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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-93

August 27, 2024

Montgomery County Police Department, Custodian
Robert Landau / Silver Spring Justice Coalition, Complainant

Complainant Robert Landau, on behalf of the Silver Spring Justice Coalition, alleges that the Montgomery County Police Department (“MCPD”) violated the Public Information Act (“PIA”) by denying inspection of records related to an incident to which police responded in March of 2023. The MCPD cited several PIA exemptions in its denial, including § 4-329¹ (medical and psychological information), § 4-307 (welfare records), and § 4-351(b)(5) (investigatory records that would disclose an investigative technique or procedure). The MCPD also cited § 4-301, which precludes disclosure of records that are “by law” privileged or confidential, or for which disclosure is forbidden by law outside the PIA. In response to this complaint, the MCPD states that it initially determined that redaction of responsive body worn camera footage would cost approximately \$900, but that it did not provide the fee estimate and instead completely denied inspection of all responsive records because the event was “solely a mental health situation.” The MCPD proposes to “fully resolve” the complaint by disclosing the records with redactions at a cost of \$900. As discussed below, we conclude that the MCPD has violated the PIA. We direct the MCPD to provide the responsive police reports and body camera footage to the complainant with redactions to information protected by § 4-329(b) and the face of the individual detained by police.

Background

The Silver Spring Justice Coalition (“SSJC”) is a “broad-based coalition” that is “focused on changing policing in Montgomery County,” and that provides “a platform to educate, advocate, and organize Montgomery County residents in order to achieve [the SSJC’s] vision” of a “county where harm by police is eliminated, while community and individuals are empowered.” Silver Spring Justice Coalition, <https://silverspringjustice.wordpress.com/> (last visited Aug. 26, 2024). On April 5, 2023, the complainant, on behalf of the SSJC, sent the following PIA request to the MCPD:

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

This is a request for the arrest report, Use of Force report, and all related reports for the incident that occurred on 3/28/23, at approximately 1:27 p.m. in Silver Spring in front of Ellsworth Place. The incident involved a Black man who appears to be having a mental/behavioral health crisis, who is tackled by police, and handcuffed. EMTs later removed the person. This is a request under the MPIA, and SSJC requests a waiver of fees and charges as this request is in the public interest and SSJC has no budget for this purpose.

On August 15, 2023, the MCPD sent the complainant a letter in which it denied inspection of “these records” under §§ 4-329 and 4-307 of the PIA.² The MCPD stated that the records related to medical or psychological information and the welfare of an individual, and therefore could not be released. The MCPD also contended that the records were “subject to other law,” and were thus privileged and confidential under § 4-301. The MCPD denied inspection of the Use of Force report specifically under § 4-351(b)(5), stating that the record could not be released because it contains “investigative techniques or procedures of the [MCPD].”

The complainant disagreed with the MCPD’s denial and therefore contacted the Public Access Ombudsman.³ In April of this year, the Ombudsman issued a final determination stating that the dispute was partially resolved. The final determination indicates that “[p]er the parties’ agreement,” the complainant “inspected certain responsive video footage at MCPD offices,” but that “[n]o other requested items have been produced by MCPD.”

After receiving the Ombudsman’s final determination, the complainant filed this complaint with our Board. The complainant contends that the PIA requires the MCPD to disclose all the records the complainant seeks, including the body-worn camera footage, “at no charge” and “subject to very limited nondisclosure of certain information expressly prohibited from disclosure under the MPIA.” The complainant stresses that the incident occurred in public.

² Though not at issue in this complaint, we note that the MCPD issued its response more than four months after receiving the PIA request and thus failed to comply with the timing provisions in the PIA. See § 4-203(a) (generally requiring a custodian to “grant or deny [a PIA request] promptly, but not more than 30 days after receiving the [request]”).

³ The PIA charges the Ombudsman with making “reasonable attempts to resolve disputes between [PIA] applicants and custodians relating to requests for public records.” § 4-1B-04(a). Before filing a complaint, a requester or custodian 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).

In its response to the complaint, the MCPD explains that the responsive records “include the Incident Report, Use of Force Report, CAD⁴ Dispatch Log, and Body Camera Video from officers present.” The MCPD maintains that its denial of inspection was proper under §§ 4-329(b), 4-307, 4-301, and 4-351(b)(5). The MCPD states that, after it received the PIA request, it “evaluated the video for redaction effort and determined that the process would take 20 hours at a cost to the requestor of \$900.” Despite this evaluation, however, the MCPD did not provide the fee estimate to the complainant and “instead completely denied the release of records” because the incident was “solely a mental health situation with no accompanying incident to provide records for, such as a theft, vandalism, or disorderly situation.” This total denial notwithstanding, the MCPD suggests “fully resolv[ing] the complaint by disclosing the records with redactions” for information covered by the cited exemptions. The MCPD indicates that the fee for “redaction of media and documents” would be \$900. The MCPD states that the fee includes the two hours that MCPD must provide free of charge. See § 4-206(c).

In reply, the complainant first states that he “does not seek or ask for any medical diagnosis, medications used, or the address of the man seized by MCPD officers.” Stressing the PIA’s pro-disclosure bent, the complainant argues that none of the exemptions cited by the MCPD apply to records. Addressing first § 4-329(b)(1), the complainant points out that the records are police records, not medical records, and that, to the extent that they contain medical information, the MCPD can easily redact that information. As for § 4-329(b)(2)’s protection for “personal information about an individual with, or perceived to have, a disability,” the complainant suggests that if such information is present, it can be redacted, including “the individual’s name, address, Social Security Number, and e-mail address.” Turning to § 4-307, the exemption for an individual’s welfare records, the complainant contends that the provision is inapplicable because the records contain no “welfare program information.” Neither does § 4-301 apply, the complainant argues, because none of the legal bases for withholding outlined in that section are present—e.g., there are no attorney-client communications in the records and disclosure would not “contradict any State statute, federal regulation, rules adopted by the Supreme Court of Maryland, or any court of record.” Finally, the complainant disputes the MCPD’s assertion that the records contain investigative techniques subject to discretionary withholding under § 4-351(b)(5).

Analysis

The PIA charges us with reviewing and resolving complaints that allege certain violations of its provisions, including that a custodian improperly denied inspection of

⁴ “CAD” stands for “computer aided dispatch.” These reports typically contain “the precise time when a call is received, when it is dispatched, the encoded identities of the emergency responders, the times when they arrived and departed, and the location to which they responded.” *Hallowell v. State*, 235 Md. App. 484, 520-21 (2018).

public records. § 4-1A-04(a)(1)(i). If the written the submissions, which include the complaint and response, do not provide enough information to resolve the dispute, we are empowered to ask for additional information, including “a copy of the public record.” § 4-1A-06(b)(2)(ii)(1). When we conclude that the alleged violation occurred, we must issue a written decision and order a statutory remedy. § 4-1A-04(a)(2) and (3). For example, if we find 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 Legislature enacted the PIA “to inform citizens about the workings of their government.” *Immanuel v. Comptroller*, 449 Md. 76, 89 (2016). Thus, “[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.” § 4-201(a)(1). However, as our State’s Supreme Court has explained, though “the public policy of the MPIA favors disclosure, the purpose of the Act reveals a legislative goal other than complete *carte blanche*, unrestricted disclosure of all public records.” *Immanuel*, 449 Md. at 88. Instead, a custodian’s “duty to disclose certain records is limited by the scope of the statutory exemptions.” *Id.* When a custodian applies an exemption to withhold records or redact information, the custodian bears the burden of justifying that decision. *Cranford v. Montgomery County*, 300 Md. 759, 771 (1984). “In a doubtful case, the party requesting information under the Act is favored.” *Immanuel*, 449 Md. at 88.

Before turning to the dispute presented in this complaint, we briefly detail the exemptions at issue. Section 4-329(b)(1) requires a custodian to deny inspection of “the part of a public record that contains . . . medical or psychological information about an individual, other than an autopsy report of a medical examiner.” Subsection (b)(2) requires denial of “personal information about an individual with, or perceived to have, a disability as defined in § 20-701 of the State Government Article.” Thus, when information about, e.g., “the symptoms or condition of an ill or injured individual” or information about a person’s “medical history or disease status” appears in a record, the custodian must redact that information and disclose the rest. 90 Md. Op. Att’y Gen. 45, 46 (2005).

Under § 4-307, “[a] custodian shall deny inspection of public records that relate to welfare for an individual.” This exemption is often implicated alongside provisions outside of the PIA that govern the disclosure of specific types of welfare-related records. For instance, § 1-201(a) of the Human Services Article (“HS”) generally prohibits disclosure of “information concerning an applicant for or recipient of social services, child welfare services, cash assistance, food stamps, or medical assistance.” Reports or records “concerning child abuse or neglect” are also generally confidential.⁵ HS § 1-202(a). Several opinions of our State’s Attorney General have interpreted these provisions, often

⁵ Both of these Human Services provisions contain exceptions for certain instances in which information either must or may be disclosed. See HS § 1-201(b); HS § 1-202(b) and (c). Those exceptions are not relevant here.

noting that the PIA’s exemption for welfare records provides similar protection. *See, e.g.*, 75 Md. Op. Att’y Gen. 415, 423-25 (1990); 71 Md. Op. Att’y Gen. 368, 372-73 (1986). The Attorney General explained that the specific confidentiality provisions in the Human Services Article “are intended to protect public assistance and social services clients from exploitation and embarrassment,” and that the welfare records exemption in the PIA also reflects a “concern for the protection of personal privacy.” 75 Md. Op. Att’y Gen. at 425.

Like § 4-329(b) and § 4-307, § 4-301(a) is a mandatory exemption—if it applies to a record or information within a record, a custodian must deny inspection of that record or information. The exemption requires a custodian to deny inspection if “by law, the public record is privileged or confidential,” or if “inspection would be contrary to” certain other law, including State statutes, federal statutes and regulations issued under them, rules adopted by our State’s Supreme Court, or a court order. We have considered many complaints about records withheld or redacted under § 4-301(a). *See, e.g.*, PIACB 24-60 (May 30, 2024) (records subject to the attorney-client privilege and thus privileged or confidential “by law”); PIACB 24-33 (Mar. 6, 2024) (redaction of information subject to HS § 1-202 and thus confidential under State statute); PIACB 23-29 (Aug. 14, 2023) (custodian claimed records were not disclosable under federal law and thus exempt under § 4-301(a)(2)(ii); Board found that records were not exempt).

Section 4-351 allows a custodian to withhold, among other things, “records of investigations conducted by . . . a police department” if disclosure would be “contrary to the public interest.” §§ 4-343, 4-351(a)(1). Under subsection (b), a “person in interest”—often the person “that is the subject of a public record,” § 4-101(g)(1)—has a greater right of access to these records. A custodian may deny inspection to a “person in interest” “only to the extent that inspection would” result in certain consequences, such as disclosing “the identity of a confidential source” or “an investigative technique or procedure.” § 4-351(b)(4) and (5). If a requester is not a “person in interest,” then a custodian may deny inspection “if, for any reason, disclosure would be contrary to the public interest,” *Frederick v. Randall Family LLC*, 154 Md. App. 543, 561 (2004), although the circumstances described in subsection (b) are certainly relevant considerations, 64 Md. Op. Att’y Gen. 236, 241-42 (1979). Regardless of a requester’s status, a custodian must provide a “particularized factual basis for the ‘public interest’ denial.” *Randall Family*, 154 Md. App. at 567; *see, e.g.*, PIACB 24-63, at 5 (Apr. 11, 2024) (finding application of § 4-351(a) to redact the names and identifying information of subjects in a police report justified where the custodian explained that at least one of the subjects expressed a strong desire to keep their name from being released and that the circumstances underlying the police incident were tense).

We turn now to the records at issue in this complaint. Because we were not able to determine the applicability of the exemptions invoked by the MCPD based on the submissions alone, we asked the MCPD to provide us with the responsive records it withheld. *See* § 4-1A-06(b)(2)(ii)(1). We will maintain the confidentiality of these records

as required by law. § 4-1A-06(b)(5); COMAR 14.02.06. Our references to the records in this decision will be general in nature, so as not to disclose any information the MCPD maintains is confidential, our ultimate conclusion notwithstanding. COMAR 14.02.06.05.

We start with § 4-301, the mandatory exemption for records that are privileged or confidential “by law” or for which inspection would be “contrary to” law outside of the PIA. In its response letter, the MCPD stated only that “these records are subject to other law: 4-301 and are privileged and confidential.” In its response to this complaint, the MCPD simply provides the citation. The MCPD has not explained why the records are legally privileged or confidential, or which privileges apply. From our review of the records we discern no obviously privileged or confidential material—for example, there are no attorney-client or other privileged communications present. Nor has the MCPD identified any State or federal statutes that would prohibit disclosure, or any rules adopted by our Supreme Court or court orders that would prevent release of these records. It is not apparent to us that any such law outside the PIA forbids disclosure. Thus, the MCPD has failed to show why the records or any information in them are exempt under § 4-301(a).

We also find that § 4-307 does not apply to the written police reports and body worn camera footage responsive to the PIA request. These records contain no information about welfare benefits or recipients, and they are not records concerning child abuse or neglect. *See* HS §§ 1-201, 1-202. While the incident itself might be characterized—as police responses sometimes are—as a “welfare check,” such characterization does not convert the records wholesale into “records that relate to welfare for an individual” exempt under § 4-307. Otherwise, a large number of police-generated records—i.e., those that police could fairly characterize as related to a “welfare check”—would be completely off-limits. *Cf.* 82 Md. Op. Att’y Gen. at 73 (noting that the prohibition on release of records and reports concerning child abuse and neglect “does not apply to the record of an arrest itself” or to “charging documents and other papers filed in court”). This cannot have been the intent of the General Assembly, especially in light of recent changes to public safety laws that were prompted, in part, by concerns about police accountability and transparency. *See, e.g.*, 2021 Md. Laws, ch. 60 (enacting the Maryland Use of Force Statute); 2021 Md. Laws, ch. 62 (enacting Anton’s Law, which made records relating to investigations of police misconduct subject to a discretionary, rather than mandatory, exemption under § 4-351(a)(4)).

The MCPD argues that the interaction between police and the individual was “solely a mental health situation,” perhaps in an effort to suggest that these records are not run of the mill investigatory records, but instead welfare records that must be withheld. But, such a position would be inconsistent with the MCPD’s application of § 4-351(b)(5), which applies to “records of investigations” by police departments and provides for only

discretionary withholding.⁶ Further, our review of the records confirms that the officer was acting on information provided to him by a citizen—i.e., “investigating” based on that information. Thus, § 4-307 does not preclude release of the written police reports and police body camera footage in their entirety.

We do find, however, that § 4-329(b) applies to some of the information contained in the records. That exemption requires redaction of “medical or psychological information about an individual” and “personal information” about an individual with a disability. § 4-329(b)(1) and (2). While we do not think that speculation by police officers on the scene or in their written reports as to what the man was experiencing qualifies as medical or psychological information protected by the exemption, there are some discrete references to “mental health” as well as descriptions of injuries in the written reports. Those references and descriptions should be redacted. Further, some of the body worn camera footage is taken from inside of the ambulance and the hospital. That footage depicts various medical professionals—e.g., EMTs and nurses—providing medical treatment to the individual. In addition, the footage from inside the hospital depicts other patients and the activities of hospital staff in the course of providing medical care. In our view, the ambulance and hospital footage depicts medical information subject to § 4-329(b)(1) that cannot be disclosed. The MCPD should therefore excise that footage from the body worn camera footage that is released to the complainant. However, as we see it, the footage from the officers at the scene, before the individual is put into the ambulance, does not contain any such information.

Section 4-329(b)(2) also appears to apply to limited information here. That subsection exempts “personal information about an individual with, or perceived to have, a disability” as the term is defined in the State Government Article. Under that definition, disability means, among other things, “being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities.” Md. Code Ann., State Gov’t § 20-701(b)(1)(iii). After review of the records, we think that the individual detained by police could be described as “being regarded as having a physical or mental impairment that substantially limits one or more of [his] life activities.” *Id.* Regardless of whether that individual *actually* has such a physical or mental impairment, the records suggest he was “perceived” that way. Thus, any personal information about that individual, including his name, address, date of birth, and Social Security Number must be redacted from the records.⁷ See § 4-101(h)(2) (defining “personal information”).

⁶ The MCPD’s assertion that §§ 4-301 and 4-307—mandatory exemptions—apply to shield the entire records from disclosure is also inconsistent with its position, in response to this complaint, that the dispute may be resolved “by disclosing the records with redactions” for a fee of \$900.

⁷ Based on the complainant’s reply, it appears that he would not object to these redactions.

Before turning to the question of whether the MCPD has justified its discretionary application of § 4-351, we pause to note the public interest in these sorts of records generally. As mentioned above, certain statutory provisions related to policing were amended substantially in recent years, and include new reporting and disclosure provisions. *See, e.g.*, 2021 Md. Laws, ch. 59 (adding annual reporting and disclosure requirements to § 3-514 of the Public Safety Article, which governs the filing of incident reports upon use of force by police). Similarly, records related to police misconduct complaints—which may arise when police use force, and which were once shielded entirely from disclosure as personnel records—now must be disclosed unless the custodian can explain why the public interest in withholding them is greater than the public interest in disclosure. *See* §§ 4-343, 4-351(a)(4). This sort of legislative action is indicative of the public’s interest in seeing these types of records. The public interest in the written reports and body camera footage at issue here is evident too from the footage itself, which depicts citizens filming the police officers’ interaction with the individual.

We also take broad guidance from our State’s Attorney General, who examined the extent to which information related to reports of alleged child abuse may be disclosed. In that opinion, the Attorney General recognized that “the public has a vital interest in seeing to it that those responsible for child protective services are doing their job properly and are provided with adequate resources.” 71 Md. Op. Att’y Gen. at 368. Thus, the Attorney General reasoned that the statutes and regulations governing the confidentiality of records related to child abuse and neglect “should be construed to permit the fullest possible disclosure regarding agency performance.” *Id.* The public interest in police performance is similarly high here and, in our view, the PIA’s exemptions should be construed to “permit the fullest possible disclosure,” *id.*, regarding how police carry out their duties and interact with the public. In other words, the MCPD has a particularly heavy burden in justifying its decision to withhold the responsive police reports and camera footage under a discretionary exemption.

After review of the submissions and the records themselves, we find that the MCPD has not met this burden. We are mindful that the complainant is not a “person in interest,” meaning that the MCPD may deny inspection “if, for any reason, disclosure would be contrary to the public interest.” *Randall Family*, 154 Md. App. at 561. But, neither the response letter nor the response to the complaint contain any detailed argument whatsoever about why disclosure of these investigative records would be contrary to the public interest. *See id.* at 567 (requiring a “particularized factual basis for the ‘public interest’ denial”). Though the MCPD claims that the records contain “investigative techniques or procedures” of the MCPD, the MCPD provides no information about where they are found in the records or why their disclosure would be harmful. We perceive no visual demonstration of any techniques or procedures from the BWC video and, although the use of force reports may refer to certain techniques by name, they contain no descriptions of how they were performed (or how they should be performed). In addition, we considered whether the police officers’ use of a certain identification device might be considered a protected

technique or procedure the disclosure of which would be contrary to the public interest, but it appears to us that it is no secret that police use such devices.

We recognize that the incident reports contain more detail about how the officers detained the individual, but, again, the MCPD has not provided any indication of what it believes is a protected “investigative technique or procedure,” and has offered no explanation at all about why it is in the public interest to withhold that information. The MCPD’s obligation to provide these facts and explanations is particularly crucial given the strong public interest in disclosure of information that sheds light on how police perform their duties and functions. We thus find that the MCPD has not justified its application of § 4-351(a) to these records on grounds that they reveal investigative techniques or procedures, the disclosure of which would be contrary to the public interest.

That said, under § 4-351(b)(3), a custodian may deny inspection to a “person in interest” if disclosure would “constitute an unwarranted invasion of personal privacy” such that disclosure is contrary to the public interest. Again, the complainant is not a “person in interest,” so privacy concerns are certainly relevant considerations. We are mindful that the MCPD has not invoked this subsection. However, as we see it, disclosure of the individual’s identity—which may well occur via disclosure of his face in the body worn camera footage—would constitute an “unwarranted invasion of personal privacy” here. It is clear from review of the footage that, for the individual, this incident captured a very bad day. There is a lot of footage that strikes us as extremely invasive of this person’s privacy and we do not see what public interest is served by disclosing *who* this individual is. Blurring the footage such that the individual’s identity is not revealed would not compromise the disclosure of the actions taken by police or how they handled the situation. We thus find that the MCPD must redact the body worn camera footage so that the individual’s face may not be seen in any detail.

Based on the foregoing, we conclude that the MCPD violated the PIA when it denied inspection of the use of force, CAD, and incident reports, and of the officers’ body worn camera footage. While, as explained above, those records contain some information that must be redacted under §§ 4-329(b) and 4-351(a), the majority of the information in the records is disclosable. The MCPD erred in denying inspection entirely. The MCPD must redact the information subject to §§ 4-329(b) and 4-351(a) from the records and disclose the rest. For the body worn camera footage, this means excising the footage from inside the ambulance and hospital entirely and blurring or otherwise redacting the individual’s face in the footage that is disclosed. We note that, of the five files of footage, one of them takes place entirely inside the hospital, thus that footage need not be produced. Of the remaining four files, one contains footage from both the ambulance and the hospital and another contains brief footage from inside the ambulance. As to the use of force, CAD, and incident reports, any explicit description of illnesses or injuries should be redacted. However, we do not think that officers’ speculation—either as captured by the body worn camera footage or expressed in their written reports—about what the individual was

experiencing qualifies as “medical or psychological information” subject to the exemption. We also find that the individual’s name, address, date of birth, and Social Security Number must be redacted from the written reports under § 4-329(b)(2).⁸

Conclusion

Based on our review of the information we have, including the submissions and the records that were withheld, we find that the MCPD violated the PIA when it denied inspection of the use of force, CAD, and incident reports, and the officers’ body worn camera footage in their entirety. Section § 4-301 does not apply because the records are not privileged or confidential “by law,” as provided in § 4-301(a)(1), and the MCPD has not demonstrated—and we do not find—that inspection would be “contrary to” any law outside of the PIA, as provided in § 4-301(a)(2). Section § 4-307 does not apply because the records are not records of “welfare for an individual” as contemplated by that exemption. The MCPD has failed to meet its burden to justify discretionary denial under § 4-351(a) on grounds that the records reveal protected investigative techniques and procedures, as it has not provided a particularized factual basis for invoking that exemption in that way. At the same time, we conclude that disclosure of the individual’s identity would constitute an unwarranted invasion of personal privacy, thus the MCPD must blur or redact the individual’s face from the body worn camera footage. We thus direct the MCPD to disclose the records with redactions to the “medical or psychological information,” the detained individual’s “personal information,” and the detained individual’s face in the manner detailed above. This information is exempt from disclosure under § 4-329(a)(1) and (2) and § 4-351(a).

Public Information Act Compliance Board*

Sareesh Rawat, Chair
Samuel G. Encarnacion
Quinton M. Herbert
Nivek M. Johnson

* Board Member Debra Lynn Gardner did not participate in the deliberation, preparation, or issuing of this decision.

⁸ Given that redaction of materials like officer body worn camera video requires more technical skill and ability than might be required to redact other types of documents, we recommend that the complainant bear the cost for the necessary editing to anonymize the body camera footage. At the same time, we also stress that any fees charged for the redactions must be reasonably related to the *actual cost* to the MCPD of producing the records, *see* § 4-206(a) and (b), and that the MCPD may not charge a fee for the first two hours needed to prepare the records for inspection, § 4-206(c).