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**STATE OF MARYLAND**  
**PUBLIC INFORMATION ACT COMPLIANCE BOARD**

**PIACB 24-55**  
**March 25, 2024**  
**Worcester County, Custodian**  
**Trey Stokely, Complainant**

Complainant Trey Stokely requested, under Maryland’s Public Information Act (“PIA”), the audio recordings of the phone calls of a specific inmate at the Worcester County Jail and the file for that inmate. Worcester County (“County”) produced some records but denied the complainant’s request for the jail call audio recordings under §§ 4-101 and 4-401<sup>1</sup> of the PIA. In this complaint, the complainant challenges the County’s denial. In response, the County maintains that denial was proper because the jail calls are not public records under the PIA. We conclude that, to the extent that the County is the custodian of responsive jail calls that were retrieved and used by the State in the prosecution of this specific inmate, the County must produce those calls subject to any exemptions that might apply. We explain in more detail below.

**Background**

In October of 2023, the complainant sent a PIA request to the County seeking the “audio recordings of phone calls made by Roy L. Hastings while in custody in Snow Hill Worcester County Jail,” as well as Mr. Hastings’s file. The County issued a final response on November 6, 2023, in which it produced certain public court records and a photograph, but denied the complainant’s request for the jail calls under § 4-101 (providing definitions) and § 4-401 (governing unlawful disclosure of public records) of the PIA.

Unhappy with the County’s response, the complainant contacted the Public Access Ombudsman for assistance.<sup>2</sup> In addition to disputing the County’s denial of his request for the jail calls, the complainant also had concerns that the County had not produced all records responsive to his request for the inmate’s file. Ultimately, the Ombudsman issued a final determination stating that the disputes were partially resolved, and that the complainant continued to disagree with the County’s denial of inspection of the jail calls. The complainant then filed this complaint with our Board.

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<sup>1</sup> Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise stated.

<sup>2</sup> The PIA charges the Ombudsman with making “reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records.” § 4-1B-04(a).

In his complaint, the complainant contends that he is entitled to inspect the requested jail calls for two reasons. First, the complainant argues that the jail “uses taxpayer money to purchase and install the phones” and “the equipment and personnel to record and monitor” the phone calls. The complainant also states that the Worcester County Sheriff’s Office “requested the recordings for the same inmate” in “advancing their case against the inmate.”<sup>3</sup>

The County responds by emphasizing the “governing principle” found in § 4-103(a)—i.e., 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.” Noting that the complainant is seeking “recordings of calls made at an inmate’s expense between the inmate and third-party citizens outside of the jail,” the County argues that, because “neither the inmate nor the third-party are conducting public business,” the jail calls are not public records as defined in § 4-101(k)(1). The County cites case law outside of Maryland to support its position. The County suggests that, if inmate jail calls are public records subject to inspection, then the same would be true for, e.g., an inmate’s letters and other mail. Fundamentally, the County contends that “there is no public business or official act that creates a public interest requiring inspection [of jail calls] under the MPIA.” The complainant, in reply, argues that the jail calls he has requested are different from other jail calls because the County Sheriff’s Office subpoenaed the same calls he is seeking.<sup>4</sup>

### Analysis

The PIA authorizes us to review and resolve complaints from PIA requesters that allege certain violations of its provisions, including that a custodian improperly “denied inspection of a public record.”<sup>5</sup> § 4-1A-04(a)(1)(i). After considering the submissions from both parties and any additional information we may request, we must issue a written

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<sup>3</sup> The complainant also takes issue with the length of time it took the County to deny his PIA request. He contends that the County received his request on October 11, 2023, and “far exceeded the 10 days and denied the request about 25 days after receiving the request.” While it is true that the PIA requires a custodian to send written notice within ten working days “[i]f the custodian reasonably believes that it will take more than 10 workings days to produce the public record,” § 4-203(b)(2), the PIA also affords custodians thirty days from receipt of the PIA request to “grant or deny” the request, § 4-203(a)(1). Notably, we are empowered to review allegations that a custodian “failed to respond to a request for a public record within the time limits established under § 4-203(a) or (d),” § 4-1A-04(a)(1)(iii), but we are not authorized to address alleged violations of § 4-203(b).

<sup>4</sup> The complainant’s reply continues to press his dissatisfaction with the timing of the County’s response. As noted, *supra*, note 3, we lack authority to address any issue there.

<sup>5</sup> Before filing a complaint, a complainant must “attempt[] to resolve the dispute” through the Ombudsman and receive a “final determination stating that the dispute was not resolved.” § 4-1A-05(a).

decision and order a statutory remedy, if we conclude that the alleged violation occurred. § 4-1A-04(a)(2) and (3). In cases where we determine that a custodian 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’s animating principle is 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). The General Assembly chose to effectuate this principle through § 4-201(a)(1), 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.” For purposes of the PIA, a “public record” is “the original or any copy of any documentary material” that is in “any form,” and that is made or received by a unit or instrumentality of the State or political subdivision “in connection with the transaction of public business.” § 4-101(k)(1); *see also 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.”).

Sometimes the government is in possession of records that have no “connection with the transaction of public business,” § 4-101(k)(1)—i.e., they are purely private in nature—and thus those records are not “public records” for purposes of the PIA, *see, e.g., Office of the Governor v. Washington Post Co.*, 360 Md. 520, 537-38 (2000) (explaining that the “home telephone bills of the Governor and his family” are not public records for purposes of the PIA, even though “their home and furnishings, including telephone service, are supplied by the State”). Although the Maryland courts do not appear to have considered the precise issue, at least one State court has concluded that, ordinarily, inmate jail calls are not public records subject to inspection under open records laws. *See Bent v. State*, 46 So.3d 1047, 1048 (Fla. Dist. Ct. App. 2010). The Florida Court reasoned that, “[a]lthough monitoring of inmate calls for security purposes is related to official business of the jail, maintaining recordings of purely personal calls is not.” *Id.* at 1049. The court stressed that the sheriff’s office was “not using the content of [the inmates’] calls to friends and family in the transaction of public business.” *Id.* at 1050.

Notably, Florida’s definition of “public record” is similar to Maryland’s. In Florida, a “public record” means:

[A]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Fla. Stat. § 119.011(12). And, like Maryland, Florida courts have emphasized that “[t]he determining factor is the nature of the record, not its physical location.” *Bent*, 46 So.3d at 1049 (quoting *State v. City of Clearwater*, 863 So.2d 149, 154 (Fla. 2003)); *see also Lamson*, 460 Md. at 365 (“[T]he mere physical location of a record is not necessarily dispositive of its characterization.”). We thus find the Florida court’s reasoning persuasive and conclude, consistent with the principles articulated in *Office of the Governor*, that generally the recordings of jail calls between inmates and third parties—e.g., friends, family, attorneys—are private in nature and lack the “connection with the transaction of public business” necessary for them to qualify as public records under the PIA.

However, there may be instances in which a discrete jail call or set of jail calls become connected to the transaction of public business such that those calls are public records for purposes of the PIA. The complainant has touched upon one such instance—i.e., when jail calls are used by the State in the prosecution of a crime. *See generally, e.g., Alarcon-Ozoria v. State*, 477 Md. 75 (2021) (addressing the scope of the State’s discovery obligations with respect to jail calls recorded by a local correctional facility). The prosecution of crime is undoubtedly the “transaction of public business.” When certain jail calls are retrieved and used by the State in the course of a prosecution—e.g., at trial or even as part of its pre-trial investigation—those calls become “connected with” the State’s transaction of “public business.” For example, in *Alarcon-Ozoria*, the prosecutor, “in preparation for trial,” requested “any recordings of jail calls made by [the defendant] as an inmate at the correctional facility,” and reviewed them. *Id.* at 86. After review, the prosecutor determined that twelve of those calls could be used for impeachment purposes, and that another call, which was located later in time, would be used in the State’s case-in-chief. *Id.* at 87. All of these calls were therefore “received” by the prosecutor “in connection with the transaction of public business,” and would thus be public records as defined by the PIA.<sup>6</sup> § 4-101(k)(1).

Here, the complainant asserts—although without further evidence—that the County Sheriff’s Office “subpoenaed these same calls [he] is requesting.” To the extent that the County is the custodian of discrete jail calls that the State used in the prosecution of Mr. Hastings, then those calls are public records under § 4-101(k)(1). The County must produce those calls, subject to any applicable exemptions in the PIA. The County is under

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<sup>6</sup> We note that *Alarcon-Ozoria*’s holding that “a jail call recording, held by a correctional facility, does not trigger the State’s mandatory disclosure requirements” under the Maryland Rules is not inconsistent with our conclusion here that, generally, an inmate’s jail calls are not public records under the PIA. 477 Md. at 98. Among other reasons, the Court explained that “a correctional facility generally takes no part in the investigation or prosecution of someone who happens to be detained in that facility.” *Id.* Thus, these calls are not normally “connected with” the “public business” of investigating and prosecuting crime.

no obligation, however, to retrieve additional calls that were not subject to that subpoena or otherwise used in the investigation and prosecution of Mr. Hastings.

### **Conclusion**

After review of the submissions, we agree with the County that, in general, recordings of inmates' jail calls are not public records for purposes of the PIA. However, when a call or set of calls is retrieved and used "in connection with" the County's "public business," then those calls become public records under § 4-101(k)(1). Thus, if the County is the custodian of any jail calls by Mr. Hastings that were used by the State in his prosecution, the County must produce those calls to the complainant, subject to any exemptions in the PIA that might apply.

### **Public Information Act Compliance Board**

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