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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 25-94
October 29, 2025
Baltimore County Police Department, Custodian
Andrew Gwinn, Complainant

At some point during the last year, complainant Andrew Gwinn applied for a position in the Baltimore County Police Department (“BCPD”). After he was hired, he sent the BCPD a Public Information Act (“PIA”) request asking for records of his background investigation and applicant screening. The BCPD denied inspection of the records, citing §§ 4-310 and 4-351¹ of the PIA, which concern letters of reference and certain investigatory records, respectively. In this complaint, the complainant alleges that the BCPD improperly applied these exemptions, stressing that he is the person in interest as to the records. Counsel for the BCPD responds and denies that the BCPD has violated the PIA, taking the position that the BCPD was required, under § 4-310, to deny inspection of letters of reference, including volunteered statements, and that the BCPD properly exercised its discretion to deny inspection of the background investigation material as contrary to the public interest. As explained below, we find that the BCPD properly applied §§ 4-310 and 4-351 to most, but not all, of the responsive records.

Background

We take the following facts from the parties’ submissions. Last year, the complainant applied for a position in the BCPD. In doing so, he signed, on December 17, 2024, a document titled “Authorization for Release of Information and Waiver of Liability.” That document authorized the BCPD to “conduct a complete and comprehensive background investigation” so that the BCPD could “determine [the complainant’s] suitability for employment.” The complainant agreed to authorize “full and complete disclosure” to the BCPD of numerous records, including, e.g., educational records, financial records, employment records, and the results of polygraph examinations. In addition, the complainant agreed that he “may not be informed of any facts or information developed throughout the course of [the] investigation and any information that may be released to [him] will be at the sole discretion of the Baltimore County Police Department.”

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

Several months later, on April 1, 2025, the complainant sent a PIA request to the BCPD asking for:

Any/all records concerning the departmental background investigation and applicant screening file related to Andrew Ryan Gwinn; to include, but not limited to, background investigator's reports and documentation, including interviewee statements, investigative notes, memos, and official reports; polygrapher reports and notes; supervisory statements and documentation, including, but not limited to, departmental memorandums, 12Ls, department letterhead reports, counseling forms, official messages, emails; any reports, recommendations, or other records related to prior Baltimore County work history; and any/all other documentation related and maintained concerning the background investigation process for reinstatement and re-employment.

The complainant also asked for records concerning his "employment history as a Police Detective within the Criminal Investigations Bureau, particularly the Vice/Narcotics Section, Robbery Squad, and Warrant Apprehension Task Force, between November 1st, 2018, and September 9th, 2025."

On April 2, 2025, the complainant was directed to a specific person regarding his request for employment history records from his personnel file. As to the other records, the BCPD advised that "any type of pre-employment information is confidential in nature and is not available for viewing by the member." The complainant disagreed with the BCPD's position so, on April 27, 2025, he contacted the Public Access Ombudsman to request dispute resolution assistance.²

Through the mediation process, the BCPD sent the complainant a letter, dated June 9, 2025, in which it denied inspection of the records from his "departmental background investigation file."³ Citing § 4-310, the BCPD advised that it was "required to deny inspection of all letters of reference," including "volunteered statements about the qualifications of prospective appointees to public positions whether they are solicited or unsolicited." As to the rest of the records from the background investigation file, the BCPD took the position that "the release of any records from a background investigation, which was conducted for a law enforcement purpose, would be contrary to the public interest."

² The PIA directs the Public Access Ombudsman to "make reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records." § 4-1B-04(a). Before submitting a complaint to our Board, a complainant must attempt to resolve a dispute through the Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a).

³ As mentioned above, the letter indicated that the complainant had been notified in April that he could contact a director in Police Human Resources to "request information or records from [his] personnel file that [were] maintained in the Police/Human Resources Section."

The BCPD acknowledged that the complainant was a person in interest,⁴ but stated that disclosure would “interfere with the proper administration of police background investigations; constitute an unwarranted invasion of personal privacy of persons who contributed information; disclose the identity of confidential sources; and disclose investigative techniques or procedures.”

On June 18, 2025, the Ombudsman issued a final determination stating that the dispute between the complainant and the BCPD was not resolved, and the complainant then filed this complaint with our Board. In his complaint, the complainant explains that he requested the records after he was hired by the BCPD, thus contending that the background investigation files “are an extension of [his] personnel file.” The complainant asserts that, as the person in interest, he is entitled to inspect the records, particularly “given there is documentation within the file that is libel [sic] in nature.”

In response to the complaint, counsel for the BCPD defends the BCPD’s application of §§ 4-310 and 4-351 to deny inspection of the records from the complainant’s background investigation file. As to § 4-310, counsel reiterates that that exemption applies to letters of references, including volunteered statements. Counsel for the BCPD also provides more explanation as to the BCPD’s determination that inspection of those records would be contrary to the public interest, under § 4-351(b). Counsel contends that disclosure would interfere with the administration of police background investigations by “revealing the personnel, methods, and structure of these investigations,” as well as the “questions used and other investigative techniques.” Counsel also maintains that disclosure would “put at risk the willingness of confidential sources to freely and frankly share important information and insights.” Counsel for BCPD maintains that those who have “relied on confidentiality” and provided information to the BCPD during the investigation are “entitled to maintain that personal privacy.”

In addition to these concerns, counsel for the BCPD also points to the document that the complainant signed to authorize the background investigation. Counsel for the BCPD argues that inspection of the records would be contrary to the public interest because “any individual who is interviewed in regard to the qualifications of a police applicant would be disincentivized from providing relevant information if they knew that the information would be disclosed to the applicant at a later date.” Counsel asserts that the “expectation of confidentiality” that is established by the document that the complainant signed is “relied upon by Department members and by external providers of information, making it possible for them to respond fully and frankly to requests for information.” Pursuant to that agreement, counsel contends, the BCPD is “under no obligation to disclose the ‘background investigation,’ ‘applicant screening file,’ or any/all other documents related

⁴ See § 4-101(g)(1), which defines a person in interest as “a person or governmental unit that is the subject of a public record.” As discussed below, some of the PIA’s exemptions afford persons in interest greater rights of access to certain records about themselves.

and maintained concerning the background investigation process for reinstatement and re-employment” that the complainant requested.

Finally, counsel for BCPD distinguishes this matter from another recent complaint in which we directed the release of certain records from a background investigation conducted by a police department during the hiring process. *See* PIACB 25-68 (June 30, 2025). Unlike that matter, which involved a closed investigation file, counsel for the BCPD states that the BCPD is “not permitted to treat this is a ‘closed’ investigative file” because the complainant “was hired as, and currently serves as, a sworn police officer.” Counsel states that the “ultimate decision on certification of a police officer rests with the Maryland Police Training and Standards Commission (MPTSC), which reviews background investigations as part of its decision-making process.” Under COMAR 12.04.01.05, counsel explains, the BCPD has a “continuing obligation . . . to provide [MPTSC] with any supplemental information obtained after an employee’s police certification.” Thus, counsel states, the BCPD “treats all background investigative files as open files and does not release them except as required to comply with [MPTSC] requirements.”

After we received the BCPD’s response to the complaint, we provided the complainant an opportunity to submit a reply. *See* COMAR 14.02.02.04. The complainant notes that the BCPD’s response to the complaint was untimely, having been submitted after both the original due date and the extended date.⁵ The complainant points out that, in our email extending the deadline, we cited § 4-1A-06(c) and advised that if a response was not received, we would issue our decision based on the information in the complaint. Counsel for the BCPD, in response, apologizes for the late submission, stating that an administrative miscommunication caused the delay. Counsel states that this was a “good faith mistake,” and apologizes for any inconvenience caused to the complainant or our Board.

Analysis

Under § 4-1A-04(a) of the PIA, we must review and resolve complaints alleging certain violations of the PIA’s provisions, including that a custodian improperly denied inspection of a public record. § 4-1A-04(a)(1)(i). After review of the submissions, if we determine that the alleged violation occurred, we must issue a written decision and order a remedy as provided in the PIA. § 4-1A-04(a)(2) and (3). When we find that a custodian has denied inspection of a public record in violation of the PIA, we must “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(3)(i).

⁵ We received the complaint by email on July 1, 2025, and forwarded it by email to the BCPD that same day, requesting a written response by July 31, 2025. *See* § 4-1A-06 (requiring our Board to forward a complaint to a custodian and request that a written response be sent within thirty days). When we did not receive the BCPD’s response by that date, we sent, on August 1, 2025, a second email advising the BCPD to submit its response by August 6, 2025. Counsel for the BCPD ultimately sent the BCPD’s response on August 7, 2025.

The PIA is meant to provide “access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). To afford this access, the PIA requires custodians to allow inspection and copying of public records, unless the law provides otherwise. §§ 4-201(a) and 4-205(b). Maryland’s Supreme Court has observed that the PIA “establishes a public policy and a general presumption in favor of disclosure of government or public documents.” *Kirwan v. The Diamondback*, 352 Md. 74, 80 (1998); *see also* § 4-103(b) (providing, in general, that the provisions of the PIA must be “construed in favor of allowing inspection of a public record”). Not all public records are subject to inspection, however. Rather, the PIA contains exemptions from disclosure, which are provisions that either require or permit a custodian to deny inspection of certain records or information. *See* §§ 4-301, 4-304, 4-328, 4-343. When an exemption is mandatory, a custodian must deny inspection of the relevant records or information, *see, e.g.*, § 4-311 (individuals’ personnel records), but when the exemption is discretionary, a custodian may deny inspection only if inspection would be “contrary to the public interest,” § 4-343; *see, e.g.*, § 4-351 (certain law enforcement records). The custodian has the burden of justifying the application of an exemption to deny inspection of public records. *Lamson v. Montgomery County*, 460 Md. 349, 367 (2018).

The BCPD relies on two exemptions here, §§ 4-310 and 4-351. Section 4-310 is mandatory in nature and provides that “[a] custodian shall deny inspection of a letter of reference.” There is little in the way of caselaw interpreting this exemption, although Maryland’s Attorney General addressed what is now § 4-310 in a 1983 opinion that explained that the exemption “applies to all letters—solicited or unsolicited—that concern a person’s fitness for public office or employment.” 68 Md. Op. Att’y Gen. 335, 335 (1983). In reaching that conclusion, the Attorney General found it reasonable to presume that one purpose for the exemption was to further “candor in the selection process,” observing that “[t]hose who are inclined to write about the qualifications of a prospective State or local government appointee are more likely to be plainspoken if their letters are not made publicly available.” *Id.* at 339. Thus, to the extent that the responsive records contain communications from others concerning the complainant’s fitness for the job for which he applied—whether the BCPD asked for them or not—those communications would fall within the scope of § 4-310.

The second exemption cited by the BCPD, § 4-351, is discretionary. Section 4-351(a)(1) allows a custodian to deny inspection of “records of investigations conducted by” certain types of law enforcement agencies, including “a police department.” In a recent decision that also concerned a PIA request for records of a background investigation conducted by a police department for hiring purposes, we determined that § 4-351 applied, even though the records might not relate to the investigation of a crime or other violation of the law. *See* PIACB 25-68, at 7-8 (June 30, 2025). In particular, we noted federal cases

interpreting a similar exemption in the Freedom of Information Act (“FOIA”)⁶ that held that “personnel background investigations” fall within the scope of the investigative records exemption because “[t]he principle purpose of a background investigation is to ensure that a prospective employee has not broken the law or engaged in other conduct making her ineligible for the position.” *Id.* (quoting *Mittleman v. Office of Pers. Mgmt.*, 76 F.3d 1240, 1243 (D.C. Cir. 1996)).

When, as here, a “person in interest” requests records subject to § 4-351(a)(1), a custodian may deny inspection “only to the extent that the inspection would” cause at least one of seven specific harms to result, such as interfering with a law enforcement proceeding or revealing a confidential source. § 4-351(b); *see also Blythe v. State*, 161 Md. App. 492, 531 (2005) (stating, “[p]recisely because of the favored status enjoyed by a person in interest, the obligation on the custodian is particularly heavy to justify an exemption pursuant to [what is now § 4-351(b)],” and that a custodian “must point to precisely which of the seven circumstances enumerated by the rule would require the exemption and explain precisely why it would do so”). If a person in interest asks to inspect records from their own investigative file, a custodian must carefully examine the records to “distinguish between that which reflects one or more of the enumerated circumstances and that which does not.” *Mayor & City Council of Baltimore v. Md. Comm. Against the Gun Ban*, 329 Md. 78, 96 (1993); *see also* 81 Md. Op. Att’y Gen. 154, 155 (1996) (“[T]he PIA effectively grants a special right of access to a ‘person in interest’—that is, the subject of an investigatory file.”). In other words, if there are records (or parts of records) in an investigative file that do not implicate the stated harms in § 4-351(b), then partial disclosure and/or redaction is required. *City of Frederick v. Randall Family, LLC*, 154 Md. App. 543, 561-62 (2004) (explaining that “a particularized showing as to *every document* withheld [under § 4-351(b)] is necessary,” (emphasis original)); *see, e.g.*, PIACB 25-68, at 9-11 (June 30, 2025) (directing disclosure of certain limited records that the Board determined would not reveal a confidential source or investigative procedure or technique).

We now turn to the disputed records at issue here. We were unable to resolve the complaint based on the parties’ submissions alone, so we asked the BCPD to provide the records it withheld under §§ 4-310 and 4-351. *See* § 4-1A-06(b)(2)(ii) (permitting our Board to request “a copy of the public record” from the custodian”). As the law requires, we will maintain the confidentiality of the records that the BCPD provided. *See* § 4-1A-06(b)(5); COMAR 14.02.06 (regulations governing treatment of confidential records received from a custodian). Any references to the records in this decision will be general

⁶ *See* 5 U.S.C.A. § 552(b)(7) (providing that FOIA’s general rule of disclosure “does not apply to matters that are . . . records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information” would cause harms nearly identical to those listed in § 4-351(b)). Our appellate courts have “stated that the interpretations and reasoning of the federal courts addressing the ‘investigatory files’ exemption . . . are persuasive.” *Fioretti v. Md. State Bd. of Dental Examiners*, 351 Md. 66, 75-76 (1998).

in nature so as not to disclose any information that the BCPD maintains is not disclosable under the PIA. COMAR 14.02.06.05.

We start with § 4-310, which forbids disclosure of letters of reference, both solicited and unsolicited. After review of the records, it is clear that the complainant's background investigation file contains numerous communications that constitute "letters of reference." These communications comment on the complainant's qualifications and fitness for employment and come from people "familiar with his character, ability, experience, training, or the like." 68 Md. Op. Att'y Gen. at 337. Under § 4-310, those records may not be disclosed, even to the complainant. We thus find no violation in the BCPD's application of § 4-310 to deny inspection of the letters of reference contained in the complainant's background investigation file.⁷

The BCPD's application of § 4-351(a) to the remaining material is perhaps a bit more difficult to judge. As noted above, the complainant is a person in interest, so the BCPD may deny inspection of those records only if it can show that at least one of the seven harms listed in § 4-351(b) would result from disclosure. Here, the BCPD claims that disclosure would interfere with the proper administration of police background investigations (§ 4-351(b)(6)), constitute an unwarranted invasion of personal privacy of persons who contributed information (§ 4-351(b)(3)), disclose the identity of confidential sources (§ 4-351(b)(4)), and disclose investigative techniques or procedures (§ 4-351(b)(5)). As to interference with background investigations, the BCPD elaborates that, "by revealing the personnel, methods, and structure of these investigations," and revealing "questions used and other investigative techniques," the background investigations would be compromised. In addition, the BCPD states that, because COMAR 12.04.01.05 creates a "continuing obligation" to provide "supplemental information obtained after an employee's police certification," the BCPD treats all background investigative files as open files, thus implicating § 4-351(b)(1), regarding a "valid and proper law enforcement proceeding."

The records we reviewed here are very similar to those involved in PIACB 25-68. There we found that "disclosure of some of the records used in and consulted for the complainant's background investigation would, in essence, provide a map to the 'specific types of records to be gathered and types of sources to be contacted or interviewed.'" PIACB 25-68, at 10-11 (June 30, 2025) (quoting *Henderson v. Office of Dir. Nat'l Intel.*, 151 F.Supp.3d 170, 173 (D.D.C. 2016)). Stated differently, we found that disclosure of those records would reveal "the investigative technique or procedure," § 4-351(b)(5), that the police department there "employ[ed] to conduct background checks for potential employees." *Id.* at 11. The police department in that case made arguments similar to what

⁷ For identification purposes, these records are found at pages 8-9 of the PDF labeled "GWINN – Personal Profile" and pages 9-19 of the PDF labeled "GWINN – Phase I (1)," both of which were provided for our confidential review.

the BCPD argues here, i.e., that disclosure of the records would “interfere with the proper administration of police background investigations by revealing the personnel, methods, and structure of these investigations,” and “put at risk the willingness of confidential sources to freely and frankly share important information and insights,” which we determined was not in the public’s interest. *Id.* Ultimately, we found no abuse of discretion in the police department’s application of § 4-351(a) to many of the records at issue in PIACB 25-68, *id.*, and find similarly here as to most, but not all, of the records we reviewed.

In PIACB 25-68, we determined that there were certain records to which the police department’s justifications—specifically § 4-351(b)(4) and (5), regarding confidential sources and investigative procedures and techniques—did not apply “given the source of the records and given that they [had] been requested by a person in interest.” *Id.* at 11. Noting the Appellate Court of Maryland’s explanation that “the purpose of the [confidential source] exception is to assist law enforcement officials in gathering information by ensuring reluctant sources that their identities would not be disclosed,” we found that § 4-351(b)(4) was “not implicated in the least” as to certain specific records, given their source. *Id.* at 9 (quoting *Bowen v. Davison*, 135 Md. App. 152, 164 (2000)). And, again given the records’ source, we also said we could “discern no way in which disclosure of [the] records to the complainant [would] reveal an investigative technique or procedure such that the public interest is harmed.” *Id.* at 11. The same is true here as to a certain subset of the records we reviewed.⁸

Aware that we directed disclosure of some records in PIACB 25-68, the BCPD urges us to distinguish this case in that, here, the complainant is presently employed as a sworn police officer, while PIACB 25-68 involved an applicant who was ultimately not hired for a civilian position. *See* PIACB 25-68, at 2 (June 30, 2025). Due to the nature of the complainant’s employment, counsel for the BCPD explains, the BCPD treats his background investigation file as an open file under public safety regulations.⁹ Thus, counsel argues, § 4-351(b)(1), which permits denial of inspection to a person in interest where inspection would “interfere with a valid and proper law enforcement proceeding”

⁸ For identification purposes, these records are found at pages 1-46 of the PDF labeled “GWINN – Personal History Packet,” page 5 of the PDF labeled “GWINN – Personal Profile,” and pages 36-38, 40, 42-49, and 51-54 of the PDF labeled “GWINN – Phase I (1),” all of which were provided for our confidential review. Due to the confidentiality obligations discussed above, we do not describe these records or their sources in more detail. We also stress that the outcome would likely be different if the requester was not a person in interest.

⁹ COMAR 12.04.01.05, cited by counsel for the BCPD in the BCPD’s response to this complaint, provides that “[a]n agency head hiring an applicant shall . . . [m]aintain a record of the background investigation,” and that “[i]f supplemental information is developed, the agency head shall submit details with the [Application for Certification] to the [Police Training and Standards] Commission.” COMAR 12.04.01.05A(9) and (10).

applies to *all* records in the complainant's background investigation file. Generally, "the reason why it is in the public interest to withhold the contents of an [open] investigative file is obvious, i.e., disclosure almost always would 'interfere with law enforcement proceedings.'" *Randall Family*, 154 Md. App. at 566. In this case, we think the words "*almost* always" are important. For most criminal and civil investigations, concerns for fairness and deference to discovery rules counsel in favor of allowing investigative bodies to withhold the contents of their open files from premature disclosure. *See Faulk v. State's Attorney for Harford County*, 299 Md. 493, 509-510 (1984). Here, however, we cannot see how disclosure of the records identified *supra*, note 8, to the complainant would compromise the background investigation already conducted or the BCPD's ability to supplement that investigation in the future. We therefore find that § 4-351(b)(1) does not apply to those specific records and direct the BCPD to produce those records to the complainant.

Conclusion

Based on the record before us, which includes the disputed records that the BCPD withheld from inspection, provided for our confidential review, we find that the BCPD properly applied § 4-310 to deny inspection of certain records that constitute "letters of reference." Section 4-310 is a mandatory exemption, requiring the BCPD to deny inspection, even to the complainant. We also find no abuse of discretion in the BCPD's application of § 4-351(a) to deny inspection of much of the material in the complainant's background investigation file. Though the complainant is a person in interest, the BCPD has sufficiently demonstrated that disclosure would compromise the administration of background investigations by disclosing investigative procedures and techniques. However, we also find that the BCPD has not justified the application of § 4-351(a) to a certain subset of records, identified *supra*, note 8. In our view, disclosure of those records *to the complainant* would not reveal confidential sources or investigative procedures or techniques, to the detriment of the public interest, nor would disclosure of those specific records interfere with an open and ongoing law enforcement proceeding. We thus direct the BCPD to produce the records identified *supra*, note 8, to the complainant within thirty days of receipt of this decision and order.

Public Information Act Compliance Board

Sareesh Rawat, Chair
Samuel G. Encarnacion
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