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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 25-09
December 11, 2024
Baltimore Police Department, Custodian
William Hernandez, Complainant

The complainant, William Hernandez, alleges that the Baltimore Police Department (“BPD”) has violated the Public Information Act (“PIA”) by constructively denying his PIA request. As explained below, we find no violation of the PIA.

Background

On July 10, 2024, the complainant sent a PIA request by email to the BPD asking for “[a]ll documents and records related to [his] PIB complaint, which has mysteriously gone missing from the complaint portal.” The complainant stated that the “PIB case number is 2024-0891.” On July 22, 2024, the BPD sent the complainant an email directing the complainant to use a specific form or, if the complainant was “making a request for PIB information for [himself,]” to “contact PID.”¹ The complainant responded: “The email contains the pertinent information, and filling out a form is not mandatory under the PIA.” On July 23, 2024, the complainant contacted the Public Access Ombudsman.² On August 7, 2024, the Ombudsman issued a statement in which she indicated that she was unable to mediate the matter due to a conflict.³ The statement indicated that the PIA dispute presented was a denial. Thus, that dispute was not resolved through the Ombudsman and the complainant filed this complaint with our Board.

¹ We understand the acronym “PIB” to stand for the BPD’s Public Integrity Bureau. See Baltimore Police Department Public Portal, <https://complaintsportal.baltimorepolice.org/#/> (last visited Dec. 11, 2024). We assume the reference to “PID” to mean the same division within the BPD.

² See Md. Code Ann., Gen. Provisions § 4-1B-04(a) (charging the Ombudsman with making “reasonable attempts resolve disputes between applicants and custodians relating to requests for public records under [the PIA]”). Before filing a complaint with our Board, an applicant or custodian must attempt to resolve the dispute through the Ombudsman and receive a final determination stating that the dispute was not resolved. *Id.* § 4-1A-05(a).

³ 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”).

While the complainant's dispute resolution request was pending with the Ombudsman, the BPD, on August 1, 2024, issued a timely response attaching the "complete PIB 2024-0891 file" and the "IA Pro history report of the case." The complainant sent several emails in response. The first stated, "Sergeant Jone's [sic] alleges that she contacted me, and land recorded the call on a recorded line. The documents you sent me do not include this." The second email stated: "These were not all the documents and records responsive to my request. This is not the complete case file and associated records related to the investigative file." After the BPD responded that "[a]ll documents and records related to PIB complaint 2024-0891 were sent in the response," the complainant stated, "Sergeant Jones indicated in a voicemail she had recordings from a recorded line in which she called me. She also indicated she 'thoroughly' investigated this complaint. Where are those records?" The BPD responded that it "only [had] access to what is in the PIB file." The complainant directed the BPD to "do your due diligence, reach out to the PIB, and acquire the other items." At that point, an attorney in the Baltimore City Law Department contacted the complainant and explained that she "spoke with PIB personally," and that the complainant had "received the entire file of your PIB complaint 24-0891." The attorney advised that his PIA request was "now considered closed."

The complaint alleges that the BPD "denied access to records" and told him that he "would have to pay money to submit a records request."⁴ The BPD, in response, denies that it has violated the PIA. Instead, the BPD maintains that it conducted an adequate search for responsive records and provided them to the complainant at no cost. Stressing that the PIA requires a reasonable search, and not one that locates "every possible responsive record," the BPD points to the emails the complainant exchanged with the BPD after his request was fulfilled. In particular, the BPD notes the email that it "confirmed its search directly with BPD's Public Integrity Bureau," which is "the unit within BPD that conducted the investigation [the complainant] requested" through his police complaint.

In reply, the complainant reiterates the language of the PIA request and emphasizes that it "means [he] wanted all documents and records related to this, which would include the different variations of the PIB from the portal's tracking history, all communications related to this, the internal communications, and the alleged messages the officers sent me

⁴ The complaint also refers to another PIA request sent by the complainant on February 11, 2024. On May 22, 2024, we issued a decision finding that the BPD violated the timing provisions of the PIA by failing to respond to that PIA request. We directed the BPD to respond but declined to order that the BPD waive fees. See PIACB 24-82, at 3 (May 22, 2024). The complainant has appealed that decision. See *In the Matter of William Hernandez*, No. C-24-CV-24-000551 (Cir. Ct. Balt. City). To the extent that the complainant seeks it, we note that we are not empowered to enforce our own orders. Thus, because we have already resolved the complainant's allegations with respect to his February 11 PIA request, we address only the allegations related to his July 10 PIA request.

before closing out the file.” The complainant contends that “[t]here are more records from the file that the BPD knowingly and willingly refused to produce,” such as a “tracking record of the report/complaint.”

Analysis

The PIA directs us to review and resolve complaints alleging certain violations of its provisions, including that a custodian improperly denied inspection of public records. § 4-1A-04(a)(1)(i).⁵ We have construed this subsection to include allegations that a custodian conducted an insufficient search that led to a failure to locate all responsive records. *See, e.g.*, PIACB 24-34 (Apr. 1, 2024). If we determine that a custodian has wrongfully denied inspection of a public record, we must 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 a person or governmental unit to inspect any public record at any reasonable time.” § 4-201(a). Thus, upon receipt of a PIA request, a custodian “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). The PIA does not require that a custodian “robotically examine every record in its possession.” *Id.* Instead, “the search should be focused on where responsive records are likely to be found.” *Id.* “A search may be reasonable and adequate without being perfect.” *Id.* When challenged, a custodian’s search is measured by “how the agency designed the effort to find responsive records,” *id.*, and not necessarily “by the fruits of the search,” *Iturralde v. Comptroller*, 315 F.3d 311, 315 (D.C. Cir. 2003); *see, e.g.*, PIACB 24-27, at 10-11 (Mar. 6, 2024) (finding a search reasonable overall in light of the language of the PIA request even though the search may have failed to locate a handful of arguably responsive email records).

Though the submissions in this matter are voluminous,⁶ neither party provided a copy of the responsive records that the BPD produced to the complainant in response to his July 10, 2024, PIA request. We thus asked the BPD to provide those records. After consideration of the BPD’s full PIA response, we find that the BPD did not constructively deny the complainant’s July 10, 2024, PIA request.

⁵ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise stated.

⁶ Many of the complainant’s submissions relate to different PIA requests he made to the BPD, one in February 2024, and another one on August 12, 2024, related to complaint PIB 2023-1161. As noted, *supra*, note 4, we do not review the February PIA request here because we did so already in PIACB 24-82, which is pending appeal in the Circuit Court for Baltimore City. The August PIA request is not before us; it appears that the complainant sent that PIA request to the BPD not even ten minutes before he submitted this complaint to our Board.

The complainant's July 10 PIA request asked for "all documents and records" related to PIB complaint number 2024-0891, which, according to the records produced, was opened on June 17, 2024, and completed the next day, June 18. The BPD produced the following records in response: the "IA Pro history report of the case," a letter from a police officer to the complainant, dated June 18, 2024, and records imported from the "public portal."⁷ In its response email, the BPD indicated that the records constituted "the complete PIB 2024-0891 file." Based on the language of the request, which included the identification of a specific complaint number, it appears to us that the BPD focused its search "on where responsive records [were] likely to be found." *Glass*, 453 Md. at 232. The record also demonstrates that, after the complainant challenged the BPD's response to his PIA request, counsel "spoke with PIB personally," and confirmed that the complainant had "received the entire file of [his] PIB complaint 24-0891."

We understand that the complainant believes that additional records exist. However, whether the custodian uncovered every single responsive record is not the standard by which search efforts are judged. *See id.* The complainant provides transcripts of two voice messages. Only one of those messages, left on August 1, 2024, at 12:38 p.m. relates to the complainant's July 10 request for the records of complaint PIB 2024-0891. The transcript of the message indicates that the caller—Sergeant Jones—was trying to get "clarification" on complaint 2024-0891 and "the original incident before you hung up on me." Sergeant Jones indicated that she would be "leaving a task in the case saying I did call you back."⁸ The complainant is adamant that calls to the BPD are recorded and that these voice messages are therefore examples of records that are responsive to his PIA request but were not provided. While it might be the case that the calls are recorded, the only recorded calls we know for sure occurred were placed on August 1, 2024, at 12:38 and 12:46 p.m.—i.e., after the BPD sent its response to the July 10 PIA request on August 1, 2024, at 11:40 a.m. Although Sergeant Jones's indication that there was a call in which the complainant hung up on her suggests that there might exist an additional recording, it is unclear when it was made (or even if it was made). And, in any event, "the adequacy of an agency's search is measured by whether it is reasonably calculated to uncover responsive records, not by whether it locates every possible responsive record." *Glass*, 453 Md. at 212. Based on the submissions, which include the responsive records produced to

⁷ These records include two BPD incident reports and a statement of charges, which appear to have been submitted as part of the complainant's PIB complaint.

⁸ The second voice message, also left on August 1, 2024, but at 12:46 p.m., relates to "case number 2023 1161," which was the subject of the complainant's August 12 PIA request, noted *supra*, note 6. That message indicates that Sergeant Jones "went back and looked at the recorded calls" and that those calls showed that Sergeant Jones "did call you twice on the 17th and did not get an answer." Sergeant Jones stated that "there was no voicemail greeting," and that this was "maybe why [she] didn't leave a message." Sergeant Jones I that she "did leave a message today," which was the "second message today." The message indicated that the "original complaint has already been investigated."

the complainant, we find that the BPD's search was reasonable under the PIA and that the BPD did not constructively deny the complainant's PIA request.

Conclusion

Based on the information before us, we find no violation of the PIA.

Public Information Act Compliance Board*, **

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

* Board Member Quinton M. Herbert did not participate in the deliberation, preparation, or issuing of this decision.

** For the reasons outlined briefly below, Board Member Debra Lynn Gardner does not join in the Board's decision.

I disagree that the BPD conducted a reasonable and sufficient search for responsive records and would thus find that the BPD constructively denied the complainant's PIA request and violated the PIA. In my view, the complainant made it clear that he was seeking all documents and records related to his PI complaint and pointed to at least one recording made of a phone call that he and Sergeant Jones actually participated in and that she advised had been recorded. In the voicemail transcript provided by the complainant (Aug. 1, 12:38 p.m.), Sergeant Jones appears to refer to at least one such phone call that transpired sometime before that and which she indicated had been recorded. In my view, when a complainant identifies one or more public records, they believe to be responsive that were not produced, a custodian's unilateral limit of the search to a case file which would not likely include all such relevant records, including the particular type identified, without explanation, is not reasonable.

Debra Lynn Gardner