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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 26-19
December 17, 2025
Washington County, Custodian
Justin Holder, Complainant

This complaint concerns a Public Information Act (“PIA”) request that complainant Justin Holder submitted to Washington County (“County”) in February 2025. The request asked for records within the personal email and text message accounts of certain current and former Washington County Commissioners. The County responded that there were no responsive records. The complainant alleges that the County’s response to his PIA request was untimely and also that the County has constructively denied inspection of records that do exist. After review of the submissions, we find that the County failed to respond to the complainant’s PIA request within the prescribed time limitations. As to the response itself, we find that the County’s approach to searching for responsive records was generally reasonable, but that the search itself was inadequate to the extent that the County did not make efforts to obtain records from certain former commissioners. We explain below.

Background

On February 12, 2025, the complainant sent an email to the County asking for “records related to the personal email, and text messages of the current and former commissioners,” specifically “text and emails between any commissioners” and a list of sixteen individuals that included State legislators and the Mayor of Keedysville, Maryland. The complainant limited the search to “the previous 5 year period” and explained that the “search should include”:

[T]ext messages and/or emails and/or social media messages about subjects such as: extending halfway boulevard through land owned by Bowman 2000 LLC, trading forest conservation in Sharpsburg farms on Snyders Landing Road to increase development of that land along the proposed halfway boulevard extension; the maugansville sewer interconnector and sewer development to hopewell and new gate roads, potentially using commingled and excess EPA 201 Construction funds from other sanitary districts, (after all the Attorney, Mr. MAckey, advised the Sanitary commision [sic] that even though EPA express forbid commingling, keeping the excess in the same account is ok, so long as the commision [sic] kept track of it);

conversations about development of the new stadium downtown; conversations about judicial nominations; conversations regarding sewer allocations and water allocation in Boonsboro; usage of grants intended to extend sewer to Vanish Brewery for other purposes; ownership of the abandoned railroad in Keedysville, MD, etc., (the “public business” being “transacted” by “instruments of the political subdivision” known as Washington County, Maryland).

After receiving no formal response or records from the County,¹ the complainant, on May 19, 2025, contacted the Public Access Ombudsman to request dispute resolution assistance.² On September 26, 2025, the Ombudsman issued a final determination stating that the dispute was not resolved due to a conflict that prevents the Ombudsman from mediating any matters in which the complainant is a party.³

In his complaint, the complainant alleges that the County violated § 4-203⁴ of the PIA by failing to respond to his PIA request within thirty days. The complainant also alleges that the County has constructively denied his PIA request by failing to conduct a reasonable search for responsive records. The complainant states that “[t]hese issues should be easily resolved in [his] favor.”

¹ The submissions demonstrate that the County did communicate with the complainant about this PIA request. On February 26, 2025, after receiving multiple additional emails regarding the PIA request from the complainant and others, the County asked the complainant for clarity about “exactly which documents [he was] requesting.” It also appears that the County sought mediation through the Ombudsman at some point regarding an issue similar to the one raised by this complaint, and that that mediation may have even involved this PIA request as, on May 12, 2025, the complainant sent the County an email stating “[t]his MPIA is well overdue if the mediation is withdrawn.” However, to the extent that any mediation sought by the County regarding this PIA request may have extended the time period for responding, *see* Md. Code Ann., Gen. Provisions § 4-203(d)(2), the County has not provided any information or evidence to this effect.

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.” Md. Code Ann., Gen. Provisions § 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 stating that the dispute was not resolved. *Id.* § 4-1A-05(a).

³ The final determination states that both the Ombudsman and the Attorney-Mediator working in the Ombudsman’s office are precluded from mediating any matters in which the complainant is a party due to the complainant indicating that “he may take certain actions that . . . render [the Ombudsman and Attorney-Mediator] unable to act in a neutral, impartial, and independent manner as to both parties to the mediation.” *See* COMAR 14.37.02.07C (regulations governing conflicts of interest in the Ombudsman’s office).

⁴ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise specified.

In response to the complaint, counsel for the County states that the County “immediately recognized that the request was unusual in that it specifically sought personal records that could only be retrieved from personal devices or personal accounts.” Thus, counsel states, the County “knew that it could not employ its typical procedures for processing this request because the requested materials would not be located on the County’s server or on County-issued phones.” After finding no “binding authority in Maryland” as to “the efforts needed to search for records uniquely in the private possession of an individual,” the County “turned to other jurisdictions with similar statutory schemes to Maryland’s PIA.” Counsel for the County points to a case from California⁵ that held, in counsel’s words, that an agency is “permitted to communicate the request to the employees in question, and rely on that information in processing the request.”

Counsel for the County also states that the County looked to federal Freedom of Information Act (“FOIA”) cases regarding “the reasonableness of an agency’s search for records.”⁶ Under guidance from those cases, counsel argues, the complainant is required to “set forth ‘specific facts’ demonstrating how the County’s search for his records was deficient,” and contends that the complainant has “utterly failed to produce any legitimate facts that tend to show that any of the Commissioners possessed the requested records on their personal phones and e-mail accounts.” Counsel acknowledges that the complainant has produced “an e-mail sent on September 3, 2025 (nearly nine months after he submitted his original records request) from a non-County employee to Commissioner Jeff Cline’s personal e-mail address,” but stresses that “Commissioner Cline replied to this September 3, 2025, e-mail the very same day, politely asking the sender to use his County e-mail address.” Counsel for the County attaches that email from Commissioner Cline to the County’s response to this complaint.

Counsel for the County states that the County “followed the guidance of the California Supreme Court” and communicated the complainant’s PIA request to “the applicable County employees identified” in that request. Counsel represents that “[i]n every instance, the County was told that there were no responsive records in anyone’s private possession—be it personal e-mails or text messages.” Thus, counsel for the County contends, the County “employed ‘reasonable efforts’ to ascertain the existence of the requested records,” and was “permitted to ‘reasonably rely on those employees to search their own personal files, accounts, and devices for responsive material.’” Counsel for the County reiterates that “the County has determined that it does not possess any records responsive to the request, and therefore has nothing to produce.”⁷

⁵ *City of San Jose v. Superior Court*, 389 P.3d 848 (Cal. 2017).

⁶ *Allnutt v. U.S. Dep’t Justice*, 99 F.Supp.2d 673 (D. Md. 2000).

⁷ The record before us does not contain a response letter issued by the County stating that it has no responsive records, and it is unclear to us whether one issued or not. We asked the County to

The complainant, in reply, takes the position that the County “had no good faith reason to look to other jurisdictions for guidance” because he provided the County with two decisions from our Board “that tell the County how to do a reasonable search.” The complainant also contends that it is “very clear that public [business] is transacted on personal devices because this record has factual evidence of John Barr and Derek Harvey texting [constituents] on [their] personal phones.”

Analysis

The PIA authorizes us to review and resolve complaints alleging certain violations of its provisions, including that a custodian improperly denied inspection of a public record or “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). We have interpreted our authority to review denials of inspection broadly to include allegations that a custodian’s insufficient search failed to locate all responsive records. *See, e.g.*, PIACB 23-05 (Nov. 23, 2022). After we receive a complaint, we forward it to the relevant custodian and ask for a written response. § 4-1A-06(a). We must then review the complaint, the response, and any other submissions and, if we determine that the custodian violated the PIA as alleged, we must issue a written decision and order a remedy as provided in the PIA. *See* § 4-1A-04(a)(2) and (3). If we determine that a custodian violated the time limitations in § 4-203(a) or (d), we must order the custodian to “promptly respond” and have discretion to waive fees if our decision states the reasons why. § 4-1A-04(a)(3)(iii). When we find that a custodian has 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). If the denial is a constructive denial due to an insufficient and unreasonable search, we may direct the custodian to conduct a remedial search and “produce any non-exempt responsive records to the complainant.” PIACB 24-08, at 6 (Sept. 28, 2023).

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 that end, custodians must allow inspection and copying of public records, unless the records are exempt from disclosure. §§ 4-201(a), 4-205(b). For purposes of the PIA, a “public record” is “documentary material” in “any form” that is made or received by “a unit or an instrumentality of the State or of a political subdivision . . . in connection with the transaction of public business.” § 4-101(k)(1). Notably, “the mere physical location of a record is not necessarily dispositive of its characterization” as a public record or non-public record. *Lamson v. Montgomery County*, 460 Md. 349, 365 (2018); *see, e.g.*, PIACB 24-55, at 4 (Mar. 25, 2024) (finding that recordings of telephone calls between inmates in a jail and their friends, families, attorneys, etc., are ordinarily not “public records” subject to the PIA unless used by the government in the transaction of public business). The PIA

provide the response letter, assuming one was sent, *see* § 4-1A-06(b)(2)(i), but the County did not provide such a letter.

favors disclosure of public records, although it also contains provisions that either require or permit custodians to deny inspection of certain records or information. *Immanuel v. Comptroller*, 449 Md. 76, 88 (2016); *see, e.g.*, § 4-313 (mandatory exemption for student records); § 4-336 (mandatory exemption for individuals' financial information); § 4-351 (discretionary exemption for certain law enforcement records). A custodian has the burden of justifying a decision to deny inspection of public records. *Lamson*, 460 Md. at 367.

When custodians receive PIA requests, 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). The custodian should use “methods that can be reasonably expected to produce the information requested” but, importantly, the custodian is not expected to “robotically examine every record in [their] possession.” *Id.* (citation omitted). When challenged, the reasonableness of a custodian's search is “measured prospectively by how the agency designed the effort to find responsive records, not retrospectively by its success in locating every responsive record.” *Id.*; *see, e.g.*, PIACB 25-88, at 6-7 (Oct. 1, 2025) (finding a search reasonable even though the complainant pointed to certain records that he believed existed but were not produced). “In the end, what the PIA requires is a *reasonable* search designed to locate all records responsive to the particular PIA request, not a perfect search that leaves no stone unturned.” *Glass*, 453 Md. at 233.

Although a handful of our decisions have touched on the issue of public records that are stored on private devices or in private accounts, *see, e.g.*, PIACB 25-21, at 8 n.12 (Jan. 29, 2025), PIACB 24-14, at 5 (Nov. 14, 2023), we are unaware of any Maryland cases that provide specific instruction as to whether or how a custodian must search for these sorts of records when they are requested under the PIA. Cases in several other jurisdictions, including the one cited by the County in its response, have held that, when a request seeks public records that may be stored on private devices or in private accounts, a custodian must ask the relevant employees to search those devices or accounts for responsive records. *See, e.g., Toensing v. Att’y Gen.*, 178 A.3d 1000, 1009 (Vt. 2017) (concerning a request for communications between state employees and numerous individuals and certain domain names); *City of San Jose v. Superior Court*, 389 P.3d 848, 860 (Cal. 2017) (concerning a request for emails and text messages exchanged between the Mayor, two city council members, and their staff); *Better Gov’t Ass’n v. City of Chicago*, 169 N.E.3d 1066, 1077-78 (Ill. App. Ct. 2020) (concerning a request for emails and text messages exchanged between the Public Health Commissioner and the Mayor's office); *see also Lipsky v. New Jersey Ass’n of Health Plans, Inc.*, 288 A.3d 1273, 1290 (N.J. Super. Ct. App. Div. 2023) (discussing cases that have held that “employees may be required to search their own accounts and devices and produce data responsive to the records requests, subject to any assertions of privilege or confidentiality by the public employer”).

The records request in *Toensing* was somewhat similar to the PIA request at issue here. There, the requester asked for communications sent or received between nine state

employees and twenty-seven individuals and three domain names, and specified that the request included “communications received or sent on a private email account . . . or private text messaging account.” *Toensing*, 178 A.3d at 1002. On appeal, Vermont’s Attorney General conceded that it did not search private email or text messaging accounts in response to the request. *Id.* at 1003. Vermont’s Supreme Court ultimately held that, when a requester “specifically seeks specified communications to or from individual state employees or officials regardless of whether the records are located on private or state accounts,” the “obligation to conduct a reasonable search includes asking those individual employees or officials to provide any public records stored in their private accounts that are responsive.” *Id.* at 1009. The court rejected arguments that this approach would invade the privacy of public employees, noting that the requester had not argued that employees should be compelled to “hand over their smartphones or log-in credentials for their personal email accounts,” *id.* at 1010, and observing that “[t]he notion that state employees have a privacy interest in records that are by law public records—those produced or acquired in the course of agency business—is incongruous,” *id.* at 1011.

We find the reasoning of *Toensing*, and the similar decisions of the other courts, persuasive and consistent with the good faith search requirements described by our Supreme Court in *Glass*, *supra*. Thus, to conduct a reasonable search here, the County was required to ask the employees or officials identified in the complainant’s PIA request to search for and provide any public records stored on their personal devices, or in their personal accounts, that might be responsive to that PIA request.⁸ Though counsel provided some information about the search in the County’s response to this complaint, we needed more factual evidence to determine the reasonableness of the search the County performed. We therefore asked the County to provide an affidavit from a person with knowledge that details the steps the County took to search for responsive records. *See* § 4-1A-06(b)(4). We asked that the affidavit include and identify the following information: which employees were asked to search for records; which accounts those employees were asked to search; how the County guided the search (i.e., what the employees were told to look for); the date(s) on which the County asked the employees to perform the search; the date(s) on which each County employees responded; and whether some or all of the employees have County-issued cell phones (and, if not, to indicate which employees do).

⁸ We realize that the sufficiency of the County’s search was not presented to the Ombudsman for dispute resolution, thus ordinarily we would lack jurisdiction to resolve this allegation. *See* § 4-1A-05(a) (requiring that a complainant first attempt to resolve a dispute through the Ombudsman). However, given the very specific circumstances presented here, we will address the reasonableness of the County’s search. The County has not asked us to dismiss this allegation—indeed, its entire response is focused on the question of whether the County conducted a reasonable search for responsive records. Moreover, we have confronted a similar situation in which a conflict precluded mediation through the Ombudsman and asserted jurisdiction “in the interest of efficiency.” *See* PIACB 24-43, at 6 (Mar. 21, 2024) (citing *Rosales v. State*, 463 Md. 552, 569-70 (2019)).

In response to our request, the County provided an affidavit from Zachary Kieffer, County Attorney for Washington County (“Kieffer Affidavit”). The Kieffer Affidavit states that, after receipt of the complainant’s PIA request, Mr. Kieffer met with the Board of County Commissioners in a closed session. To Mr. Kieffer’s recollection, President John Barr, Vice President Jeffrey Cline, Randall Wagner, and Derek Harvey were present.⁹ The Kieffer Affidavit asserts that “every member of the then-situated Board was asked to search their accounts for responsive records promptly after receipt of this request.” Specifically, the Commissioners were asked to “search through their personal cellular phones for text messages and personal social media messages, and through their personal e-mail accounts for e-mails responsive to the request.” As to how the County guided the search, the Kieffer Affidavit states that Mr. Kieffer “read the first full paragraph of the request to the Board during closed session,” thus the “search terms” provided were “the individuals [the complainant] identified in his request.”

Mr. Kieffer indicates that he cannot provide the specific dates on which he discussed the complainant’s PIA request with the Commissioners because his communications with the Commissioners were not in writing. However, Mr. Kieffer states that “there were likely multiple discussions across multiple meetings in closed sessions,” and that those likely occurred “in late February and early March.” For the same reasons, Mr. Kieffer is unable to provide the specific dates on which the Commissioners provided their responses. Rather, the Kieffer Affidavit indicates that, during the closed session, “all members of the Board responded immediately and in person to [Mr. Kieffer],” and that each Commissioner’s response was the same, i.e., “the Commissioners do not conduct public business using their personal phones, nor do they use their personal social media accounts (if they exist), or personal e-mail accounts to conduct or discuss matters of public business.” The Kieffer Affidavit further advises that all County Commissioners receive “a County-issued phone for purposes of conducting County business,” and that each Commissioner has “consistently maintained that they use their County-issued phones for County business, and do not use their personal devices nor personal accounts to conduct County business.”¹⁰

⁹ The Kieffer Affidavit states that “Commissioner Wayne Keefer may have been present, but he had submitted his resignation during the time in between when the County received the request, and when the Board next met in closed session.”

¹⁰ After receiving the County’s affidavit, the complainant responded that he “had no idea that the cell phones that the County Commissioners used were issued by the County,” and that, “[w]hen [he] asked for the Commissioners ‘personal’ cell phones, [he] was referring to the ones they use to conduct County Business.” According to the complainant, the “definition of ‘personal’ in this instance would be the ones that the Commissioners keep on their person, not pay for personally.” The complainant suggests that his PIA request was “broad enough to capture those records.” We disagree. In his PIA request of February 12, 2025, the complainant sought “records related to the personal email, and text messages of the current and former commissioners.” Such request could be read to ask for “personal” records—i.e., not “public records.” However, read that way, the County would have no obligation to produce any records at all. See PIACB 24-53 (May 8, 2024) (citing *Office of the Governor v. Washington Post Co.*, 360 Md. 520 (2000)) (information

After review of the submissions, including the Kieffer Affidavit, we find that the County largely satisfied its obligations under the PIA. Recognizing that “the mere physical location of a record is not necessarily dispositive of its characterization,” *Lamson*, 460 Md. at 365, and that public records may thus exist on private devices and in private accounts, the County asked the sitting Commissioners to search those private devices and accounts for any records responsive to the complainant’s PIA request. Looking to cases such as *Toensing* and *Glass*, *supra*, we think the County’s approach was reasonable. The complainant attaches an email sent to Commissioner Cline’s personal account on September 3, 2025, from an individual, and contends that this is evidence that the County’s search was inadequate. In addition, the complainant points to Commissioner Derek Harvey’s remarks, made during a public meeting, that he had received numerous text messages concerning planning and zoning. However, there is no suggestion or evidence that those text messages were received on Commissioner Harvey’s personal cell phone, and we have no reason to assume that they were, particularly in light of the Kieffer Affidavit’s representations that, (1) each Commissioner has a County-issued cell phone and (2) the Commissioners ordinarily do not conduct County business on their personal cell phones. Similarly, we do not think that the one email produced by the complainant—which contained an invitation to a “Focus Areas Discussion”—alone is enough to undermine the County’s search. This is so especially given that the County has produced evidence that, upon receipt of an email from the same individual sent in August 2025, Commissioner Cline asked the individual to “please use jccline@washco-md.net.”

However, as we see it, there is one way in which the County’s search fell short—at least as far as we can tell based on the record we have. The complainant’s PIA request asked for records from “current *and former* commissioners” over “the previous 5 year period”—i.e., since February 2020. It appears that only three of the five current sitting Commissioners have been on the Board of County Commissioners for that entire time.¹¹ It seems that at least two former commissioners also served during that time,¹² and the Kieffer Affidavit does not provide any information about efforts to search for any responsive public

about personal calls not related to public business contained in a phone log was not a public record subject to disclosure under the PIA). We think the County properly read the complainant’s PIA request to ask for any public records stored on the Commissioners’ private devices or in their personal accounts.

¹¹ Specifically, Council President John Barr, Vice President Jeffrey Cline, and Commissioner Randall Wagner. See Maryland Manual On-Line, Washington County, Maryland, <https://msa.maryland.gov/msa/mdmanual/36loc/wa/html/wal.html> (last visited Dec. 17, 2025) (“Maryland Manual”) (providing information about current and former members of the Washington County Board of County Commissioners).

¹² Specifically, Wayne Keefer and Cort Meinelschmidt. See Maryland Manual, *supra*, note 11. The Kieffer Affidavit refers to Mr. Keefer but does not state with certainty whether he was asked to search for responsive records. We note that Mr. Keefer’s service spanned the entire five-year time period identified in the complainant’s PIA request.

records that those former commissioners may have. While we recognize that it may be more difficult for a custodian to obtain records from former officials and employees, we think a reasonable search should entail at least some effort to contact those officials and employees. After all, a public record does not cease to be a public record simply because an official or employee has left government service. Thus, we direct the County to make attempts to contact any former commissioners who served on the County's Board of Commissioners between February 2020 and February 2025, and ask that they provide any public records they might have that are responsive to the complainant's PIA request. To the extent that there are responsive, non-exempt public records, the County must produce those to the complainant.

Finally, as to the complainant's allegation that the County's response to his PIA request was untimely, we find, based on the facts in the record before us, that the County violated § 4-203(a). The complainant sent his PIA request by email on February 12, 2025. Though the County and the complainant apparently communicated about the request during the following weeks, we have no indication as to when the County actually advised the complainant that it had no responsive records—i.e., when it “granted” or “denied” the PIA request. The Kieffer Affidavit states that, to the best of Mr. Kieffer's recollection, he discussed the request with the Commissioners, and asked that they search their accounts, in late February or early March. But, Mr. Kieffer provides no information about when the County communicated the results of those searches to the complainant. Section 4-203(a)(1) requires that custodians “grant or deny” a PIA request “promptly, but not more than 30 days after receiving the [request].” We see no evidence that this was done here. However, because the County has provided a response at this point, we take no further action as to this allegation.

Conclusion

Based on the record before us, and for the reasons discussed above, we find that the County failed to grant or deny the complainant's PIA request within the time limitations specified in § 4-203(a) of the PIA. The County has since responded, so we take no further action. As to the County's response, we find that the County's approach to searching for responsive records was generally reasonable, but that the County's search was insufficient to the extent that it did not attempt to locate responsive public records from certain former County commissioners. We thus direct the County to make attempts to contact those former County commissioners and produce any responsive non-exempt public records found to the complainant.

Public Information Act Compliance Board

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