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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-48

April 19, 2024

Office of the State's Attorney for Baltimore City, Custodian
Maddy Ferrier, Complainant

The complainant, Maddy Ferrier, 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 criminal cases 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 19, 2023, the complainant sent the following to the BCSAO:

Please provide any info or records the BCSAO has on ASA Kathleen Copsey and this deal, to include:

1. how many charging document she intercepted and made disappear from the BCSAO's records
2. A copy of these charging documents
3. And records or information on what authorizes ASA Copsey to prevent a citizen from reporting a crime with a commissioner or judicial officer
4. How ASA Copsey can prevent a district court commissioner, which is a judicial officer independent from the SAO, from doing their duties and finding probable cause and issuing charging documents.

Please also include any records, information, and the number of times former Deputy ASA Bjorklund instructed ASA Copsey to process the charging documents she was hiding from 11/28/2022 until the date he left that position. This includes Microsoft Teams meetings in which multiple parties and witness were involved regarding ASA Copsey disciplinary issues.

The BCSAO sent a response letter on September 22, 2023. In that letter, the BCSAO advised that it had tried to locate responsive records but was unable to do so. The BCSAO explained that “[a]fter a thorough search, [it] could not locate any evidence suggesting that ASA Kathleen Copsey ‘intercepted and made disappear’ any charging documents referred to the [BCSAO] by the Court Commissioner.”

Unhappy with the BCSAO’s response, the complainant contacted the Public Access Ombudsman. On December 18, 2023, the Ombudsman issued a statement in which she indicated that she was unable to mediate the matter due to a conflict.¹ The statement indicated that the PIA dispute presented was the BCSAO’s denial of 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 “pretended that they didn’t have [the records requested] and concealed the records.” The complainant contends that this “makes absolutely no sense because [the complainant] had provided the documents to them on several occasions.” The complainant states that the records were “specifically related to Kathleen Copsey, particularly the well-documented but illegal arrangement she made,” and that the BCSAO “literally has all of these documents that prove this in its discovery.”

In response to the complaint, the BCSAO maintains that it properly denied the PIA request. The BCSAO reiterates that it did not locate any records demonstrating that ASA Copsey “intercepted and made disappear” any charging documents, or that the ASA was “authorized” to “prevent anyone from reporting crimes” or that she was otherwise improperly influencing the District Court Commissioner. The BCSAO also notes that this PIA request—along with many others—was referred to the Ombudsman because the BCSAO believed it was frivolous, vexatious, and in bad faith.²

The complainant replies that that the BCSAO has “proven yet again of their intent to defraud and mislead,” and that there is “no question that there are additional records that they are concealing.”

¹ 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”).

² The BCSAO initially responded to this complaint by referring to a letter sent on September 25, 2023, regarding a different PIA request made by the complainant. In its amended response, the BCSAO explains that, during its original review of responses to the PIA request, it “missed the [September 22] closure notice among the hundreds of other communications that were exchanged between [the BCSAO] and the group of requestors associated with James Alford [in PIACB 24-29 (Mar. 29, 2024)].”

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 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

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).

adequacy of a FOIA^[5] 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. The PIA request here was not a straightforward request for records. Rather, the request contained a fair amount of editorialization and implicit accusations of wrongdoing—e.g., that the ASA had “intercepted and made disappear” charging documents, or that she had “prevented” a judicial officer from “doing their duties.” The language of a PIA request is relevant to the reasonableness of a search. *Glass*, 453 Md. at 233 (reasonableness “is measured against the specificity of the request”). It is not surprising to us that the BCSAO did not locate records demonstrating these things. Moreover, the complainant’s PIA request was largely phrased in question format. 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*

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

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