IN THE
APPELLATE COURT OF MARYLAND

MAYOR AND CITY COUNCIL OF BALTIMORE,	*	
	*	September Term, 2026
Appellant,	*	
	*	No. 1477
v.	*	
	*	ACM-REG-1477-2026
INSPECTOR GENERAL OF BALTIMORE CITY ISABEL MERCEDES CUMMING, ESQ., *et al.*,	*	
	*	(Cir. Ct. No. C-24-CV-26-001410)
Appellees.	*	

* *

APPELLEES' OPPOSITION TO
APPELLANT'S EMERGENCY MOTION TO STAY

Appellees Inspector General of Baltimore City Isabel Mercedes Cumming, Esq., Gayle Guilford, individually and in her official capacity as Chairperson of the Office of the Inspector General of Baltimore City ("OIG") Citizen Advisory Board, and Citizen Advisory Board Secretary James Godey, CPA, Esq., individually and in his official capacity, by undersigned counsel, oppose the Emergency, Two-Part Motion to Stay (the "Motion") filed by Appellant Mayor and City Council of Baltimore (the "City"). In support, Appellees state as follows:

INTRODUCTION

For eight months, the City has ground to a halt the OIG's ability to investigate fraud, waste, and abuse in City government. The circuit court found as much: the City cut off the OIG's longstanding access to City records and systems in January 2026, left a

growing docket of subpoenas unanswered, and never once substantiated the privileges it now invokes to justify that obstruction. Sept. 21, 2026 Opinion at 6–10. The consequence is a mounting backlog of citizen complaints and investigations the OIG once resolved within days but now cannot advance at all. The September 21, 2026 Order does not impose some novel intrusion on the City; it restores the status quo prior to January 2026, reinstating the oversight the voters of Baltimore created and restoring the direct access that the City undisputedly itself provided, without incident, from 2018 through 2025.

Against that record, the City asks this Court for the extraordinary remedy of a stay on the strength of sweeping assertions unsupported by fact or law. It contends that producing its records internally within the City governed by national standards of OIG compliance and confidentiality would purportedly run afoul of the attorney-client privilege, cost millions, and inflict irreparable harm. None of the City's contentions withstand scrutiny, and the City cannot carry the heavy burden a stay demands.

First, the Motion is procedurally improper and should be denied on that basis alone. Maryland Rule 8-422(c) and Rule 8-425(b) require a party to first seek—and obtain a ruling on—stay relief in the circuit court before asking this Court to act. The City's stay motion remains ***pending*** in the circuit court. Although the City purported to require the circuit court to issue an order within 24-hours of filing its motion, the circuit court is not beholden to the City's demands. The City's own Errata confirms as much. That is no basis for bypassing the circuit court—parties do not set the courts' deadlines; the Maryland Rules and the courts do.

Second, the City cannot make the required "strong showing" of likely success on appeal. *Gen. Motors Corp. v. Miller Buick, Inc.*, 56 Md. App. 374, 388–89 (1983). Its lead argument—that giving the OIG access waives the attorney-client privilege—rests on a false premise: disclosure to an internal City oversight office within the same legal entity is not disclosure to a third party and waives nothing. The circuit court already ruled that the City failed even to establish that any privilege applies. Sept. 21, 2026 Opinion at 7, 10.

Third, the City faces no irreparable harm. Any material goes solely to an internal watchdog barred from further disclosure, and the City's newly minted, multimillion-dollar "undue burden"—raised for the first time in this Court—was never developed below and is entirely of the City's own making. Indeed, the cost exists only because the City refuses to restore the direct access that would avoid it. The status quo the City claims to protect is not the direct access it eliminated; it is the very obstruction the Order corrects. Accordingly, the City's Motion should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

This is the City's fourth attempt to stay its obligations to the OIG. The circuit court denied a stay on August 26, 2026. A panel of this Court denied a stay on September 14, 2026, first ruling that the order in question was "not appealable as an order in the nature of an injunction" and further explaining, per Judge Friedman, that because any restricted document "will go solely to the Office of Inspector General and be disseminated no further at this juncture, the potential harm is not irreparable." Sept. 14, 2026 Order at 1–2.

On September 16, 2026, the circuit court conducted a hearing on Appellees' Motion for Summary Judgment and, on September 21, 2026, granted that motion in substantial part and entered an Order and accompanying Opinion. The court declared that the OIG "has the legal authority to issue and enforce subpoenas without restrictions," that its subpoenas carry full force "without limitation or restricted response under the Maryland Public Information Act [("MPIA")]," and that the City must comply "without restricting or withholding unspecified or inapplicable attorney-client communications or work product documents." Sept. 21, 2026 Order at 1–2. The court reached these conclusions on undisputed facts, after the City "did not offer documents informing or statements attesting to genuine disputes of material fact." Sept. 21, 2026 Opinion at 3.

Central to the circuit court's Order and Opinion are two findings the City cannot escape. First, OIG subpoenas "are legal orders compelling attendance and production of evidence," not requests that "could fairly characterize OIG as an 'applicant'" under the MPIA. *Id.* at 6. Second, the City never substantiated the privileges it invoked: "At no time in 2025 or during the pendency of this case has the Law Department offered an explanation of the applicability of the privilege or identified a privilege log," *id.* at 7, and at the September 16 hearing "defense counsel declined the Court's invitation to specify employees or offices for whom any privilege was claimed," *id.* at 7 n.2. The City "does not attempt to prove that any such privilege exists, let alone" one that "warrants foreclosing investigatory data searches or denying subpoenas." *Id.* at 10.

The access the Order restores is the access the City itself provided for years. From 2018 through 2025, the City gave the OIG direct, unredacted access to the records and

systems necessary to investigate fraud, waste, and abuse; the City unilaterally cut off that access in January 2026. The Order directs the City to produce responsive documents (with a detailed privilege log) and to restore the system access held by OIG Assistant Inspector General Bryan Bartsch as of January 22, 2026. Sept. 21, 2026 Order at 2–4.

On September 21, 2026, the City noted an appeal and filed a motion in the circuit court to stay the Order pending appeal. That motion remains pending. Without waiting for a ruling, the City filed the present Emergency Motion in this Court under Rule 8-425, demanding that Appellees respond within roughly 24 hours and that this Court decide the first part of the Motion the same day. Mot. at p. 2; *see* Ex. A, Sept. 21–22, 2026 Emails.

Hours after filing the Motion in this Court, the City filed an Errata correcting Paragraph 10, which had represented that "[t]he circuit court denied the stay/failed to respond before the filing of this motion" and had cited an "Order Denying Stay 9/22/26, attached as Exhibit 2." Sept. 22, 2026 Errata Sheet at 1. The City acknowledged that this was "inaccurate placeholder language" referring to "a non-existent 'Order Denying Stay 9/22/26,'" that the language "was meant to be removed in the final draft" but was not "in the rush to file," and it revised Paragraph 10 to read only that "[t]he circuit court failed to respond before the filing of this motion." *Id.* at 1–2. There is, in short, no circuit-court ruling of any kind.

ARGUMENT

I. The Motion Is Procedurally Improper Because the City Did Not First Obtain Relief in the Circuit Court, as Rules 8-422(c) and 8-425 Require.

The Maryland Rules do not permit a party to bypass the circuit court and seek a stay in this Court in the first instance. A stay of an order granting an injunction "is governed by Rules 2-632 and 8-425," Md. Rule 8-422(a)(1), and Rule 8-422(c) authorizes this Court to review a lower court's stay ruling only "on motion of a party who has first sought relief in the lower court." Md. Rule 8-422(c). Rule 8-425 says the same: "Unless it is not practicable to do so, a party shall file a motion in the circuit court requesting relief pursuant to Rule 2-632 before requesting relief from the appellate court under this Rule." Md. Rule 8-425(b). A party may proceed directly in this Court "[i]f a motion under Rule 2-632 is not practicable or such a motion was denied by the circuit court or not ruled upon within a reasonable time," and even then the motion "shall include the reason why it is impracticable to seek the relief in the circuit court or … any reason given by that court for denying or not affording the relief." Md. Rule 8-425(c).

The City satisfies none of the gateways to direct appellate relief, as its own filings confirm. Its Rule 2-632 stay motion remains pending in the circuit court; that court has neither denied it nor—having had the motion for less than 24-hours a day—failed to rule on it "within a reasonable time." Md. Rule 8-425(c). The City effectively conceded as much, filing an Errata the same evening it filed its Motion in this Court, admitting that this was "inaccurate placeholder language" referring to "a non-existent 'Order Denying

Stay 9/22/26,'" and it revised Paragraph 10 to read only that "[t]he circuit court failed to respond before the filing of this motion." Sept. 22, 2026 City's Errata at 2.

The City's complaint that the circuit court "failed to respond" manufactured that supposed predicate by fiat. It served its circuit-court stay motion the evening of September 21 and unilaterally demanded a response by noon the next day and a ruling the same day. *See* Ex. A. When Appellees objected that any shortening of response time is governed by Rule 1-204 and that the City had cited no authority for its arbitrary deadline, the City pressed ahead anyway. *Id.* Parties do not set the courts' deadlines. The Maryland Rules and the courts do, and a litigant cannot conjure appellate jurisdiction by declaring a 24-hour clock and then treating the court's silence as though it were a ruling—as the City's original, since-corrected Paragraph 10 tried to do. The City has done the very same thing in this Court, demanding that Appellees respond within roughly 24 hours and that this Court rule the same day. Mot. at p. 2. Because the City did not first obtain—or even await—a ruling below, the Motion should be denied.

II. Even if the Court Reaches the Merits, the City Cannot Make the Required Strong Showing of Likely Success.

A stay pending appeal is governed by the same four factors that govern injunctive relief in the circuit court: (1) the likelihood of success on the merits; (2) the balance of convenience; (3) whether the movant will suffer irreparable injury absent relief; and (4) the public interest. Md. Rule 8-425(g); *Fogle v. H & G Rest., Inc.*, 337 Md. 441, 455–56 (1995). The City bears the burden on all four, and "failure to prove the existence of even one of the four factors will preclude the grant of preliminary relief." *Id.* at 456. And

because the circuit court rejected the City's arguments on the merits, the City must make a "*strong showing* that it is likely to prevail on the merits of its appeal"—"tantamount, in most cases, to proving the likelihood that the trial judge committed some reversible error." *Gen. Motors Corp.*, 56 Md. App. at 388–89 (emphasis in original). The City fails every factor.

A. The Attorney-Client Privilege Is Not Implicated by the OIG's Internal Access.

The centerpiece of the City's Motion is the inaccurate assertion that giving the OIG access to City records will destroy the attorney-client privilege and hand the OIG the City's work product "in this very appeal." Mot. ¶¶ 1, 13(a).[1] The argument rests on a fallacy: that disclosure to an internal City oversight office waives the privilege. It does not.

The party asserting the privilege bears the burden of establishing its existence, and the privilege—"narrowly construed"—reaches only communications made for the purpose of legal advice and intended to be confidential. *E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 415–16 (1998). The City never carried that burden. As the circuit court found, "[a]t no time in 2025 or during the pendency of this case has the

[1] The City's accusation that Appellees and their counsel would somehow access information related to this litigation, Mot. ¶ 1, is baseless and an *ad hominem* attack on counsel. Undersigned counsel are keenly aware of their obligations under the Maryland Attorneys' Rules of Professional Conduct, and, as the circuit court ruled, the only access the OIG undertakes relates to valid investigations. To the extent the City harbors any genuine concern, Appellees confirm that they will take every step necessary to ensure that the OIG does not access any materials involving this litigation. To suggest that Appellees' counsel would intrude upon the attorney-client privilege in this very litigation is both unfounded and not well taken.

Law Department offered an explanation of the applicability of the privilege or identified a privilege log[.]" Sept. 21, 2026 Opinion at 7 (footnotes omitted). At the summary-judgment hearing "defense counsel declined the Court's invitation to specify employees or offices for whom any privilege was claimed," *id.* at 7 n.2; and the City "does not attempt to prove that any such privilege exists," *id.* at 10. A movant cannot make a "strong showing" of reversible error by reasserting on appeal a privilege it refused to substantiate below.

Not every communication with a lawyer is privileged. The privilege applies only to communications "pertaining to legal assistance" and "made with the intention of confidentiality"; communications for business, political, or administrative purposes are not protected. *E.I. du Pont de Nemours & Co.*, 351 Md. at 416 (emphasis omitted). And to the extent any communication concerns fraud, waste, or abuse, the crime-fraud exception forecloses using the privilege as a shield. *Newman v. State*, 384 Md. 285, 309 (2004).

Nor does internal disclosure within a single entity waive the privilege. The OIG is an office of the same municipal corporation; sharing records with it is not disclosure to a third party at all. The United States District Court for the District of Maryland has "consistently recognized that … intra corporate distribution of legal advice received from counsel does not vitiate the privilege even though the legal advice is relayed indirectly from counsel through corporate personnel," because "the decision-making power over the corporate client may be diffused among several employees" and "the dissemination of confidential communications to such persons does not defeat the privilege." *Baltimore*

Scrap Corp. v. David J. Joseph Co., No. CIV. L-96-827, 1996 WL 720785, at *6 (D. Md. Nov. 20, 1996) (citing sources). A corporation "can only act through its directors, officers, employees and agents," so relaying advice to those who must act on it preserves the privilege. *Id.* Applying Maryland law, the same court concluded that even a genuine third party does not waive the privilege where it is the "functional equivalent" of an employee. *Maxtena, Inc. v. Marks*, No. CIV.A. DKC 11-0945, 2014 WL 4384551, at *20 (D. Md. Sept. 2, 2014); *accord Newman*, 384 Md. at 306; *Parler & Wobber v. Miles & Stockbridge, P.C.*, 359 Md. 671, 691 (2000). The OIG is not even a third party; it is part of the client.

In *Gallagher v. Office of Attorney General*, this Court held that an assistant attorney general did not waive the attorney work-product privilege by sharing her work with other agencies, because parties "with shared interests … may share privileged information without waiving their right to assert the privilege." 141 Md. App. 664, 676 (2001). That common-interest principle traces directly to the Fourth Circuit authority on which *Baltimore Scrap* relied: "persons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other … without waiving privileged attorney-client communications." *Baltimore Scrap*, 1996 WL 720785, at *7 (quoting *In re Grand Jury Proceedings 89-3 & 89-4*, 902 F.2d 244, 249 (4th Cir. 1990)). If sharing privileged material among ***separate*** **agencies** with a common interest does not waive the privilege, sharing it ***within a single legal entity*** does not either. The materials the OIG receives remain confidential within the OIG—and therefore within the City.

The City's Technology Acceptable Use Policy supports such a finding. It notifies every employee that they "have no expectation of privacy when using City IT resources" and that "[c]ommunications or content may be subject to disclosure to … the Office of Inspector General."[2] The circuit court so found. Sept. 21, 2026 Opinion at 9–10. Employees acknowledge that notice each time they log in. The Fourth Circuit holds that exactly such a policy—stating "no expectation of privacy" and that content is "subject to inspection," acknowledged at each log-on—defeats any objectively reasonable expectation of confidentiality and confirms that employees of the City acknowledge and consent to the internal review of communications by the OIG. *Cf. United States v. Hamilton*, 701 F.3d 404, 408–09 (4th Cir. 2012) ("In similar circumstances, we have held that a defendant did not have an 'objectively reasonable' belief in the privacy of files on an office computer after his employer's policy put him 'on notice' that 'it would be overseeing his Internet use.'" (quoting *United States v. Simons*, 206 F.3d 392, 398 (4th Cir.2000)). Communications the City's own policy marks for potential disclosure to the OIG were never anticipated to be confidential as against the OIG in the first place.

B. The City's MPIA-Preemption and Capacity Theories Were Already Considered and Rejected.

The City's remaining merits arguments fare no better. It again contends that the MPIA, through *Montgomery County v. Shropshire*, 420 Md. 362 (2011), and *Caffrey v. Department of Liquor Control*, 370 Md. 272 (2002), preempts the Charter and bars the

[2] *See* City of Balt., *Baltimore City Administrative Manual*, AM-118-1V (Jan. 1, 2023), https://codes.baltimorecity.gov/us/md/cities/baltimore/administrative-manual/100/AM-118-1

OIG's access. Mot. ¶¶ 6–8, 13(b). The circuit court considered and rejected that precise argument, holding that OIG subpoenas "are legal orders compelling attendance and production of evidence," not requests that make the OIG an MPIA "applicant," and that the OIG's subpoena authority "is not in conflict with or restricted by the MPIA." Sept. 21, 2026 Opinion at 6; Sept. 21, 2026 Order at 1–2. *Shropshire* involved a records request, not a subpoena, and *Caffrey* preempts only local provisions that *conflict* with a public general law—a conflict the circuit court found absent. Indeed, the MPIA and the City Charter—both which liberally construe transparency to the public—cannot be read in conflict with one another. Reasserting an argument the trial court already weighed is not a "strong showing" of reversible error. *Gen. Motors Corp.*, 56 Md. App. at 388–89. Indeed, a panel of this Court already declined to disturb the earlier order enforcing the same authority. Sept. 14, 2026 Order at 1.

The City's contention that the OIG lacks capacity to sue, Mot. ¶ 13(c), likewise fails. The circuit court applied this Court's very precedent to determine that Appellees have standing to sue. *See* August 14, 2026 Decision & Order at 13–15 (citing *Coates v. Charles Cnty. Bd. of Comm'rs*, 266 Md. App. 266, 290 (2025)). The circuit court held that the Charter, ratified by the voters, created an "independent Office of Inspector General" that does not answer to the Mayor, City Council, or City Solicitor, and that the City Solicitor's irreconcilable conflict required the OIG to proceed through independent counsel. Sept. 21, 2026 Opinion at 1–2. The City offers no basis to conclude that reasoned ruling is likely to be reversed.

III. The City Faces No Irreparable Harm, and Its Cost Argument Raised for the First Time in This Court Is Both Waived and of the City's Own Making.

The City's irreparable-harm argument fails for the reason this Court has already given. The Order authorizes no public disclosure of anything; any restricted material goes "solely to the Office of Inspector General," which is bound to safeguard it and "disseminated no further at this juncture," so "the potential harm is not irreparable." Sept. 14, 2026 Order at 1–2 (Friedman, J.). *Office of State Prosecutor v. Judicial Watch, Inc.*, 356 Md. 118 (1999), on which the City relies, involved compelled disclosure to a public MPIA applicant; disclosure here is to an internal watchdog bound to confidentiality. The distinction is dispositive, and this Court has already drawn it. The City's professed harm is also speculative: a movant must "allege and prove facts" showing injury that is "actual and imminent," not "remote [or] speculative," and the circuit court found the City never identified any privileged material at all. Sept. 21, 2026 Opinion at 7, 10.

The City's newest theory—that compliance will cost "between $1,947,600 and $3,628,200" to review more than two million pages, Mot. ¶ 17—cannot support a stay for three independent reasons.

First, the City did not raise or develop this argument in the circuit court. An argument neither raised nor decided below is not a basis on which to find the trial court committed reversible error. *See* Md. Rule 8-131; *Bryant v. State*, 436 Md. 653, 659–66 (2014).

Second, the timing reveals the City's argument is not credible. The City represented to the circuit court, repeatedly, that it had been reviewing and producing responsive documents "on a 'rolling' basis." Sept. 21, 2026 Opinion at 7. Yet it claims to have "[t]oday" (*i.e.*, September 22, 2026) discovered, for the first time, a multimillion-dollar price tag, Mot. ¶ 17. That about-face on an issue the City had every opportunity to raise below calls its own representations into question.

Third, and most fundamentally, the burden is a creature of the City's own making. The cost the City now invokes exists only because the City insists on routing every document through outside privilege review rather than restoring the OIG's direct access—the very access the Order reinstates and that the City itself provided for years prior to January 2026. Were the City to restore that access, the review cost it decries would disappear. The City's position—that the OIG may not have direct access, but that reviewing records for the OIG is too burdensome—would mean the OIG can never obtain what it needs to do its job. That is the antithesis of the transparency the Charter commands.

IV. The Status Quo and the Public Interest Weigh Decisively Against a Stay.

The City's premise that a stay would "preserve the existing status quo," Mot. ¶¶ 5, 19, is backwards. The status quo is "the last, actual, peaceable, noncontested status which preceded the pending controversy." *Ehrlich v. Perez*, 394 Md. 691, 734 (2006). That status is the direct, unredacted access the City provided the OIG until January 2026—not the City's unilateral January 2026 cutoff thereafter. The September 21 Order restores that longstanding arrangement; it is the City's cutoff, not the Order, that departed from the

status quo. A stay would not preserve the status quo—it would entrench the City's disruption of it.

Nor is the harm to the OIG "comparatively much smaller, and entirely reparable." Mot. ¶ 19. The City has effectively incapacitated the OIG since January 2026. Eight months have passed, during which more than 900 citizen complaints have accumulated and investigations the OIG once resolved within days have stalled for months. The "temporary delay" the City posits is neither temporary nor small; it is an ongoing, worsening obstruction of a Charter-mandated oversight function. That is not what the voters of Baltimore decided when they created an independent Inspector General. *See* Sept. 21, 2026 Opinion at 3–4.

The public interest confirms the point. Because this is litigation between governmental parties over a government watchdog's access to records, "the only interest to be considered is the public interest." *State Dep't of Health & Mental Hygiene v. Baltimore County*, 281 Md. 548, 557 (1977). Since 2018, the OIG has identified tens of millions of dollars in fraud, waste, and abuse. Preserving that oversight—not the City's recent departure from it—serves the public.

Because the City cannot satisfy any of the four factors, let alone all of them, a stay is unwarranted.

CONCLUSION

For the foregoing reasons, Appellees respectfully request that this Court deny the City's Emergency Motion to Stay.

DATED: September 23, 2026

Respectfully submitted,

/s/ H. Mark Stichel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2026, a copy of the foregoing Appellees' Opposition to Appellant's Emergency Motion to Stay A and Proposed Order, was served via MDEC to:

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