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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-34

April 1, 2024

Prince George's County Police Department, Custodian
Michael Brochu, Complainant

The complainant, Michael Brochu, alleges that the Prince George's County Police Department ("PGPD") failed to produce all records responsive to his Public Information Act ("PIA") request for disciplinary records of three PGPD detectives. The PGPD maintains that it conducted a reasonable and adequate search for records and that the redacted records it provided to the complainant are the only responsive records that exist. After review of the submissions, we find that the PGPD conducted an inadequate search that failed to locate all responsive records and therefore violated the PIA. We explain below.

Background

According to this Board complaint, the complainant filed misconduct complaints against three PGPD detectives in July of 2017. In those complaints, the complainant provided to the PGPD "a package of files which proved police misconduct, false police reports, and perjury." The complainant includes two examples from those files—excerpts from his trial transcript and from one detective's Investigator's Activity Summary—with this complaint.

In February 2023, the complainant sent a PIA request to the PGPD seeking the records contained in the Internal Affairs Division ("IAD") disciplinary files for each of the three detectives. Though the PGPD initially denied inspection of those records, the PGPD later produced redacted records after the complainant sought the assistance of the Public Access Ombudsman.¹ The complainant states that the records he received "go back to 2008" but do not contain any records related to the 2017 misconduct complaints that he filed.

¹ The PGPD's September 1, 2023, response letter indicates that the records were redacted to "protect personal, sensitive, or confidential information, information not pertaining to the request, and investigatory techniques or procedures in accordance with the MPIA." The complainant does not challenge these redactions here.

The complainant again contacted the Ombudsman for dispute resolution assistance, contending that the PGPD had not produced all responsive records. After the Ombudsman issued a final determination stating that the dispute was not resolved, the complainant filed this complaint with our Board in which he continues to challenge the PGPD's response to his PIA request. He argues that, because no records related to his 2017 complaints were produced, it cannot be the case that the PGPD has provided all responsive records. Further, given that he "provided all the evidence pertaining to the misconduct and perjury by the PGPD detectives," the complainant asserts that the records from those 2017 case files should be released.

In response to the complaint, the PGPD "affirms that all responsive records were produced and that no records were withheld." Referring to a letter sent to the complainant in December 2017—which advised that the PGPD "found no wrongdoing or misconduct on behalf of the detectives," and which the complainant includes with his complaint—the PGPD explains that because the 2017 complaints "did not result in a full investigation," some of the records the complainant expected to receive "were never generated." The PGPD states that the only responsive record related to the misconduct complaints is the December 2017 letter that was sent to the complainant in 2017 and again in September 2023, in response to his PIA request.

The PGPD further explains that, when it receives a PIA request for officers' disciplinary records, it contacts IAD and asks for all responsive records in IAD's possession. Noting that it has provided to the complainant "[v]oluminous records of disciplinary and investigative records" involving the three detectives, the PGPD maintains that it conducted a "reasonably calculated search to uncover responsive records," and that this is "evidenced in the very supporting documents" that the complainant attaches with his complaint.

Analysis

The PIA charges us with reviewing and resolving complaints that allege certain violations of its provisions, including that a custodian wrongfully denied inspection of public records.² *See* § 4-1A-04(a)(1)(i).³ We have interpreted wrongful denials to include instances in which a custodian is alleged to have conducted an insufficient search that failed to locate all responsive records, or "constructive denials." *See, e.g.*, PIACB 24-28 (Jan. 5, 2024). If we conclude that the alleged violation of the PIA has occurred, we must issue a written decision and order a statutory remedy. § 4-1A-04(a)(2) and (3). When we

² 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. Md. Code Ann., Gen. Provisions § 4-1A-05(a).

³ Statutory citations are to the General Provisions Article of Maryland's Annotated Code unless otherwise indicated.

determine that a custodian has improperly denied inspection of public records, we must “order the custodian to . . . produce the public record[s] for inspection.” § 4-1A-04(a)(3)(i). In the context of a constructive denial, we may direct a custodian to conduct another search and “produce any non-exempt responsive records” that are found. *See, e.g.*, PIACB 24-08, at 6 (Sept. 28, 2023).

After receipt of a PIA request, a custodian “must conduct a search in good faith that is reasonably designed to capture all responsive records,” and that uses “methods that can be reasonably expected to produce the information requested.” *Glass v. Anne Arundel County*, 453 Md. 201, 232 (2017) (quoting *Oglesby v. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). The PIA does not require a “perfect search that leaves no stone unturned.” *Id.* at 233. Nor does it require that the custodian “robotically examine every record in its possession.” *Id.* at 232. Indeed, “the adequacy of the agency’s search is measured by whether it is reasonably calculated to uncover responsive records, not by whether it locates every possible responsive record.” *Id.* at 212 (citing *Ethyl Corp. v. EPA*, 25 F.3d 1241, 1246-47 (4th Cir. 1994)).

The parties’ submissions left us with questions about how the PGPD conducted the search for records responsive to the complainant’s PIA request. Thus, we asked the PGPD to explain why the search did not uncover the records that the complainant knows exist (because he provided them to the PGPD in 2017 with his misconduct complaints). We expressed concern that the PGPD’s failure to locate these records may indicate that there are other responsive records that were not found. We also asked for more information about the PGPD’s 2017 investigation into the misconduct complaints and why it would not have generated any records concerning the activities described. And, we asked the PGPD to advise whether there are any other locations in which responsive records may be stored after IAD investigations are complete—e.g., in personnel files, supervisors’ records, the relevant case files, etc.

In response to our questions, the PGPD advises that the complainant’s 2017 complaint, though filed through IAD, was treated as a Field Case Inquiry / Citizen Complaint (“FCIQ”) and sent to the involved officers’ supervisors for investigation. The PGPD states that these FCIQ complaints are investigated by IAD only after this initial investigation, and when a “supervisor finds that the involved officers’ actions violated policies.” Because the supervisor found no misconduct, no IAD “paperwork” was generated. The PGPD explains that it “does not send out FCIQ memos because no disciplinary actions are associated with those [FCIQ] complaints.” To illustrate, the PGPD attaches the complainant’s 2017 misconduct complaint, the FCIQ memo, and a letter to the complainant, all of which were apparently sent to the complainant in 2017 by the commander who investigated the complaint. The PGPD represents that the only place that disciplinary files are kept are in IAD.

With this additional information, and given the standards articulated by our State’s Supreme Court in *Glass*, we conclude that the PGPD did not perform a reasonable search for responsive records and therefore has constructively denied the complainant’s PIA request. The complainant asked for “[a]ll disciplinary/internal affairs files pertaining to” the three detectives against whom he lodged misconduct complaints in 2017. The records provided by the PGPD in response to our additional questions—records that apparently were not included with its September 2023 response to the PIA request—are responsive. In asserting that it did not provide the FCIQ memos “because no disciplinary actions are associated with [the corresponding] complaints,” we think the PGPD reads “disciplinary/internal affairs” too narrowly. The “inter-office memorandum”—sent to an IAD commander—clearly relates to the officers’ disciplinary issues, regardless of whether the officers were actually disciplined or found in violation as a result of the initial investigation. The PGPD thus should have provided this memo, and the other documents the PGPD now provides, to the complainant in response to his PIA request.

To the extent that there are other FCIQ memos or records related to the police misconduct complaints the complainant filed in 2017, we direct the PGPD to locate those records and provide them to the complainant. § 4-1A-04(a)(3)(i). More generally, we stress the importance of construing PIA requests by their natural language and making good faith efforts to “focus on where responsive records are likely to be found.” *Glass*, 453 Md. at 232; *see also, e.g.*, PIACB 24-41, at 7 (Mar. 6, 2024) (finding a violation of the PIA where the custodian used a narrow, specific search term to search for email records and the search failed to locate records clearly responsive to the natural language of the PIA request).

Conclusion

The PGPD did not conduct a reasonable and adequate search for IAD disciplinary records responsive to the complainant’s PIA request and thus violated the PIA. Because the additional responsive records supplied by the PGPD with its response to our additional questions have been provided to the complainant, we do not order the PGPD to produce those records again. However, the PGPD must determine whether additional FCIQ or other records related to the 2017 misconduct complaints exist and, if so, provide those to the complainant in a manner consistent with the provisions of the PIA.

Public Information Act Compliance Board

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