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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 26-78

July 16, 2026

Comptroller of Maryland, Custodian
Nicholas Kegg, Complainant

Complainant Nicholas Kegg alleges that the Comptroller of Maryland (“Comptroller”) has failed to provide all records responsive to his Public Information Act (“PIA”) request for certain notices, correspondences, assessments, liens, and judgments. The Comptroller, through counsel, asserts that there are no additional responsive records not already provided to the complainant. As discussed below, we find that the Comptroller constructively denied the complainant’s PIA request.

Background

The following facts are taken from the parties’ submissions, including emails exchanged between the complainant and staff in the Comptroller’s office. On June 17, 2025, the complainant sent a PIA request to the Comptroller seeking “copies of all the notices, assessments, Liens, judgments, and all of the correspondences related to” certain tax years and actions taken on the complainant’s Comptroller account. The Comptroller needed additional identifying information to process the PIA request so, on June 20, 2025, the Comptroller sent the complainant a letter asking him to provide “the full taxpayer name, address, the taxpayer identification number, the tax type . . . and if available, a case number or notice number.” The complainant provided the information by completing and submitting a PIA records request form, which contained fields for the requested information.

On August 6, 2025, the Comptroller produced responsive records related to tax years 2010 and 2012. The Comptroller stated that she was “continuing [the] search for additional records and [would] send them to [the complainant].” In addition, the Comptroller explained that the records had been redacted under § 4-338¹ of the PIA, which requires a custodian to deny inspection of information about the security of information systems.

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

The complainant was dissatisfied with the Comptroller's response to his PIA request, so on November 4, 2025, he contacted the Public Access Ombudsman to request dispute resolution assistance.² Through the mediation process, the Comptroller issued, on February 12, 2026, a supplemental response to the complainant's PIA request. The Comptroller stated that she "did not find any additional documents that were responsive to [the] initial request that were not already provided." However, the Comptroller provided "screenshots of the system records for all notices, regardless of tax year and regardless of whether they were part of the original request." In addition, the Comptroller provided "a summary of activity on [the complainant's] account for tax years 2008, 2010, 2012, and 2021-2024" to "assist [the complainant] in understanding the various screenshots and records provided." This supplemental response notwithstanding, the Ombudsman issued a final determination stating that the dispute was not resolved and the complainant filed this complaint with our Board.

The complaint alleges that the Comptroller has "not provided the notices, correspondence, assessments, liens, and judgments for the requested tax years." Noting that the Comptroller's response "initiate[d] more requests for information that the Comptroller has treated as a separate [new] Maryland Public Information Act Request," the complainant states that his complaint seeks "further consideration of the initial request with intent to receive a full response to the additional requests."

In response to the complaint, counsel for the Comptroller first explains that "the Comptroller does not retain copies of the original Notices that were mailed to Complainant, and therefore cannot provide them to him." Counsel advises that the Comptroller produced "screenshots of the SMART system screens displaying the variable information contained in the notices," and also "went above and beyond the requirements of the PIA by drafting and providing Complainant a six-page summary explanation of the documents provided to him." Counsel for the Comptroller further explains that when the Comptroller sends any of the various types of notices issued by the office, the "notices generally are system-generated." The Comptroller's SMART system, which stores all data regarding the notices and their mailing, "automatically generates the notices issued to taxpayers by combining taxpayer information with uniform notice language." According to counsel for the Comptroller, the system "does not retain a copy of the original letter, but the electronic data variables—including the tax amount, when it was generated, and when it was placed in the mail—are retained and maintained in an electronic record." Hence, counsel states, "the Comptroller cannot provide taxpayers copies of the actual notices sent to them but can

² The PIA requires 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 stating that the dispute was not resolved. § 4-1A-05(a).

provide the relevant information contained in the notices and the address where the notices were sent.”

Counsel for the Comptroller explains that the Comptroller provided “screenshots of the SMART screens showing the notice number, notice status (e.g., ‘sent’), the account type to which the notice related (e.g., individual income tax), the notice identification (e.g., assessment, lien warning, etc.), and the specific tax information contained in those Notices.” Counsel states that the Comptroller provided such screenshots not only for the tax years identified in the PIA requests, but other years as well. Counsel argues that the redactions applied to the screenshots were proper under § 4-338,³ and that “[n]one of the data redacted in the SMART screenshots would have appeared on any of the original Notices that were printed and mailed to [the complainant].” Counsel for the Comptroller asserts that the Comptroller has produced “all requested records in its possession,” and “does not possess any additional records that are responsive to [the complainant’s] Original PIA Request.”⁴

In reply, the complainant suggests that “the Comptroller has established a pattern and practice of improper audits, liens, and procedures.” The complainant continues to urge that the Comptroller be directed to produce the “[a]ddress the notices and liens were delivered to.”

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 public records. § 4-1A-04(a)(1)(i). We have broadly construed our authority to review denials to include constructive denials, e.g. an allegation that a custodian has not produced all responsive records and has not claimed that the records not produced are exempt. *See*

³ The complainant does not appear to challenge the redactions applied to the records under this exemption, so we do not address that issue further.

⁴ Counsel for the Comptroller also argues that, to the extent the complainant makes allegations regarding a subsequent PIA request, those allegations are not properly before us. We agree, as we are limited to reviewing the disputes about the PIA request identified in the Ombudsman’s final determination. *See* § 4-1A-05(a). Here, the final determination concerns only the June 17, 2025, PIA request. The complainant attaches two responses he received from the Comptroller regarding a PIA request submitted on February 24, 2026. If the complainant disputes the Comptroller’s responses to that request or other PIA requests, he must first attempt to resolve the disputes through the Ombudsman. The complainant cites COMAR 14.02.01.04, which permits our Board to consolidate complaints “if both complaints involve the same applicant and same custodian, and if consolidation will promote efficient and fair resolution of the complaints.” *See, e.g.,* PIACB 26-54 & 26-55 (June 4, 2026). This regulation does not confer jurisdiction over disputes that have not yet gone through the Ombudsman’s process, however.

PIACB 23-03, at 3-4 (Nov. 2, 2022); *see, e.g.*, PIACB 24-99 (June 14, 2024). If we find that a custodian improperly denied inspection of a public record, we must issue a written decision and “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(2) and (3)(i). When the denial is constructive in nature, we may order the custodian to perform a remedial search and “produce any non-exempt responsive records to the complainant.” PIACB 24-08, at 6 (Sept. 28, 2023).

The PIA requires custodians to allow inspection of public records, unless a disclosure exemption applies. § 4-201(a). Thus, when a custodian receives a PIA request, the 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). In doing so, a custodian must use “methods that can be reasonably expected to produce the information requested.” *Id.* (quoting *Oglesby v. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). While a search may be reasonable without having to “robotically examine every record in [the agency’s] possession,” custodians must focus a search “on where responsive records are likely to be found.” *Id.* At the same time, our courts have acknowledged that an agency “cannot produce what it does not have,” *Abell Found. v. Baltimore Dev. Corp.*, 262 Md. App. 657, 716 (2024) even if the requester reasonably believes that the custodian should have the records sought.

We needed additional information about the Comptroller’s search for records, including specific details about the SMART system.⁵ *See* § 4-1A-04(b)(4) (allowing our Board to request “an affidavit or a statement containing the facts that are at issue in the complaint”). We asked the Comptroller to provide an affidavit from a person with knowledge that: (1) describes the search for responsive records, including (but not limited to) where the records are likely found and any search terms used to locate the records; and (2) describes the functionality of the Comptroller’s SMART system. In response, the Comptroller provided an affidavit from Debora Gorman, the Director of the Legal Division for the Office of the Comptroller. (“Gorman Affidavit”).

Ms. Gorman states that the Comptroller “sends various types of notices to Maryland taxpayers,” including, e.g., tax computation or assessment notices, lien warning notices, and lien notices. According to the Gorman Affidavit, these notices “generally are generated by the Comptroller’s tax information system, SMART,” which is a “COBOL-based mainframe system that the Comptroller implemented in 1993.” The SMART system, Ms. Gorman states, “stores data for over 3 million taxpayers.” Ms. Gorman avers that the system “automatically generates written notices to taxpayers by combining taxpayer-specific information with uniform notice language.” As example, Ms. Gorman states, “for

⁵ Counsel for the Comptroller included some of this information in the Comptroller’s response to the complaint. We do not mean for our request for an affidavit to imply that we disbelieve counsel’s representations. As we have said before, we cannot “rely on counsel’s unsworn statement[s] alone.” PIACB 24-100, at 12 n.10 (Sept. 12, 2024).

a taxpayer who is subject to a tax assessment, SMART takes the taxpayer's name, address, tax liability, and other pertinent information housed in SMART, and plugs that data into a template assessment notice, which is then printed and mailed to the taxpayer." Ms. Gorman further states that "[t]he SMART system does not retain a copy of the original notice or other mailing, but the electronic data variables—including the tax amount, when the notice or other mail was generated, and when it was placed in the mail—are retained and maintained in an electronic record."

Noting that Comptroller employees who have access to SMART can search for a taxpayer's account and "view the taxpayer's filing and payment history, outstanding liabilities, records for SMART-generated notices sent to the taxpayer, and other information," the Gorman Affidavit states that, when the Comptroller received the complainant's June PIA request, the Comptroller searched the SMART system using the information the complainant provided. Ms. Gorman advises that the system "had electronic records showing that it had generated various notices directed to Complainant and the dates on which those notices were sent to him." The Gorman Affidavit states that, "[b]ecause the SMART system did not retain copies of the original printed notices sent to Complainant, such copies could not be provided to him." Thus, Ms. Gorman states, the Comptroller produced "a series of screenshots of the SMART system containing the data variables that appeared on the original printed notices," including "the notice number, notice status (e.g., 'sent'), the account type to which the notice related (e.g., individual income tax), the notice identification (e.g., assessment, lien warning, etc.), and the specific tax information contained in the notices." The Gorman Affidavit avers that the Comptroller does not have any additional records responsive to the complainant's June PIA request.

After review of the submissions, including the Gorman Affidavit, we find that the Comptroller constructively denied the complainant's PIA request. The complainant asked for copies of "notices, assessments, Liens, judgments, and all of the correspondences" for certain tax years and specific actions taken on his account. Based on the Gorman Affidavit's description of the SMART system, it appears that those records would be maintained in that system. However, given the limitations of the system—i.e., that it does not retain or maintain copies of the actual notices or correspondence sent to the taxpayer—the Comptroller is unable to produce those records exactly as they were at the time they were generated and sent by the SMART system. Thus, in response to the PIA request, the Comptroller produced screenshots of the complainant's account that displayed the variable information used to create the notices, and also provided the complainant a summary of his account history which spanned multiple years.

The record before us does not demonstrate, however, that the Comptroller provided the complainant with the "uniform notice language" that was included in each type of notice generated by the SMART system and issued to the complainant. Without that uniform notice language, which the Comptroller surely has record of, the complainant

cannot reconstruct the content of the notices sent to him with the information that was produced. In a recent complaint also involving a PIA request for, among other records, notices issued by the Comptroller, the Comptroller “regenerat[ed] the notices” to that complainant to “‘demonstrate what was sent,’ although . . . the regenerated notices ‘reflect[ed] the date they were regenerated and contain[ed] the complainant’s most recent address of record and new notice numbers.’” PIACB 26-46, at 4 (May 1, 2026). While it is possible that something similar was done here, we cannot conclude from the record we have that it was. We therefore direct the Comptroller to produce the same type of “regenerated” notices to the complainant for the tax years identified in his PIA request.

Conclusion

Based on the submissions, and for the reasons discussed above, we find that the Comptroller failed to provide the “uniform notice language” to the complainant and therefore constructively denied his PIA request. We direct the Comptroller to produce responsive “regenerated” notices, as described immediately above, to the complainant within thirty days of receipt of this decision and order.

Public Information Act Compliance Board*

Sareesh Rawat, Chair

Samuel G. Encarnacion

Debra Lynn Gardner

Nivek M. Johnson

* Board member Kimberly A. Moses did not participate in the deliberation, preparation, or issuing of this decision.