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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-53

May 8, 2024

Frederick County, Custodian
Eric Beasley, Complainant

The complainant, Eric Beasley, challenges redactions applied by Frederick County (“County”) to phone records for a specific County phone number provided in response to the complainant’s Public Information Act (“PIA”) request. The County maintains that the redactions were properly applied to shield information about personal telephone calls made from the County phone number. As explained below, we conclude that the County improperly redacted some, but not all of the information about those calls. We therefore direct the County to provide the phone logs with redactions only to the “Number Dialed,” “Location,” and “Ani Number” (when other than zero). We find that the remaining information is subject to disclosure in light of guidance from our State’s Supreme Court.

Background

In September 2023, the complainant sent the following PIA request to the County: “I would like to request the phone records for the county-managed phone number ‘301-600-1999’ during the following time period: 7/10/2018 through 8/25/2018.” About two weeks later, the County produced a telephone log to the complainant and indicated that personal phone calls had been redacted. The County cited *Office of the Governor v. Washington Post Co.*, 360 Md. 520 (2000) as legal authority for the redactions.

After receiving the records, the complainant contacted the County and advised that he had not received records for the full date range indicated in his PIA request. The complainant also asked the County to provide an unredacted version of the records. The complainant pointed to a footnote in *Office of the Governor* that suggested that, while the content of personal calls made from government telephones might be private, the telephone bill itself is not. The complainant argued that the phone log was a “modern equivalent of the phone bill.”

The next day, the County issued another response, this time providing records for the full date range. The County also “noted” the complainant’s “assertion that the phone log is equivalent to a telephone bill,” but stated that the Office of the Attorney General (“OAG”)—with whom the County had consulted in responding to the PIA request—was

not inclined to change its position that the information about personal telephone calls was subject to redaction.

The complainant and the County exchanged several more emails regarding the redactions, but the County did not change its position. Thus, the complainant contacted the Public Access Ombudsman in October 2023 in an effort to resolve the dispute. In January 2024, the Ombudsman issued a final determination stating that the dispute was not resolved and the complainant filed this complaint with our Board.

The complaint first notes that the County “manages all phone numbers which begin with 301-600,” and that the complainant has been “requesting phone records related to elected public officials and their conduct in public office.” While the complainant takes issue with the County’s redaction pursuant to *Office of the Governor*, he also argues that OAG is “overstepping their authority and preventing Frederick County from releasing the records” by “falsely claiming that these records are Judicial Records.” Citing the definition of judicial records provided in the Maryland Rules, the complainant contends that the phone log is not covered by the definition.

The County’s response to the complaint provides more background about the evolution of the dispute and the nature of the records’ relationship to the Judiciary. The County explains that its Division of Interagency Information Technology “administers and maintains” a phone system that is shared by many County and State governmental units, including the Frederick County courts. When the County receives a PIA request for telephone records, it contacts the relevant governmental unit and coordinates a response to the PIA request, giving “significant deference” to the units because they are “in a better position to know whether an exemption may apply.”

The County further explains that the extension identified in the complainant’s PIA request was that of a Circuit Court judge, so it contacted the appropriate counsel within OAG. The County states that “counsel identified certain calls in the judge’s telephone log that were personal calls,” and that the County thus provided the records with those calls redacted.¹

¹ The County also explains that it had previously explored whether “the telephone logs of court personnel were more properly judicial records,” which are not subject to the PIA. *See* Md. Rule 16-901(a) (generally providing that “the Rules in this Chapter govern public access to judicial records, whether in paper or electronic form, that are in the custody of a judicial agency, judicial personnel, or a special judicial unit”); *see also* Md. Rule 16-921 (“Except as provided in Rule 16-919, the Rules in this Division 3 constitute the exclusive procedures for requesting inspection of judicial records.”). The County indicates that “at that time the parties determined that practically the answer and any exemptions would be the same,” presumably to explain why the County, and not courts, ultimately produced the responsive telephone log.

In reply, the complainant argues that the County has failed to adequately support redaction of the phone log. He again stresses the footnote in *Office of the Governor*, and argues that his PIA request was not for the “content of a phone call,” but for the “phone bill,” which he characterizes as “[t]he number dialed, duration, and time of the phone call.” While he acknowledges that the case does not “clearly define whether or not the phone number dialed is part of the content of the phone call,” the complainant contends that the number is non-content “metadata which is present on a phone bill.” Thus, he argues that “the number dialed is a matter of public record.”

The complainant also points to our decision in PIACB 23-04 (Nov. 9, 2022), in which we determined that the Frederick County Sheriff’s Office did not improperly deny inspection of records reflecting when the Clerk of the Circuit Court entered and exited the courthouse garage. The complainant points out that, in that matter, the Sheriff’s Office did not argue that the records constituted judicial records. The complainant stresses the PIA’s presumption in favor of disclosure and argues that full disclosure of the phone log would resolve certain “issues” he has raised, including whether or not the judge in question had contact with certain individuals related to a case involving the complainant.²

Analysis

The PIA authorizes us to review and resolve complaints that allege certain violations of its provisions, including that a custodian wrongfully denied inspection of a public record.³ See § 4-1A-04(a)(1)(i).⁴ When we receive a complaint, we must review the submissions and, if we conclude that the alleged violation of the PIA has occurred, we must

² The complainant’s reply also contains additional argument as to: (1) why the phone log is not a judicial record; (2) why the doctrine of separation of powers does not prevent disclosure of the phone log; (3) the possible implications the County’s arguments have for Maryland’s Wiretap Act; and (4) the effect of the County’s Technology Use Policy, which the complainant explains is not publicly available, and which he states he obtained “through a confidential source within Frederick County Government.” Because, as explained below, we resolve this complaint on whether or not the redacted information constitutes a “public record” in light of *Office of the Governor*, we do not recount these arguments in detail. We note, however, as to the complainant’s arguments about the County’s Technology Use Policy, that locally-enacted policies cannot supersede the provisions of the PIA. See *Lamson v. Montgomery County*, 460 Md. 349, 364 (2018) (agreeing with a lower court’s determination that local regulations “cannot be invoked to prevent disclosure of records” because it would “impermissibly limit[] the application of a state law enacted by the General Assembly”).

³ 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).

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

issue a written decision and order a statutory remedy. § 4-1A-04(a)(2) and (3). If we determine that we need more information to resolve the complaint, the PIA empowers us to request that information. *See* § 4-1A-06(b)(2). When we conclude that a custodian has improperly denied inspection of a public record, we must “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(3)(i).

The PIA is rooted in the principle that “[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). This principle is given effect in § 4-201(a) of the PIA, which provides that, “[e]xcept as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time.” The PIA directs that “unless an unwarranted invasion of the privacy of a person in interest would result,” its provisions “shall be construed in favor of allowing inspection of a public record.” § 4-103(b); *see also Office of the Governor v. Washington Post Co.*, 360 Md. 520, 544 (2000) (“[T]he statute should be interpreted to favor disclosure.” (citation omitted)).

The PIA does not apply to every single record in a government agency’s possession. Rather, it applies only to *public* records, § 4-201(a), a term that the PIA defines as “the original or any copy of any documentary material,” in “any form,” that is made or received by a “unit or an instrumentality” of the State or a political subdivision “in connection with the transaction of public business,” § 4-101(k)(1). Under that broad definition it is safe to assume that most records in the government’s possession will qualify as public records. *See Lamson v. Montgomery County*, 460 Md. 349, 362 (2018) (“Because the MPIA is designed to grant access to documents regarding the affairs of government and the official acts of public officials, it follows that the definition of a public record should be broad enough to cover a wide range of document types.”). However, there are instances in which the government is in possession of records or information that do not qualify as “public records” for purposes of the PIA. *See, e.g.,* PIACB 24-55, at 5 (Mar. 25, 2024) (concluding that “in general, recordings of inmates’ jail calls are not public records for purposes of the PIA,” but recognizing that “when a call or set of calls is retrieved and used ‘in connection with’ [an agency’s] ‘public business,’ then those calls become public records under § 4-101(k)(1)”). The PIA’s provisions simply do not reach those records. *See Office of the Governor*, 360 Md. at 536 (“[A]part from the statute’s express exemptions, the coverage of the Maryland Public Information Act is ordinarily dependent upon whether records are those of a “government instrumentality” or are “private.”).

We start by clarifying the scope of our review. Though both parties refer to and, to some degree, make arguments about whether the phone log is a judicial record that the County lacks authority to produce in response to a PIA request, the fact remains that the County *has* produced the log in redacted form. Thus, we need not definitively resolve that argument, assuming that we even could. *See* Md. Rule 16-931 (providing that the rules governing access to judicial records “constitute the exclusive methods of resolving disputes regarding access to judicial records,” and that Subtitles 1A and 1B of the PIA—the subtitles

governing the Ombudsman and our Board—“are not applicable”). We nevertheless note that, just as there may be more than one custodian of executive agency records, *see, e.g.*, PIACB 23-14, at 6 (Apr. 17, 2023), it seems to us that a record may simultaneously be in the possession of the Judiciary—and thus, when requested from the Judiciary, subject to inspection only under the Maryland Rules governing access to judicial records—and also in the custody of an agency subject to the PIA. Police reports, for instance, may be contained in both the court file for a criminal case, and also in the investigative file of a police department. But, because the County has produced the phone log and applied redactions on grounds that the redacted information is not a public record subject to the PIA, we will proceed to review only this justification for the denial.

In the course of our review, we determined that we needed more information about the redacted phone calls to ascertain whether they were “private” in nature, or whether they were made “in connection with the transaction of public business,” § 4-101(k)(1)(i), such that they are subject to the PIA’s provisions. Thus, we asked the County to provide a descriptive index of the redacted phone calls. *See* § 4-1A-06(b)(2)(ii)(1) (allowing the Board to request a descriptive index of a public record). The index provided by the County supplies further information about the twelve redacted phone calls. Specifically, the County indicated who made those calls and a general description of the persons to whom those calls were made. The County also provided some information about the calls’ duration. As required by law, we will maintain the confidentiality of this descriptive index. § 4-1A-06(b)(5); *see also* COMAR 14.02.06 (regulations governing the Board’s treatment of confidential records or information).

After review of the descriptive index, and guided by our State Supreme Court’s reasoning in *Office of the Governor*, we conclude that the redacted phone calls are private in nature, but also that some of the information about those calls is “connect[ed] with the transaction of public business,” § 4-101(k), and therefore should be disclosed. In *Office of the Governor*, the Court considered a request for, among other things, “records of telephone calls made from telephones in the ‘Governor’s Mansion,’ or, as it is officially named, ‘Government House,’” the place the State’s constitution requires the Governor to reside. 360 Md. at 536-37. The Court concluded that these records were not public records, reasoning that “[i]t seems obvious that bills or records of telephone calls, made by a government official or members of the official’s family from their personal telephones in the family’s private home, would not be considered ‘public records.’” *Id.* at 537. The Court acknowledged that “[i]n light of the nature of Government House and the role of the Government House Trust, the Governor and his family might not have the identical expectations of privacy while living there as one has in his or her privately owned home,” but reasoned still that the Governor and family need not “relinquish all normal expectations of privacy in their home simply because, in accordance with constitutional and statutory provisions, their home and furnishings, including telephone service, are supplied by the State.” *Id.*

We recognize that there are important differences between the circumstances described in *Office of the Governor* and those at issue here—most significantly that here we are concerned with a telephone that is located in a government office, and not in a quasi-private residence. However, the Supreme Court of Maryland has explained that “the mere physical location of a record is not necessarily dispositive of its characterization.” *Lamson*, 460 Md. at 365. Further, we take guidance from the footnote in *Office of the Governor* cited by the complainant, which addressed whether “all personal calls” placed by certain officials “from their office locations” should also have been redacted, as the Governor’s office urged. 360 Md. at 538 n.8. The Court “[did] not agree totally.” *Id.* Instead, the Court offered the following guidance:

Although the content of such calls may be private, the bill from a telephone company to the State, for calls made from state offices by state officials or employees on state telephones during their working hours, clearly falls within the definition of “public record” in the Act. It is a document received by a unit of government, and, in our view, it is “in connection with the transaction of public business.” Although employees must occasionally make personal telephone calls from their employers’ phones during working hours, *the frequency of and the amount of time spent on such calls is clearly a matter of legitimate concern to the employer.* This is true regardless of whether there exists a reimbursement record. The taxpayers and citizens of Maryland, as the employers of state officials and employees, have a legitimate interest in the frequency and length of personal telephone calls made on state office telephones. *That interest may be vindicated, however, by disclosure of the aggregated totals of time spent and charges incurred on calls devoted to personal business versus public business.* Thus, absent evidence of abuse, this degree of disclosure would be sufficient.

Id. (emphases added).

The phone log in dispute here contains certain information about the telephone calls, including the date and time the calls were placed, their duration, the numbers dialed (for outgoing calls) or the numbers of the originating calls (for incoming calls), and the charge for the call, if any. Given the Supreme Court of Maryland’s guidance above, some of this information—which is information about “personal telephone calls from . . . employers’ phones during working hours,” *id.*—is connected to “the transaction of public business,” § 4-101(k)(1)(i), and thus subject to disclosure under the PIA. In our view, the County must disclose the dates and times of the twelve redacted calls, their duration, and the amount of any charges incurred for those calls—in other words, the information in the logs that reflects “the frequency of and the amount of time spent on such [personal] calls” and the “charges incurred on calls devoted to personal business.” *Office of the Governor*, 360 Md. at 538 n.8.

The complainant argues that the phone numbers associated with the redacted phone calls should also be disclosed because they do not qualify as “content,” which the complainant contends is the only material subject to non-disclosure under *Office of the Governor*. We do not interpret the term “content” as narrowly as the complainant does. While it is true that a phone number does not reveal the precise, word-for-word content of a telephone call, it certainly reveals information *about* its content. For example, if an employee placed a personal call to their family physician and that phone number was disclosed, one only need “reverse lookup” the phone number to obtain information about the nature and general content of the personal call—and also sensitive, private information about where the employee and/or their family receive medical care. Further, given that most government entities that are not in the habit of recording employee phone calls are unlikely to ever be in possession of a record that reflects the precise, word-for-word content of a call, the State Supreme Court’s instruction that the “content of such calls may be private,” *id.*, would be far less meaningful if it were limited to only that information. And, as discussed above, the Court has indicated what information about employees’ personal calls from their government offices is potentially subject to disclosure—i.e., the frequency and duration of the calls, as well as any charges that may have been incurred for them. *Id.* The phone numbers dialed are not included in that list.

Finally, we observe that disclosure of the date, time, duration, and any charge for the twelve personal calls placed from the County’s telephone number would seem to satisfy the PIA’s goal of providing “access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). As the information provided in the County’s descriptive index reveals, the phone numbers associated with those calls were truly private numbers not “connect[ed] with the transaction of public business,” § 4-101(k)(1)(i), and thus disclosure of those numbers would not serve the PIA’s purpose.

Conclusion

After review of the submissions, including the confidential descriptive index provided by the County, we conclude that some of the redactions applied to the responsive telephone log violated the PIA. The improperly redacted information is information in the County’s possession that was created “in connection with the transaction of public business,” and thus constitutes a public record subject to the PIA’s disclosure provisions. We therefore direct the County to disclose the phone log with redactions only to the “Number Dialed,” “Location,” and “Ani Number” (when that number is not zero). § 4-1A-04(a)(3)(i). This redacted information relates to the content of private, personal phone calls, and thus does not constitute a public record for purposes of the PIA.

Public Information Act Compliance Board*

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* For the reasons outlined briefly below, Board member Samuel G. Encarnacion does not join in this decision.

Because I think that a government employee has no expectation of privacy in calls originating from or coming into a government building using a government phone line, I would order disclosure of the phone log without redaction. Further, I agree with the complainant that the phone numbers related to “personal” calls are not part of the content of those calls. Finally, I believe that the public interest in ensuring that Judicial Officers are not having unethical ex-parte communications with parties negates any claim of privacy in those calls. The public interest in understanding how our government works outweighs any minimal privacy interest that might exist.

Samuel G. Encarnacion