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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-28
January 5, 2024
St. Mary's County Sheriff's Office, Custodian
Steven Boas, Complainant

The complainant, Steven Boas, alleges that the St. Mary's County Sheriff's Office ("SMCSO") violated the Public Information Act ("PIA") by failing to produce certain records in response to his request. In particular, the complaint focuses on video and audio footage of an encounter between the complainant and a sheriff's deputy, which the SMCSO claimed it no longer had. In response to the complaint, the SMCSO maintains that it conducted a diligent and reasonable search for responsive records and that, due to record retention policies, the video and audio recordings that the complainant seeks no longer exist. We conclude that the SMCSO has not violated the PIA and explain further below.

Background

Information supplied by the submissions sets out the following sequence of events. The complainant was arrested at a Target store in St. Mary's County in April of 2020—not long after the Covid-19 pandemic began—for allegedly violating the Governor's then-effective stay-at-home order. The complainant was released the same day. Though, to our knowledge, the complainant was never charged, the events sparked a civil lawsuit and a series of PIA requests that escalated over the next several years. It is the first request, however, that is the subject of this dispute.

The complainant's PIA request, sent on May 10, 2021, asked for "[e]very record pertaining to" the April 2020 incident, "including video, pictures, [and] audio in [the] police car." The SMCSO responded to the request the following day and provided a copy of a Maryland Field Interview Report and a Computer Aided Dispatch ("CAD") report. The SMCSO indicated that there were "no photos, video or audio records available to provide." The submissions suggest that all was quiet as to the complainant's PIA request until December of 2022, when the complainant filed a complaint for declaratory relief and damages in U.S. District Court.

According to the SMCSO's response to this Board complaint, the complainant's lawsuit triggered another search for records and evidence related to the April 2020 incident involving the complainant. This time, however, the SMCSO apparently discovered body worn camera footage from another officer who was also present, although primarily

investigating a separate theft incident unrelated to the complainant. In early May of 2023, that footage was filed in conjunction with the defense against the complainant's civil lawsuit. On May 19, 2023, after the SMCSO received a several new PIA requests from the complainant, the SMCSO mailed the complainant a USB drive with a copy of the body worn camera footage, redacted to remove footage related to the theft incident that did not involve the complainant.¹

The complainant disputed the SMCSO's response to his request for all of the records related to the April 2020 incident, in particular the SMCSO's representation that there was no video or audio that it could produce to the complainant. The complainant thus sought dispute resolution assistance through the Office of the Public Access Ombudsman. After the Ombudsman issued a final determination stating that the dispute was not resolved, the complainant filed this complaint.

Noting that the SMCSO initially advised that there were no video or audio records responsive to his PIA request, but then "those records that [he] sought were submitted as evidence in [his] lawsuit," the complainant alleges that more responsive records exist that have not been disclosed. The complainant asserts that the SMCSO "fraudulently or mistakenly withheld a record, and that record is important evidence in a civil rights lawsuit." The complainant asks for relief in the form of "compensatory damages, injunctive relief, statutory penalties, litigation costs, legal fees, policy changes, and punitive damages."

In response to the complaint, the SMCSO explains that when it received the complainant's PIA request on May 10, 2021, 383 days had passed since the April 2020 incident that was the subject of his request. The SMCSO further explains that, pursuant to

¹ According to the SMCSO's response, the complainant sent six more PIA requests between the middle of May and the end of August, 2023. Those requests sought a broad array of records, including records related to officers' training and discipline, policies and directives related to the stay-at-home order, and copies of incident reports from interactions between SMCSO officers and citizens related to the stay-at-home-order. We understand that the complainant paid fees for some responsive records, that the SMCSO denied inspection of others on various grounds, and that the SMCSO asked the complainant to refine other aspects of his requests. The Ombudsman's final determination indicates that the dispute presented for mediation was "the completeness of the SMCSO's final written response and records production with respect to body worn camera footage and/or dash camera footage related to a specified incident involving the [complainant] on April 22, 2020." And, while the complaint alleges generally that "[t]here are still records that [the complainant] requested that [he has] not received," the complainant attaches only his May 10, 2021, PIA request and the SMCSO's response thereto. Thus, these subsequent PIA requests and the SMCSO's responses to them are not at issue in this complaint. See Md. Code Ann., Gen. Provisions § 4-1A-05(a) (requiring that a complainant attempt to resolve a dispute through the Office of the Public Access Ombudsman before filing a complaint); COMAR 14.02.02.01B(1) (requiring a complaint to "[p]ertain only to the dispute described in the Final Determination").

the SMCSO's body worn camera policy, which the complainant attaches to his complaint, camera footage that is not marked for retention or as non-evidence is automatically erased after 365 days. Thus, the footage from the primary officer—i.e., the officer who arrested the complainant²—had been deleted by the time the complainant sent his PIA request. Stating that this officer was “the only officer dispatched for the call that [the complainant] was involved in at Target,”³ the SMCSO maintains that it “conducted a reasonable search designed to locate all of the requested records responsive to this request.”

In reply, the complainant suggests that the SMCSO's response “raises serious concerns about their compliance with the PIA.” The complainant expresses his belief that SMCSO policy requires officers to “approach arrests in pairs,” and maintains that the SMCSO therefore should have searched for video footage from other officers when he initially requested the records in May 2021. In addition, the complainant notes that he filed a complaint of “rudeness” against the deputy who arrested him the same day that the incident occurred. The complainant thus believes that the video footage from the deputy would have been saved pursuant to section 12(C) of the SMCSO's body worn camera policy, which provides that “the video file may be reviewed and be used as the basis for performance counseling or disciplinary action” when misconduct complaints are filed. The complainant attaches records related to SMCSO internal misconduct investigations, including a redacted disciplinary history for the deputy who arrested him. The complainant contends that those records demonstrate that his complaint was not closed until January 2022 and thus, by implication, that the video was available when he sent his first PIA request.

² In its response, the SMCSO states that the footage was purged “[d]ue to the fact that there was no arrest.” This statement is inconsistent with the deputy's field report, which the SMCSO produced to the complainant and which indicates that the complainant *was* arrested, albeit apparently released shortly thereafter. However, upon review of the SMCSO's policy, it does not appear that an arrest alone requires that an officer's body worn camera footage be marked for extended retention or classified as “non-evidence.” See Office of the Sheriff St. Mary's County, MD, Body Worn Cameras, Policy No. B3.12 (Nov. 18, 2020), https://www.stmaryscountymd.gov/docs/Policy_B3.12_Body_Worn_Cameras.pdf (last visited Jan. 4, 2024). In any event, even if the footage was purged in a manner inconsistent with the SMCSO's policy, we are not authorized to enforce that policy. *Cf.* PIACB 21-16, at 4 (July 30, 2021) (explaining that our Board is “not charged with evaluating whether and to what extent an agency has complied with whatever records management laws it must comply with”).

³ We note that this statement appears to conflict with the facts contained in an affidavit that the primary officer filed in connection with the complainant's civil lawsuit, which the complainant attaches to his complaint. In that affidavit, the officer states that he was assisting with the unrelated theft investigation when he made observations that led to his interaction with the complainant. It does not seem as though that officer was actually dispatched to any incident involving the complainant.

The complainant argues that the belated disclosure of the body worn camera footage from the non-arresting officer has “created substantial hurdles” in his “pursuit of justice.” He states that, after he received the footage in May 2023, he spent approximately 120 hours amending the complaint he filed in federal court. In addition to asking that our Board “recognize the gravity of the situation,” the complainant requests “the time-stamped GPS information” that the complainant states is “referenced” in the SMCSO’s response, noting that the “data was part of [his] original request.”

Analysis

We are authorized to resolve complaints that allege certain violations of the PIA, including that a custodian wrongfully denied inspection of a public record. See § 4-1A-04(a)(1)(i).⁴ In addition to a custodian’s application of an exemption to withhold records or information, we have interpreted this particular provision to include circumstances in which a custodian, after searching, claims that responsive records do not exist. See, e.g., PIACB 24-08 (Sept. 28, 2023); see also PIACB 23-03, at 3-4 (Nov. 2, 2022) (reasoning that an allegation that a custodian conducted an inadequate search is “tantamount to a constructive denial of access to records”). If, after review of the submissions and any other information before us, we conclude that the alleged violation of the PIA has occurred, we must issue a written decision and order a statutory remedy.⁵ § 4-1A-04(a)(2) and (3). When we determine that a custodian has withheld records or information in error, we must order the custodian to “produce the public record for inspection.” § 4-1A-04(a)(3)(i).

Under the PIA, “a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time,” unless the law provides otherwise. § 4-201(a)(1). Thus, upon receipt of a PIA request, a custodian must conduct a search that is “reasonably calculated to uncover responsive records.” *Glass v. Anne Arundel County*, 453 Md. 201, 212 (2017). Our State’s Supreme Court has explained that “[t]his does not mean that the agency must robotically examine every record in its possession, running up an extravagant fee and diverting public resources in furtherance of a futile effort; rather, the search should be focused on where responsive records are likely to be found.” *Id.* at 232. Further, “[t]he reasonableness of an agency’s search is to be measured prospectively by how the agency designed the effort to find responsive records, not retrospectively by its success in locating every responsive record.” *Id.* In other words, “[a] search may be reasonable and adequate without being perfect.” *Id.* (citing *Ethyl Corp. v. EPA*, 25 F.3d 1241, 1246 (4th Cir. 1994)).

⁴ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise indicated.

⁵ Before filing a complaint, a complainant must attempt to resolve a dispute through the Public Access Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a).

We start by noting that we are not authorized to provide most of the relief that the complainant seeks. We cannot order a custodian to pay damages or penalties, or award costs to one party over the other. *Compare* § 4-1A-04(a)(3) and (b)(3) (providing specific statutory remedies not including damages, penalties, or awards of litigation costs), *with* § 4-362(d) and (f) (providing circumstances under which a circuit court may award damages or costs). We also lack any broad authority to require a custodian to enact policy changes. However, our authority to order a custodian to “produce the public record for inspection,” § 4-1A-04(a)(3)(i), is akin to a narrow form of “injunctive relief” that a court might order. *Compare* § 4-362(c)(3) (authorizing a circuit court to “enjoin the State, a political subdivision, or a unit, an official, or an employee of the State or of a political subdivision from . . . withholding the public record”). That is, should we find that the SMCSO constructively denied the complainant’s PIA request by conducting an inadequate search that failed to locate responsive audio or video footage that has not already been provided,⁶ we may order the SMCSO to “produce” any additional responsive records that it might find upon conducting a reasonable and sufficient search. *See, e.g.*, PIACB 24-08, at 6 (Sept. 28, 2023) (directing a custodian to search electronic records where it appeared that no such records were searched and the PIA request explicitly sought email communications).

The submissions did not supply enough detail about “how the [SMCSO] designed the effort to find responsive records,” *Glass*, 453 Md. at 232, so we asked the SMCSO to provide more information about those efforts. Specifically, we asked the SMCSO to explain where it expected responsive records to be located and where it ultimately searched for records. We also asked the SMCSO to provide any search terms used to locate digital or electronic records, and for information about how body worn camera footage is stored and organized. Lastly, we asked the SMCSO to explain how the search conducted in December 2022, after it received notice of the complainant’s civil lawsuit, differed so that the SMCSO discovered the body worn camera footage produced in May 2023.

In response to our questions, the SMCSO explains that, after receiving a PIA request for body worn camera footage, “the CAD is researched to obtain the exact date, location, time of the incident, and any and all officers involved.” The names of those officers are

⁶ The complainant now has body worn camera footage associated with the April 2020 incident—i.e., the footage from the non-arresting officer that the SMCSO provided to the complainant in May of 2023. To the extent that the SMCSO should have found that footage in 2021 when it first searched for responsive records, we note that we cannot order any relief or other sanction for any alleged failure to conduct a reasonable search for that particular record at that time. *Cf.* PIACB 23-10, at 4 (Jan. 17, 2023) (no other relief available in a failure-to-respond case where the custodian had “issued a PIA-conforming response” after the complaint was filed without charging any fees).

then entered one at a time into the “Evidence” section of the AXON system’s dashboard.⁷ The SMCSO explains that the system allows one to “enter the exact date or range of dates” to find footage for the officer(s), and that any and all videos for those dates appear with certain listed information, including, e.g., who uploaded the video, when it was uploaded, and the duration of the video. The SMCSO also indicates that there are “additional search engines such as Evidence Map that will provide information on what officers are at specific locations using a typed in address.” The SMCSO reiterates that video footage from the April 2020 incident identified in the PIA request “was not marked as Evidence and was therefore purged by AXON because the 365 days of ‘Retention’ had expired.”

Regarding the December 2022 search for evidence related to the complainant’s civil lawsuit, we first note that the SMCSO’s responses indicate that a different person within the SMCSO conducted that search. This person searched AXON for any footage from the primary deputy’s contact with the complainant but did not locate anything because the time for retention had expired. At that point, the SMCSO “utilized the mapping feature in AXON and located other officers in the area at the time of [the deputy’s] contact with [the complainant].” That function apparently “showed other officers in the parking lot of the Target store” who were “investigating a crime” that was “totally separate” of the contact between the deputy and complainant. Because the footage from the separate crime was marked as evidence, it had been retained in the system. It seems that the SMCSO viewed the footage from those other officers and found the video from the deputy who “briefly assisted the [primary deputy] during his contact with [the complainant].” As noted in the response to the Board complaint, the SMCSO provided that footage to the complainant in May of 2023.

With this additional information, we find that the SMCSO generally undertook “a good faith effort to conduct a search for the [complainant’s] requested records, using methods that can be reasonably expected to produce the information requested.” *Glass*, 453 Md. at 232 (citation omitted). The SMCSO’s use of a comprehensive storage system for body worn camera footage—AXON—fairly implies that such footage is not routinely kept elsewhere. In light of the complainant’s general request for “[e]very record pertaining to this report, including video, pictures, [and] audio in [the] police car,” it was reasonable for the SMCSO to start by examining the CAD report to determine which of its deputies were involved in the encounter with the complainant. Though it is unfortunate that he SMCSO did not discover the footage from the other officer—whose name notably did not appear in the CAD or field reports—in May of 2021, when the complainant sent his first PIA request, it seems that the failure to find the video is the result of two different SMCSO employees performing the searches, one of whom was perhaps a bit more thorough in

⁷ AXON is a company that “provides cloud-based digital evidence storage and management services for law enforcement agencies to manage, review, and share digital evidence, generally for video evidence captured with Axon-branded cameras.” *Pinheiro v. State*, 244 Md. App. 703, 710 n.5 (2020).

utilizing the additional mapping functions. However, given that the reasonableness of a search for records is not measured “retrospectively by its success in locating every responsive record,” *id.*, we do not think that the SMCSO’s failure to discover this video initially renders that first search unreasonable. Additionally, there is no evidence that the complainant was charged as a result of his encounter in April of 2020, thus it was reasonable for the SMCSO to conclude that any video footage directly related to that encounter had been erased pursuant to the retention policy.

We recognize, as the complainant points out in his reply, that the SMCSO’s body worn camera policy provides for certain uses of footage that could conceivably result in copies of footage being stored elsewhere. For instance, section 12 governs “internal use of recordings” and allows, e.g., that footage “may be reviewed and used as the basis for performance counseling or disciplinary action” in cases of misconduct, or that “[t]he department may use video files for training or other purposes” under certain circumstances. Office of the Sheriff St. Mary’s County, MD, Body Worn Cameras, Policy No. B3.12.12(C) and (D) (Nov. 18, 2020), https://www.stmaryscountymd.gov/docs/Policy_B3.12_Body_Worn_Cameras.pdf (last visited Jan. 4, 2024). But these provisions do not *require* that copies be made for these purposes. And, though the complainant argues that the primary deputy’s footage must have been retained past the one-year mark because it would have been “reviewed” and possibly “used as the basis for performance counseling or disciplinary action” in connection with the misconduct complaint he filed, it is not at all clear to us, based on the documents provided by the complainant, that the SMCSO’s investigation of his complaint was still ongoing when the complainant sent his PIA request in May 2021.⁸

Even if we were to conclude that the SMCSO’s initial search fell short of what the PIA requires, as explained *supra*, note 6, we lack the means to remedy the situation. The SMCSO has provided the video footage discovered in December 2022 to the complainant,

⁸ Close reading of the records that the complainant attaches to his reply does not tend to support his contention that SMCSO’s investigation into his complaint against the arresting deputy concluded in January 2022. One of the records is a statistical summary of all complaints against SMCSO personnel contained within a database from January through December 2022. The letter accompanying that summary explains that the document also includes complaints “initiated in 2020 and 2021 and completed in 2022.” In the summary, the complainant highlights a complaint for which two sworn patrol employees were investigated, one for “conduct unbecoming/rudeness.” The summary indicates that the “date occurred” was April 22, 2020, and the “date reported” was September 4, 2020. However, the complainant states that he reported the allegation on April 22, 2020. And, notably, the relevant case number in the summary—OPR2020-1858—does not appear as one of the case numbers on the arresting deputy’s disciplinary history, which is redacted but contains case numbers. Further, while the arresting officer’s history does contain a complaint of “conduct unbecoming/rudeness” from April 2020, it appears that that allegation was closed as “unfounded” at the end of that month, while the highlighted allegation in the statistical summary was “sustained” against the employee.

presumably in response to his May 2023 PIA request for all video footage related to the incident at the Target store on April 22, 2020. At most, we are authorized to order the SMCSO to “produce the public record for inspection,” § 4-1A-04(a)(3)(i), which the SMCSO has done. Based on the information before us, we have no reason to believe that additional video or audio footage of the incident exists. By using the evidence mapping function, the SMCSO has now conducted a more extensive search for body camera footage from officers who, although not necessarily interacting with the complainant, may have been present during his encounter with the primary deputy.⁹

Conclusion

After consideration of the parties’ submissions, including the exhibits attached and the additional information the SMCSO provided in response to our questions, we conclude that the SMCSO conducted a search that was “reasonably calculated to uncover responsive records,” *Glass*, 453 Md. at 212, to include the reports and video footage disclosed. Thus, the SMCSO has not violated the PIA.

Public Information Act Compliance Board

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⁹ In his reply, the complainant asks for “the time-stamped GPS information referenced in the sheriff’s office’s reply.” After review of the SMCSO’s submissions, we are not sure which record the complainant refers to. In response to our questions, the SMCSO explains that it “utilized the mapping feature in AXON and located other officers in the area” during the April 2020 incident. While this database feature may use GPS, it appears to be more in the nature of a search function as opposed to a discrete record or set of data.