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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-99

June 14, 2024

Office of the State's Attorney for Baltimore County, Custodian
Ronald Rubie, Complainant

The complainant, Ronald Rubie, alleges that the Office of the State's Attorney for Baltimore County ("BCoSAO") violated the Public Information Act ("PIA") by failing to locate records related to his 1987 criminal case. The BCoSAO responds that it searched for the records in several places but was unable to find them, and cannot provide what it does not have. After review of the submissions, we find no violation of the PIA.

Background

In November of last year, the complainant sent a PIA request to the BCoSAO asking for records related to his 1987 criminal case, including:

1. Indictment[s].
2. All police reports to include: Ballistics, latent fingerprints, or other forensic reports.
3. Arrest warrants and search warrants.
4. All written statements of all witnesses.
5. Photo arrays or any other extrajudicial identification procedures
6. Any surveillance video in the case;
7. and any follow-up reports done in the case.

The complainant stated that he was a "person in interest,"¹ and sought "full access of the above enumerated information."

Less than a week later, the BCoSAO responded to the complainant's PIA request and explained that "[a]fter thoroughly searching the records of this office," the BCoSAO had "no documents that pertain to [the] request."

¹ See Md. Code Ann., Gen. Provisions § 4-101(g) (defining "person in interest" to include the person "that is the subject of a public record").

The complainant was dissatisfied with the BCoSAO's response to his PIA request, so he contacted the Public Access Ombudsman.² In April, the Ombudsman issued a final determination stating that the dispute was not resolved. According to the final determination, the dispute presented for mediation was the complainant's belief that the BCoSAO's "response that it did not have responsive records was inaccurate." After receiving the final determination, the complainant filed this complaint with our Board.

In his complaint, the complainant states that he is "dissatisfied with the State's continuous claim that they do not have [his] case file pertaining to a homicide case." The complainant explains that the records are "essential to [his] right to challenge [his] conviction."

In response to the complaint, the BCoSAO explains that in 1987, when the complainant was tried, the BCoSAO had "paper files that were sent to an off-site storage facility upon completion of the case." The BCoSAO states that it has "checked that storage facility and they do not have the file." In early 2004, the BCoSAO explains further, the office changed to a digital system and then upgraded to a new case management system in 2019. The BCoSAO states that "[b]oth those systems were searched and no records for this case were found."

The BCoSAO attaches a letter dated April 2, 2024, in which it provided a more detailed explanation of its search efforts to the complainant. That letter explained that the first step taken was to search the BCoSAO's current case management system. The BCoSAO noted that the system was "implemented around 2019, so most cases before that time period are not up to date." Because there was nothing in that system, the BCoSAO moved on to what it calls the "old scanning system," which was implemented in the early 2000s, when the BCoSAO was "shifting from paper files to digital copies." The BCoSAO stated that "[a]fter several attempts of searching using different methods (case number, name, etc.), there were no results."

Having searched the digital files, the BCoSAO explained that it next moved to search paper files. One of the charges in the case was murder, so the BCoSAO spent about an hour searching "every box" of "the murder cases that [it is] in possession of," but did not find the complainant's records. Finally, the BCoSAO explains, it contacted the person in charge at the BCoSAO's off-site storage facility and provided the information necessary to search there. The person at the facility reported that there were "no matches for [the complainant's] case number or name."

² The PIA charges the Ombudsman with making "reasonable attempts to resolve disputes between [PIA] applicants and custodians relating to requests for public records." Md. Code Ann., Gen. Provisions § 4-1B-04(a). A complainant must attempt to resolve a dispute through the Ombudsman before filing a complaint with our Board. *Id.* § 4-1A-05(a).

The BCoSAO's April 2 letter recognized the complainant's concern that it "did not adequately search as [the BCoSAO] responded with in the same day" that it received the PIA request. The BCoSAO explained that "it is quite easy to search for cases that would be in [its] possession given all of [the] systems in place." The BCoSAO suggested that "[o]ther entities such as the Baltimore County Police Department may be in possession of items related to [the] file," but that it could not "provide what [it does] not possess."

Analysis

The PIA authorizes us to review and resolve complaints that allege certain violations of its provisions, including that a custodian improperly denied inspection of public records. § 4-1A-04(a)(1)(i).³ We have interpreted this section of the PIA to include allegations that a custodian conducted an inadequate search that failed to locate all responsive records, i.e., a constructive denial. *See, e.g.*, PIACB 24-34 (Apr. 1, 2024). If, after review of the submissions, 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). When we find that a custodian has constructively denied a PIA request, we may direct the custodian to conduct another search and "produce any non-exempt responsive records" that may be found. *See, e.g.*, PIACB 24-08, at 6 (Sept. 28, 2023).

The PIA 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." § 4-201(a)(1). When custodians receive a PIA request they must "conduct a search in good faith that is reasonably designed to capture all responsive records." *Glass v. Anne Arundel County*, 453 Md. 201, 232 (2017). Maryland's Supreme Court has explained that "[t]his does not mean that the agency must robotically examine every record in its possession," but rather that "the search should be focused on where responsive records are likely to be found." *Id.* When challenged, the sufficiency of a search is measured "by how the agency designed the effort to find responsive records, not retrospectively by its success in locating every responsive record." *Id.*

Using these legal principles as guideposts, we cannot find that the BCoSAO's search efforts fell short of what the PIA requires. The BCoSAO searched four different filing systems, two digital and two paper. Given the age of the case—close to forty years old at this point—searching both paper and electronic records makes sense. The BCoSAO attempted to locate the records in those systems by using different terms, e.g., the complainant's name or the case number. Thus it seems that the BCoSAO's search was "reasonably designed to capture all responsive records," and that the BCoSAO focused its search "on where responsive records [were] likely to be found." *Id.*

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

When a PIA request seeks records that the custodian determines do not exist—e.g., because they were lost or destroyed—the PIA requires the custodian to “notify the [requester] of this determination.” § 4-202(d). The PIA specifies that “if the custodian has reached this determination after a search for potentially responsive public records,” the custodian must notify the requester “promptly after the search is completed but not more than 30 days after receiving the [request].” § 4-202(d)(2). The BCoSAO’s response complied with this provision.

We understand the complainant’s frustration with the lack of results here. After all, one might expect a State’s Attorney’s office to retain possession of homicide case files even long after the cases were tried. But our Board is not empowered to micromanage a custodian’s search and review process.⁴ PIACB 24-08, at 5 (Sept. 28, 2023). Nor are we authorized to search their files ourselves. Based on BCoSAO’s detailed explanation of the search it conducted, we find no violation of the PIA.

Conclusion

After review, we conclude that the BCoSAO conducted a reasonable search for responsive records that was focused on where records were likely to be found. The BCoSAO has not violated the PIA.

Public Information Act Compliance Board

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⁴ We also note that we are not empowered to enforce record retention laws. *See* PIACB 21-16, at 4-5 (July 30, 2021). Rather, State Archives and the Records Management Division of the Department of General Services are charged with overseeing the retention and management of government records. *See* Md. Code Ann., State Gov’t §§ 10-608 through 10-611.