

WES MOORE
GOVERNOR

ARUNA MILLER
LT. GOVERNOR



MICHELE L. COHEN, ESQ.
SAMUEL G. ENCARNACION
DEBRA LYNN GARDNER
NIVEK M. JOHNSON
DEBORAH MOORE-CARTER

STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-35

April 15, 2024

Office of the State's Attorney for Baltimore City, Custodian
Lionel Rodriguez, Complainant

The complainant, Lionel Rodriguez, alleges that the Office of the State's Attorney for Baltimore City ("BCSAO") violated the Public Information Act ("PIA") by improperly denying inspection of certain records related to a criminal case in the District Court of Maryland for Baltimore City. The BCSAO responds that it has no responsive records and properly indicated such in its response to the complainant's PIA request. As explained below, we find no violation of the PIA.

Background

On August 28, 2023, the complainant sent the following to the BCSAO:

This request is for records and information the BCSAO has regarding the private Maryland attorney Arnold Abraham, attorney ID #1706200002, in relation to the following

- (1) when this attorney entered his appearance on case 0B02440417;
- (2) when this attorney became an attorney of record authorized to issue subpoenas for case 0B02440417;
- (3) when this attorney was authorized to conduct criminal discovery for case 0B02440417 and by whom;
- (4) when this attorney was authorized to represent the State of Maryland for case 0B02440417 and by whom; and
- (5) when this attorney was authorized to domesticate subpoenas in California on behalf of the state of Maryland to conduct discovery for case 0B02440417 and by whom.

Please provide all information, records, pleadings, documents and dates in the BCSAO's possession related to the above points.

The BCSAO sent a response letter on September 8, 2023. In that letter, the BCSAO advised that it was not the custodian of the records the PIA request sought. The BCSAO explained that entries of appearance are usually filed with the court and suggested that the complainant contact the custodian of records for the court. The BCSAO provided a link to information about the process for requesting court records. The BCSAO also explained that records related to an attorney's "authorization" to practice law in Maryland and California were likely the records of the Maryland State Board of Law Examiners and the State Bar of California. The BCSAO provided links to information about both of those entities.

After receiving the BCSAO's response letter, the complainant sent the BCSAO an email stating that "the answers [it] provided do not align with and do not respond to [the] actual questions. Please review the original questions."¹ Thus, unhappy with the BCSAO's response, the complainant contacted the Public Access Ombudsman. On December 15, 2023, the Ombudsman issued a statement in which she indicated that she was unable to mediate the matter due to a conflict.² The statement indicated that the PIA dispute presented was the BCSAO's failure to respond to the PIA request. Thus, that dispute was not resolved through the Ombudsman and the complainant filed this complaint with our Board.

The complainant alleges that the BCSAO "intentionally denied access to public records" even though the BCSAO has "been in possession of them for over a year." The complainant states that the records relate to "counterfeit subpoenas" that were part of the "criminal discovery" for a case filed on December 30, 2022, and also to entry of appearance documents that were served on the BCSAO in February 2023. The complainant asserts that "there is no way to pretend that these documents are not in the [BCSAO's] possession," because they are also "found in the related criminal case . . . filed on 8/19/2023."

In response to the complaint, the BCSAO provides additional explanation about its response to the PIA request and the criminal case underlying the request. The BCSAO states that the records were not in the BCSAO's possession at the time of the PIA request, and that there is "some doubt with respect to whether the record[s] ever existed." The BCSAO explains that case number 0B02440417 was a "criminal complaint against James

¹ The record does not indicate the BCSAO's precise response to this email. However, the BCSAO's response to this complaint indicates that it referred the request to the Public Access Ombudsman for mediation after it denied the request. We note that this was one of many requests identified in PIACB 24-29 (Mar. 29, 2024), in which we determined that a pattern of PIA requests sent to the BCSAO was vexatious and in bad faith.

² See COMAR 14.37.02.07C(3) (providing that, "[i]f the Ombudsman is unable to proceed in a neutral, impartial, and independent manner," then the Ombudsman must withdraw from the mediation and issue a final determination "stating that the dispute was not resolved through the Ombudsman due to conflict").

Alford by a victim represented by an attorney named Arnold Abraham.” The BCSAO notes that Mr. Abraham did not prosecute the case, nor did he represent the defendant. The BCSAO states that it is “unusual for the victim’s counsel to file an entry of appearance form,” and that, in any event, entries of appearance are filed with the court, and not the BCSAO.

The BCSAO maintains that it searched its case file for case 0B02440417 and found no entry of appearance form for Mr. Abraham. The BCSAO indicates that if an entry form had been forwarded to the BCSAO, it was “likely lost or destroyed.” Addressing the other parts of the complainant’s PIA request, the BCSAO explains that Mr. Abraham would not have been “authorized” to “conduct criminal discovery” or “represent the State of Maryland,” given that he was “not a member of the defense or prosecution teams.” Thus, the BCSAO maintains that its response to the complainant’s request conformed to what the PIA requires.

The complainant replies that the records requested were provided to the “BCSAO main email” and to certain specific Assistant State’s Attorneys (“ASA”) in February 2023. The complainant contends that the BCSAO is therefore “falsely proclaiming” that it does not have these records in its possession.

Analysis

The PIA directs us to review and resolve complaints that allege certain violations of its provisions, including that a custodian wrongfully denied inspection of a public record.” § 4-1A-04(a)(1)(i).³ We have interpreted this provision to include instances in which a custodian searches for records but then asserts that no responsive records exist. *See, e.g.*, PIACB 24-28 (Jan. 5, 2024). We have explained that, if a custodian conducts an insufficient search that fails to locate all responsive records, this is “tantamount to a constructive denial of access to records.” PIACB 23-03, at 3-4 (Nov. 2, 2022). When we determine that the alleged violation of the PIA has occurred, we must issue a written decision and order the remedy provided by the statute.⁴ § 4-1A-04(a)(2) and (3). If we find that a custodian has improperly withheld records or information, we must to order the custodian to “produce the public record for inspection.” § 4-1A-04(a)(3)(i).

Unless the law provides otherwise, a custodian must allow inspection of a public record “at any reasonable time,” § 4-201(a), and provide copies if the requester asks for them, § 4-205(b). A custodian who receives a PIA request, then, must “conduct a search

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

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

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) (citing *Oglesby v. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)) (internal quotation marks omitted). Importantly, however, this does not mean that the custodian “must robotically examine every record in its possession, running up an extravagant fee and diverting public resources in furtherance of a futile effort,” but rather that “the search should be focused on where responsive records are likely to be found.” *Id.*

The PIA does not command “a perfect search that leaves no stone unturned.” *Id.* at 233. Instead, the adequacy of a search “is measured against the specificity of the request and the willingness of the requestor to focus a request and improve the efficiency of the search,” *id.*, and “by how the agency designed the effort to find responsive records,” *id.* at 232. A custodian’s search for records is not judged “retrospectively by its success in locating every responsive record.” *Id.* Indeed, “[a] search may be reasonable and adequate without being perfect.” *Id.* (citing *Ethyl Corp. v. EPA*, 25 F.3d 1241, 1246 (4th Cir. 1994)); *see also, e.g., Iturralde v. Comptroller*, 315 F.3d 311, 315 (D.C. Cir. 2003) (“[T]he adequacy of a FOIA⁵ search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.”).

With these guiding principles in mind, we conclude that the BCSAO conducted a reasonable and adequate search for responsive records and did not constructively deny the complainant’s PIA request. Given the PIA request’s reference to case number 0B02440417, it seems to us that, by searching its file for that case, the BCSAO “focused on where responsive records are likely to be found.” *Glass*, 453 Md. at 232. Notably, as the BCSAO explains, many of the records sought—e.g., entries of appearances or records documenting when an attorney became “authorized” to engage in certain legal practices—are records likely to be in the custody of the courts or attorney licensing entities, and not the BCSAO. When a PIA request is submitted to the incorrect custodian, the PIA requires that custodian to provide the requester with “notice of that fact” and “the name of the custodian” and “the location or possible location of the public record,” if either are known. § 4-202(c). This is precisely what the BCSAO did when it referred the complainant to those other entities and provided links to information about them.

While the complainant repeatedly stresses that the entry of appearance he sought was emailed to the BCSAO and certain ASAs months before the August 2023 request for “when this attorney entered his appearance on case 0B02440417,” we note that “the failure of an agency to turn up one specific document in its search does not alone render a search inadequate.” *Iturralde*, 315 F.3d at 315. Even more, we cannot ignore the format of the PIA request, which is relevant to the reasonableness of a search. *Glass*, 453 Md. at 233

⁵ The Freedom of Information Act, or FOIA, is the PIA’s federal counterpart. *See* 5 U.S.C.A. § 552.

(reasonableness “is measured against the specificity of the request”). In this case, the complainant phrased the request in question form, and the BCSAO’s response largely answered those questions. We have previously observed that when PIA requests “straddle the line” between requests for public records and “interrogations directed toward [a custodian],” requesters are often dissatisfied with the response. PIACB 23-23, at 5 n.5 (June 20, 2023). We emphasize again that a custodian’s obligation under the PIA is to search for and provide public records that may respond to the questions posed in a PIA request. *Id.* A custodian is “not obligated to create new records that answer those questions to [a] complainant’s full satisfaction.” *Id.*

Conclusion

Based on the information before us, we conclude that the BCSAO has not violated the PIA. Rather, the BCSAO conducted a reasonable and adequate search for records and issued a PIA-conforming response.

Public Information Act Compliance Board*

Michele L. Cohen, Esq.
Samuel G. Encarnacion
Debra Lynn Gardner
Nivek M. Johnson

* Board Member Deborah Moore-Carter did not participate in the deliberation, preparation, or issuing of this decision.