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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 26-94

July 28, 2026

Montgomery County Police Department, Custodian
James Bertini, Complainant

Complainant James Bertini requested, under Maryland’s Public Information Act (“PIA”), that the Montgomery County Police Department (“MCPD”) produce to him records related to the MCPD’s investigation into the death of a specific individual. The MCPD denied inspection of the records, citing § 4-351,¹ a discretionary exemption for police investigation records. The MCPD took the position that disclosure would cause an unwarranted invasion of personal privacy. In this complaint, the complainant alleges that the MCPD improperly applied § 4-351 and thus violated the PIA. In response, the MCPD maintains that its application of the exemption was appropriate. After review, we find the MCPD improperly applied § 4-351 to deny inspection of the report in its entirety, rather than redacting the exempt portions and producing the remaining report. We explain more below.

Background

On December 22, 2025, the complainant sent a PIA request to the MCPD asking for “[a]ny police reports or other documents related to [the MCPD’s] response or investigation” into the death of a specific named individual. The MCPD issued a response the same day, denying inspection of the responsive records. The MCPD cited § 4-351(b)(3) of the PIA and stated that “[r]eleasing these records would result in an unwarranted invasion of privacy to the subject.”

The complainant disagreed with the MCPD’s response to his PIA request, so on January 18, 2026, he contacted the Public Access Ombudsman to request dispute resolution assistance.² After the Ombudsman issued a final determination stating that the dispute was not resolved, the complainant filed this complaint with our Board.

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

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 complaint alleges that the MCPD improperly denied inspection of the responsive investigation records. The complainant argues that, because the subject of the report is deceased, he has “no cognizable privacy interest.” Thus in the complainant’s view, application of § 4-351(b)(3), which concerns personal privacy, is improper. The complainant also contends that “the invasion of privacy exemption is not a stand-alone exemption,” and that the MCPD has not cited any other exemption. In addition, the complainant alleges that “there was no evaluation of the harm from disclosure and whether it is greater than the public interest in access to the records.” The complainant asserts that “there is great public interest in the circumstances” surrounding the individual’s death.³ The complainant stresses that “the provisions of the law are to be construed in favor of inspection,” and argues that “a vague reference to privacy does not comport with the provisions of Maryland law.” Finally, the complainant advises that he is an attorney and is “investigating this matter in connection with a writing project.”

In response to the complaint, the MCPD states that, when the complainant submitted his PIA request, “[h]e presented himself as a member of the public and not as a related person to the deceased subject of the report.” Thus, the MCPD explains, it denied inspection of the report under § 4-351(b)(3), “unwarranted invasion of privacy.” The MCPD states that it determined that “the contents of the report describe personal, medical and mental history and situations which should remain private to the deceased and involved/related persons.” According to the MCPD, “[t]here are 14 sentences in the narrative of the report and even considering redaction, MCPD would only offer to fully disclose 3 sentences.” The MCPD asserts that “[t]he remainder of the contents contain comments and discussions which should remain private with redaction.”

Analysis

We are authorized to 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). If, after review of the submissions, 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). 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).

The PIA is intended to provide access to “information about the affairs of government and the official acts of public officials and employees.” § 4-103(a); *see also*

the Ombudsman and receive a final determination stating that the dispute was not resolved. § 4-1A-05(a).

³ The complainant explains that the subject of the police report—i.e., the deceased individual—was an administrative law judge for the U.S. Patent and Trademark Office.

Immanuel v. Comptroller, 449 Md. 76, 81 (2016) (stating that the PIA “gives the public the right to broad disclosure of government or public documents”). Upon receipt of a written request, custodians must allow inspection of public records, unless a disclosure exemption applies. §§ 4-201(a)(1) and 4-202(a). The PIA contains both mandatory and discretionary disclosure exemptions. Section 4-351, at issue here, is a discretionary exemption that permits a custodian to deny inspection of, among others, “records of investigations conducted by . . . a police department,” if disclosure would be “contrary to the public interest,” §§ 4-343 and 4-351(a)(1). A custodian has the burden of justifying the application of an exemption to deny inspection of a public record. *Lamson v. Montgomery County*, 460 Md. 349, 366-67 (2018).

We needed additional information from the MCPD to resolve this complaint. So, we asked the MCPD to provide a copy of the police report it withheld under § 4-351(b)(3). See § 4-1A-06(b)(2)(ii) (permitting our Board to ask the custodian to provide “a copy of the public record”). As required by law, we will maintain the confidentiality of the police report we received from the MCPD. See § 4-1A-06(b)(5); COMAR 14.02.06 (regulations governing treatment of confidential records received from custodians). Any references to the content of the report will be general in nature so as not to reveal any information that the MCPD asserts should not be disclosed under the PIA. COMAR 14.02.06.05.

Section 4-343 provides, “if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part of the record, as provided in this part.” One of the exemptions in Subtitle 3, Part IV of the PIA is § 4-351, which applies to certain law enforcement records, including “records of investigations conducted by . . . a police department.” § 4-351(a)(1). The disputed police report here clearly falls within the scope of § 4-351(a)(1). Under subsection (b), a custodian may deny inspection by a “person in interest” only if at least one of seven specified harms would result. For purposes of police investigation records, the person in interest is the individual “targeted by the investigation.” *Maryland Dep’t State Police v. Dashiell*, 443 Md. 435, 463 (2015); see also § 4-101(g) (defining “person in interest”). The complainant is not a person in interest as to the police records he requested. Thus, the MCPD may deny him inspection of the report “if, for any reason, disclosure would be contrary to the public interest.” *City of Frederick v. Randall Family, LLC*, 154 Md. App. 543, 561 (2004). Of course, any of the reasons listed in § 4-351(b) would suffice. 64 Md. Op. Att’y Gen. 236, 241-42 (1979).

The MCPD relies on § 4-351(b)(3), which permits denial of inspection if inspection would “constitute an unwarranted invasion of personal privacy.”⁴ In response to the PIA

⁴ The complainant argues—correctly—that there is no standalone “unwarranted invasion of privacy” exemption in the PIA. See *Police Patrol Sys., Inc. v. Prince George’s County*, 378 Md. 702, 716-17 (2003) (“[T]here are no discrete ‘public interest,’ ‘personal information,’ or ‘unwarranted invasion of privacy’ exceptions to the MPIA.”) However, the MCPD does not

request, the MCPD explained its position that “[r]eleasing these records would result in an unwarranted invasion of privacy to the subject.” We have said before that “individuals have a ‘legitimate privacy interest’ in personal information about them contained in law enforcement records.” PIACB 24-63, at 5 (Apr. 11, 2024) (citing federal cases). In examining federal cases concerning the Freedom of Information Act (“FOIA”),⁵ our State’s Supreme Court has explained that the PIA is “a statutory mechanism for revealing matters of governance . . . but it should not reveal information from beyond where State activity ends and private activity begins.” *Immanuel*, 449 Md. at 93; *see also id.*, at 90 (“[T]he FOIA’s central purpose is to ensure that the *Government’s* activities be opened up to the sharp eye of public scrutiny, not that information about *private citizens* that happens to be in the warehouse of the Government be so disclosed.” (quoting *U.S. Dep’t of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 774-75 (1989) (emphases original))).

As to FOIA, federal courts have explained that an agency may not withhold an investigative record “solely because disclosure would infringe legitimate privacy interests, but must balance privacy interests against the public’s interest in learning about the operations of its government.” *Campbell v. U.S. Dep’t Just.*, 164 F.3d 20, 33 (D.C. Cir. 1998). The complainant argues that, because he is deceased, the subject of the record here has no privacy interest at all in the records. We have addressed a similar argument before in the context of a PIA request for police reports related to a decades-old sexual assault. *See* PIACB 24-42 (May 8, 2024). The PIA request, sent in 2022, sought records of an assault that occurred in 1978. *Id.* at 1, 7. The police department produced the records, but redacted the victim’s identifying information, including her name, citing § 4-351(b)(3) and personal privacy interests. *Id.* at 1. At the time of the PIA request, the victim had been deceased for more than twenty-five years. *Id.* at 8. Those circumstances notwithstanding, a majority of our Board concluded that “death does not entirely extinguish privacy interests in the kind of personal identifying information at issue here.” *Id.* In doing so, we looked to federal cases, including *Campbell*, which explained that although “the deceased by definition cannot personally suffer the privacy-related injuries that may plague the living,”

purport to deny inspection on privacy grounds alone, untethered from a valid exemption. Rather, the record at issue, a police report, falls within the scope of § 4-351. As stated above, one of the reasons a custodian may deny inspection of a police report falling within § 4-351(a)(1) is if inspection would “constitute an unwarranted invasion of personal privacy.” § 4-351(b)(3).

⁵ FOIA contains an exemption comparable to § 4-351. *See* 5 U.S.C.A. § 552(b)(7)(C) (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 . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy”). Maryland appellate courts have “stated that the interpretations and reasoning of the federal courts addressing the ‘investigatory files’ exemption . . . are persuasive.” *Fioretti v. Maryland State Bd. Dental Examiners*, 351 Md. 66, 75-76 (1998).

a court “must also account for the fact that certain reputational interests and family-related privacy expectations survive death.” 164 F.3d at 33.

Thus, consistent with our conclusions in PIACB 24-42 (May 8, 2024), we find that privacy interests are not irrelevant when considering disclosure of the dispute police report here. As federal courts have explained, when balancing the public interest against individuals’ privacy interests, “the *only* relevant public interest” is “the extent to which disclosure of the information sought would shed light on an agency’s performance of its statutory duties or otherwise let citizens know what their government is up to.” *Lahr v. Nat’l Transp. Safety Bd.*, 569 F.3d 964, 974 (9th Cir. 2009) (emphasis original); *see also Immanuel*, 449 Md. at 90 (“Disclosure under the FOIA is not an end for its own sake, but instead must be for the purpose of helping citizens understand and oversee the workings of government.”). The complainant states that there is public interest in the death of the person who is the subject of the report. But, public interest in an individual’s death is not the same as public interest in the operations of government, even where the individual was a government employee. After review of the police report, we find that there is information in the report, the disclosure of which would “constitute an unwarranted invasion of personal privacy,” § 4-351(b)(3), and that the privacy interest outweighs any interest in disclosure of that personal information.⁶

At the same time, there is information in the police report that is relevant to the MCPD’s “performance of its statutory duties.” *Lahr*, 569 F.3d at 974. We think that information may be disclosed while preserving the personal privacy interests at issue. *See* § 4-343 (allowing for withholding only of “that part of the record” for which disclosure would be “contrary to the public interest”). For example, there is information about how many officers responded, and what actions they took when they arrived on the scene. Because it is difficult to describe the information we have determined either must or may be redacted without also revealing its substance, which is particularly sensitive in this case, we will provide the MCPD with a copy of the record in pre-redacted form.⁷ We direct the MCPD to produce the police report to the complainant with redactions as indicated.

Conclusion

For the reasons discussed above, we find that the MCPD improperly applied § 4-351 to deny inspection of the disputed police report in its entirety, as opposed to redacting the information that, under § 4-351(b)(3), is against public interest to disclose. We

⁶ There is also information in the report subject to the PIA’s mandatory exemption for “medical or psychological information about an individual.” § 4-329(b)(1). The MCPD cannot disclose that information, and redaction will not solve the problem as the complainant knows the identity of the individual to whom the information pertains.

⁷ Should our decision be appealed to the circuit court, we will transmit a copy of the pre-redacted record to the court under seal. *See* COMAR 14.02.06.08.

therefore direct the MCPD to produce the record to the complainant within thirty days of receipt of this decision and order, with redactions as we have indicated on a pre-redacted version of the record.

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.