting as the government's auditor of the IAD.[163] Therefore, the officer's confidentiality interests were not in danger because the risk that the Inspector General would, in turn, release the officers' information did not outweigh the public interest of disclosure.[164] Judge Adkins found that the LEOBR did not act as an obstacle in preventing disclosure because the interest in government transparency outweighed the public interest in the officers' confidentiality, given the improbability of the Inspector General disclosing Shropshire and Parker-Loan's information to the public.[165]

IV. ANALYSIS

The Court of Appeals erred in its determination that the officers' IAD files fell within the mandatory denial provision of personnel records. Rather, the IAD files fall within the plain meaning of the investigations permissible denial category.[166] In its concern for officers' privacy—particularly given that IAD harbors *all* complaints levied against an officer, founded or otherwise—the court "slotted" IAD files within the more stringent disclosure provision of personnel files.[167] The court could have reached the same outcome in this case by holding that the IAD files should not be disclosed as investigations substantiated by a public interest of confidentiality as derived from the LEOBR, thereby avoiding the nonsensical result of labeling IAD files as personnel records.[168]

A. *IAD Files Fall Logically Within the Meaning of the Investigations Permissible Denial Category Rather Than the Personnel Records Mandatory Denial Category*

The IAD files in question in *Shropshire* are more apt to fall under the permissible denial of "investigations" rather than the mandatory denial of "personnel records" relied upon by the court. In dissent,

162. *Shropshire*, 420 Md. at 390–91 n.2, 23 A.3d at 222 n.2.
163. *Id.*
164. *Id.*
165. *Id.*
166. *See infra* Part V.A.
167. *See infra* Part V.B.
168. *See infra* Part V.C.

Judge Adkins appropriately invoked the doctrine of *ejusdem generis*[169] to analyze Section 10-616(i) of the MPIA.[170] Section 10-616(i) enumerates three categories of personnel records, "including an application, performance rating, or scholastic achievement information."[171] As Judge Adkins noted, "the type of records developed during an investigation, like the records at issue in this case, are a far cry from the three examples enumerated in the statute."[172] Hence, a common sense reading of Section 10-616(i) does not logically lead to the majority view that the IAD files are personnel records.

Whereas the IAD files do not fit a plain reading of Section 10-616(i) personnel records, the files do fit a plain reading of Section 10-618(f) investigations. As a cardinal rule of statutory interpretation, "[i]f the language of the statute is clear and unambiguous, [the court] need not look beyond the statute's provisions and [the court's] analysis ends."[173] Section 10-618(f)(1)(i) provides that "a custodian may deny inspection of . . . records of investigations conducted by . . . a city or *county* attorney, a *police department*, or a sheriff."[174] The Court of Appeals is not ignorant to this text, having already interpreted this enumeration to "negate[] the need for the agency to demonstrate that the files were compiled for a law enforcement purpose."[175] Thereby, this enumeration carries import beyond merely demonstrating which agencies may deny disclosure under Section 10-618(f). The IAD files at question in *Shropshire* were undeniably compiled by a county police department, and therefore patently came under the contemplation of Section 10-618(f).[176]

Furthermore, the public policy rationale behind the MPIA supports such a plain language analysis.[177] Both the MPIA itself[178] and

169. "[W]hen general words in a statute follow the designation of particular things or classes of subjects or persons, the general words will usually be construed to include only those things or persons of the same class or general nature as those specifically mentioned." Giant of Md. v. State's Attorney, 274 Md. 158, 167, 334 A.2d 107, 113 (1975).

170. Montgomery County v. Shropshire, 420 Md. 362, 385, 23 A.3d 205, 219 (2011) (Adkins, J., dissenting).

171. MD. CODE ANN., STATE GOV'T § 10-616(i) (LexisNexis 2009).

172. *Shropshire*, 420 Md. at 385, 23 A.3d at 219.

173. Patterson Park Public Charter School, Inc. v. Balt. Teachers Union, 399 Md. 174, 198, 923 A.2d 60, 74 (2007).

174. STATE GOV'T § 10-618(f)(1)(i) (emphasis added).

175. Fioretti v. Md. State Bd. of Dental Examiners, 351 Md. 66, 80, 716 A.2d 258, 265 (1998).

176. STATE GOV'T § 10-618(f)(1).

177. *See* Md. Unemployment Comp. Bd. v. Albrecht, 183 Md. 87, 94, 36 A.2d 666, 670 (1944) (finding that the court need not construe the language of the statute where another meaning is clearly indicated by a contrary underlying policy).

the Court of Appeals acknowledge a public policy preference for disclosure.[179] Whereas personnel records are mandatory exclusions from disclosure, investigations can be disclosed upon a showing of a public interest and with the custodian's discretion.[180] Therefore, considering a policy preference for disclosure, the IAD files in question should be construed to fit the provision that furthers that preference: the permissible denial of investigations. The *Shropshire* court cannot root its decision in the public policy underlying the MPIA; the IAD files in question fit under the investigations denial after conducting both a plain meaning and policy analysis.

B. The Shropshire *Court Effectively Sought to Remedy a Practical Deficiency in the MPIA by "Shoehorning" IAD into Section 10-618(f)*

The *Shropshire* court's concern with fairness toward investigated officers prompted it to adopt a practical, though improper, solution in interpreting IAD files as personnel records. The court expressed concern for the fact that *any* report filed against an officer is contained in the IAD report, regardless of the complaint's merit.[181] The plain language of the statute, however, does not lend itself to an interpretation that would bring the IAD files under the mandatory denial of personnel records, thereby prompting the court to rely mainly upon the use of the term "discipline" by the court in *Kirwan v. The Diamondback*.[182] In so doing, the *Shropshire* court violated a central tenet of interpretation: that the court should not insert words into a statute to change its meaning. Therefore, despite its best intentions, the *Shropshire* court effectively violated its own doctrine.[183]

The court in *Shropshire* concerned itself at length with the issue of fairness to the officers investigated by the IAD, because their respective files contain all complaints alleged against the officers, regardless

178. STATE GOV'T § 10-612(a) ("All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.").

179. Kirwan v. The Diamondback, 352 Md. 74, 80, 721 A.2d 196, 199 (1998).

180. *See* Att'y General v. Gallagher, 359 Md. 341, 353–54, 753 A.2d 1036, 1043 (2000) (discussing the different imperatives—permissible versus required—compelling disclosure in §§ 10-618(f) and 10-616(i), respectively).

181. Montgomery County v. Shropshire, 420 Md. 362, 381, 23 A.3d 205, 216–17 (2011) (majority opinion).

182. 352 Md. 74, 83, 721 A.2d 196, 200 (1998).

183. *See* Koons Ford of Balt., Inc. v. Lobach, 398 Md. 38, 62–63, 919 A.2d 722, 737 (2007) ("The court's charge in interpreting a statute is to determine the intent of the Legislature, not to insert language to change the meaning of a statute." (internal citations omitted)).

of merit.[184] The court emphasized its prior discussion in *Mayor of Baltimore v. Maryland Committee Against the Gun Ban*[185] by quoting the *Gun Ban* court's observation that "[m]istaken or even deliberately false reports and accusations are made against members of the department" and "[i]n some instances, the most conscientious and hardworking members will be the subject of such reports."[186] While not delving into such specificity, the Court of Special Appeals has similarly recognized that subjects of an IAD report have a "privacy interest" in maintaining its confidentiality.[187] Hence, both the Court of Appeals and Court of Special Appeals have found an interest in maintaining the subject of an IAD investigation's confidentiality.

Faced with the difficulty of wanting to protect the private interests of officers within a counterintuitive statutory designation, the court justified its reasoning by clinging to the *Kirwan* court's use of the word "discipline." *Kirwan* stands for the proposition that "personnel records" are documents that "*directly* pertain to employment and an employee's ability to perform a job."[188] In choosing to focus upon the *Kirwan* court's use of the word "discipline" rather than its central holding, the *Shropshire* court hued closely to the court in *Office of the Governor v. Washington Post Co.*,[189] which, as the Court of Special Appeals pointed out, "was decided about two years after the *Kirwan* case . . . [and] for the first time, included the word 'discipline' in its judicially crafted definition of 'personnel records.'"[190] In so doing, the *Shropshire* court preferenced the expanded definition of "personnel"

184. *Shropshire*, 420 Md. at 381, 23 A.3d at 216–17.

185. In *Gun Ban*, a political committee sought records generated in the course of an IID investigation that resulted from civilian complaints concerning the action of officers during the service of a subpoena. 329 Md. 78, 84, 617 A.2d 1040, 1042–43 (1993). The director of the IID denied disclosure of the files, in part, because he considered the records to be investigations. After first determining that the Committee was not a person in interest, the Court of Appeals held that the LEOBR provided an adequate public interest such that the IID custodian could permissibly deny disclosure of the requested records. *Id.* at 95–96, 617 A.2d at 1048.

186. *Id.* at 84, 617 A.2d at 1043.

187. Balt. City Police Dep't v. State, 158 Md. App. 274, 286, 857 A.2d 148, 155 (2004) (stating in its analysis: "[w]e can only assume in the case before us that the trial court concluded that appellee's rights of confrontation and to a fair trial outweighed the *privacy interest Detective Dressel had in his personnel records*" (emphasis added)).

188. Kirwan v. The Diamondback, 352 Md. 74, 83, 721 A.2d 196, 200 (1998) (emphasis added).

189. Office of the Governor v. Washington Post Co., 360 Md. 520, 548, 759 A.2d 249, 264 (2000).

190. Md. Dep't of State Police v. Md. State Conf. of NAACP Branches, 190 Md. App. 359, 373, 988 A.2d 1075, 1083 (2010), *cert. granted*, 415 Md. 38, 997 A.2d 789 (2010).

records in *Office of the Governor v. Washington Post Co.* than the more narrowly tailored centralized holding in *Kirwan*.[191]

The *Shropshire* court's reliance on *Kirwan*'s use of the term "discipline," and *Office of the Governor*'s subsequent reliance thereon, is misplaced. First, both the *Shropshire*[192] and *Office of the Governor*[193] courts erroneously attributed far too much weight to the *Kirwan* court's use of the term "discipline."[194] The *Kirwan* court's primary holding was largely an intrinsic discussion of the "personnel record" exception.[195] In the passage that the subsequent courts utilize, however, the *Kirwan* court is simply applying its holding to the particular case of Coach Williams: "Records of tickets issued by the campus police do not relate to Coach William's hiring, discipline, promotion, dismissal, or any matter involving his status as an employee."[196] Not only do the *Shropshire* and *Office of the Governor* courts misapprehend this application of the *Kirwan* court's statement of the rule, but those subsequent courts commit a logical fallacy by taking an exemplary application and turning it into a requirement: *if the record deals with an employee's discipline, then it is a personnel record*.[197] However, to treat another object in the series from which the courts extracted the term "discipline"—for example, *if the record deals with "any matter involving his status as an employee," then it is a personnel record*—would be directly contrary to the *Kirwan* court's statement:

> As previously discussed, the policy of the Public Information Act is to allow access to public records. Generally, the statute should be interpreted to favor disclosure. In light of this policy, we do not believe that the General Assembly intended that any record identifying an employee would be exempt from disclosure as a personnel record. Instead, the General Assembly likely intended that the term "personnel records" retain its common sense meaning.[198]

Hence, to treat any of those other objects in the *Kirwan* court's applicative series as wholly indicative of a personnel record would be to

191. *See id.* at 373, 988 A.2d at 1083 (describing the interplay between the definitional difference of personnel files and investigations as defined in *Kirwan*, 352 Md. at 83, 721 A.2d at 200).

192. Montgomery County v. Shropshire, 420 Md. 362, 378–79, 23 A.3d 205, 215 (2011).

193. *Office of the Governor*, 360 Md. at 548, 759 A.2d at 264.

194. *Kirwan*, 352 Md. at 83, 721 A.2d at 200.

195. *Id.* at 82–83, 721 A.2d at 200.

196. *Id.* at 83, 721 A.2d at 200.

197. *Shropshire*, 420 Md. at 378–79, 23 A.3d at 215.

198. *Kirwan*, 352 Md. at 84, 721 A.2d at 200.

contravene the *Kirwan* court itself, thereby demonstrating the *Kirwan* court could not have intended for that application to be included within the central holding of the case.[199]

Second, the *Shropshire* court used the *Kirwan* opinion to effectively insert the term "discipline" into Section 10-616(i), thereby changing its meaning. The Court of Appeals has held that a court should not insert language into a statute to change its meaning.[200] In this case, by placing so much emphasis on the *Kirwan* court's use of "discipline," the *Shropshire* court effectively read the term "discipline" into Section 10-616(i).[201] In so doing, the court assumedly is attempting to protect the privacy interests of the officer, about which it has demonstrated concern; hence, *Shropshire* very well may be the product of the practical concern for the officer's privacy.[202] Nevertheless, both the statute's words and the policy behind the MPIA reflect a contrary result.[203] Additionally, the *Shropshire* court's analysis ignored the fact that alleged misconduct of a police officer that would prompt an IAD investigation would also likely impinge upon constitutional rights.[204] In other words, a government employee performing clerical duties may misplace a document and such an oversight would be worthy of note in a personnel file; contrastingly, a police officer who misplaces a police report may commit a *Brady* violation and by its very nature spawn an investigation.[205] Therefore, the *Shropshire* court should have refrained from materially changing the meaning of 10-616(i) by reading discipline into the statute.[206]

199. *Id.*, 721 A.2d at 200–01.

200. Koons Ford of Balt., Inc. v. Lobach, 398 Md. 38, 62–63, 919 A.2d 722, 737 (2007) (citations omitted).

201. Montgomery County v. Shropshire, 420 Md. 362, 378–79, 23 A.3d 205, 215 (2011) (stating that "[w]e . . . determined that personnel records were those relating to hiring, *discipline*, promotion, dismissal, or any matter involving an employee's status." (emphasis added)).

202. *Id.* at 380–81, 23 A.3d at 216.

203. *See supra* Part III.A.

204. *See Robinson v. State*, 354 Md. 287, 304, 730 A.2d 181, 190 (1999) (explaining that a "police department [is] an arm of the prosecution," and thereby a department has the same duty under *Brady v. Maryland*, 373 U.S. 83 (1963), to release exculpatory evidence to a criminal defendant).

205. *Id. See also* Corinne M. Nastro, Note, Strickler v. Greene*: Preventing Injustice by Preserving the Coherent "Reasonable Probability" Standard to Resolve Issues of Prejudice in* Brady *Violation Cases*, 60 MD. L. REV. 373, 377–382 (2001) (discussing *Brady* in the context of Maryland jurisprudence).

206. Koons Ford of Balt., Inc. v. Lobach, 398 Md. 38, 62–63, 919 A.2d 722, 737 (2007) (citations omitted).

C. *The Court Should Have Recognized the IAD Files as "Investigations," With a Public Interest in Denying Disclosure Pursuant to the LEOBR*

The same result reached by the *Shropshire* court—denying the disclosure of IAD files—could be accomplished by recognizing intra-departmental files as investigations, the denial of which is substantiated by the LEOBR. *Gun Ban* serves as an example of how the LEOBR can be utilized to validate denial of disclosure under the proper designation of investigations, rather than the improper blanket denial of personnel records.[207] As discussed above, denying disclosure of an "investigation"—especially in the case of "closed" files—requires a public interest;[208] assumedly, the *Shropshire* court adopted the "personnel records" interpretation of IAD so as to firmly deny the disclosure of files that contain even superfluous complaints against possibly the most "conscientious and hardworking members" of the department.[209] *Gun Ban*, however, reached the same conclusion using the LEOBR as a viable public interest to substantiate the permissible denial under the investigations exception: "That there is a public interest in the confidentiality of investigations of police officers is demonstrated by the provisions of LEOBR . . . [c]ontrary to the Committee's contention, the public interest in the confidentiality of investigations is broader than protecting the identity of confidential sources."[210] Applied to the IAD files in *Shropshire*, the LEOBR could have served as the same viable public interest by which to deny disclosure, without having to nonsensically "slot" an investigation file under the personnel records exception, instead of under the investigations exception.[211]

Curiously, while the *Shropshire* court went to great lengths to qualify the IAD files in question as personnel files, it substantiated its claim similar to that of how an investigations exception would: it identified a public interest as derived from the LEOBR.[212] Given the mandatory nature of the personnel files exception, those documents attributed that designation are thought to have an inherent public interest against disclosure, and therefore there is no need for the custo-

207. Mayor of Balt. v. Md. Comm. Against the Gun Ban, 329 Md. 78, 80, 617 A.2d 1040, 1041 (1993).

208. *See supra* Part III.A.2.

209. Montgomery County v. Shropshire, 420 Md. 362, 380–81, 23 A.3d 205, 216 (2011) (quoting Mayor of Balt. v. Md. Comm. Against the Gun Ban, 329 Md. 78, 84, 617 A.2d 1040, 1043 (1993)).

210. *Gun Ban*, 329 Md. at 95, 617 A.2d at 1048.

211. *Id.*

212. *Shropshire*, 420 Md. at 381, 23 A.3d at 216–17.

dian to proffer such an interest.[213] Nevertheless, the *Shropshire* court offered the LEOBR as indicative as a requisite public interest:

> [W]here, as here, an investigation clears the officers of wrongdoing, there is *a significant public interest* in maintaining confidentiality, both in fairness to the investigated officers and cooperating witnesses. This policy is embodied in Section 3-104(n) of the Public Safety Article, which states that an investigated officer must "execute a confidentiality agreement" before obtaining a copy of his or her investigatory file at the close of an investigation.[214]

Hence, the Court of Appeals treated the IAD files *as if they were investigations,* pursuant to Section 10-618(f). While there is no logical reason for attributing a public interest to personnel records, it is generally requisite for permissible denials under investigations.[215] Hence, the Inspector General could have been denied the officers' IAD files under the more logical construct of investigations, with a public interest rooted firmly in the LEOBR, rather than classify the documents as personnel records.

V. CONCLUSION

In *Montgomery County v. Shropshire*, the Court of Appeals chose to embrace a nonsensical approach to the confidentiality of intradepartmental disciplinary files, despite the fact that another, more logical, option was available that would have accomplished the same goal.[216] Instead of holding that the IAD files in question qualified as "personnel records," the court should have interpreted the files as "investigations."[217] Understandably, the court was concerned with the personal privacy of police officers;[218] however, the court could have accomplished the same end of nondisclosure by acknowledging the IAD files in question fell within the plain meaning of "investigations,"[219] the disclosure of which would have been proscribed by a public interest in confidentiality as provided in the Law Enforcement

213. *See generally* Kirwan v. The Diamondback, 352 Md. 74, 82–84, 721 A.2d 196, 200 (1998).

214. *Shropshire*, 420 Md. at 381, 23 A.3d at 216 (emphasis added).

215. Mayor of Balt. v. Md. Comm. Against the Gun Ban, 329 Md. 78, 94–95, 617 A.2d 1040, 1047–48 (1993).

216. *See supra* Part V.C.

217. *See supra* Part V.A.

218. *See supra* Part V.B.

219. *See supra* Part V.A.

Officers' Bill of Rights.[220] Hence, the court should have interpreted investigations to include intradepartmental disciplinary files, while still denying the disclosure of those files.[221]

---

220. *See supra* Part V.C.
221. *See supra* Part V.A.