STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 23-02
November 3, 2022
Harford County Sheriff's Office, Custodian
Tyreek Brown, Complainant

The complainant, Tyreek Brown, sought records from the Harford County Sheriff's Office ("HCSO") related to an investigation that occurred in July 2022, in Joppa, Maryland. The HCSO ultimately denied inspection of all records, citing § 4-351(b)(3)[1] and stating that inspection "may constitute an unwarranted invasion of personal privacy." The complainant disputed the HCSO's response and attempted to resolve his dispute through the Office of the Public Access Ombudsman. On August 16, 2022, the Ombudsman issued a final determination stating that the dispute was unresolved. On August 17, 2022, the complainant filed a complaint with this Board alleging that the HCSO violated the Public Information Act ("PIA") by denying access to the requested records. The HCSO responded to the complaint on September 16, 2022. As explained in detail below, we conclude that the HCSO properly applied § 4-351 and thus did not violate the PIA.

Background

On July 19, 2022, the complainant sent a PIA request to the HCSO asking for an electronic copy of the records related to a criminal investigation that occurred in July 2022, in Joppa, Maryland. He indicated that his request included, but was not limited to, videos, reports of investigation (including summaries of any interviews), results of record checks, and "summaries of source interviews or responses to written inquiries." The complainant explained his involvement in the investigation as "witness/1st party/self."

The HCSO denied inspection of the records entirely on August 9, 2022, invoking § 4-351(b)(3)'s discretionary exemption for records of certain investigations. The HCSO asserted simply that inspection may cause an unwarranted invasion of personal privacy. The complainant requested administrative review of the denial, which resulted in a more detailed explanation of the HCSO's determination. The HCSO acknowledged that the complainant was a "person in interest," but stated that disclosure of the records would

[1] Citations are to the General Provisions Article of the Maryland Annotated Code, unless otherwise indicated.

nevertheless be contrary to the public interest because "the report and video(s) contain[] details of a sexual assault and the disclosure would be an unwarranted invasion of personal privacy for the victim(s) involved."

In his complaint, filed on August 17, 2022, the complainant challenges the HCSO's denial of his PIA request. Noting that the records contain personal information about him and his alleged involvement in the incident, the complainant points out that no charges were filed as a result of the investigation and maintains that the investigation was "based on an inaccurate report of events relayed to the agency." The complainant states that the investigation led to "administrative matters" with his employer and suggests that privacy concerns could be addressed through redaction of the records.

In response to the complaint, the HCSO states that the responsive records relate to an alleged sexual assault that took place in 2019 in which the complainant was the suspect. The HCSO explains that the investigation was initiated after it received a report from an out-of-state law enforcement agency that had learned of the allegations while performing a background check for the complainant. According to the HCSO, the investigation report contains "explicit details of an alleged non-consensual sexual encounter," as well as efforts by the complainant to contact the alleged victim in an attempt to get her to state that the encounter was consensual. The HCSO acknowledges that the investigation did not result in criminal charges, "[f]or reasons the Sheriff is not willing to disclose publicly out of concerns for the privacy interests of the alleged victim," but asserts that the investigation did not "exonerate" the complainant.

After review of the written submissions, we determined that additional information about the responsive records would be helpful to our resolution of the complaint. We thus requested that the HCSO provide a descriptive index of the records. *See* § 4-1A-06(b)(2)(ii)(1) ("On request of the Board, the custodian shall provide . . . [a] descriptive index of the public record."). The HCSO complied, providing the descriptive index on September 30, 2022. As required by law, we will maintain the confidentiality of this descriptive index. *See* § 4-1A-06(b)(5); COMAR 14.02.06.

Analysis

We are authorized to review and resolve complaints alleging certain violations of the PIA, including allegations that a custodian violated the PIA by denying inspection of a public record. *See* § 4-1A-04(a)(1)(i). Before filing a complaint, a complainant must attempt to resolve his or her dispute through the Office of the Public Access Ombudsman and receive a final determination from the Ombudsman that the dispute was not resolved. § 4-1A-05(a). If, after reviewing the compliant, the response, and any additional submissions before us, we conclude that a violation of the PIA has occurred, we must issue a written decision stating such and order an appropriate remedy. § 4-1A-04(a)(2), (3). In cases where 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).

The basic motivating principle of the PIA is that "[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees." § 4-103(a). Thus, in general, the PIA must be "construed in favor of allowing inspection of a public record." § 4-103(b); *see also Kirwan v. Diamondback*, 352 Md. 74, 81-82 (1998) (noting that the Court of Appeals has "on several occasions explained that the provisions of the [PIA] 'must be liberally construed . . . in order to effectuate the Public Information Act's broad remedial purpose,'" (citations omitted)). Further, under certain circumstances, a "person in interest"—i.e., "the person or governmental unit that is the subject of a public record," § 4-101(g)(1)—has a greater right of access to records than other PIA requesters, *see, e.g.*, § 4-311(b)(1) (personnel records); § 4-336(c) (information about an individual's finances); § 4-351(b) (records related to certain investigations). With these general principles in mind, we turn to the exemption that the HCSO applied in this case.

The HCSO denied inspection of all responsive records pursuant to § 4-351, a discretionary exemption that allows a custodian to deny access to, among other things, "records of investigations conducted by . . . a sheriff" if the custodian "believes that inspection . . . by the applicant would be contrary to the public interest." §§ 4-343, 4-351(a)(1). As the custodian, the HCSO bears the burden of justifying its application of § 4-351 to withhold the responsive records. *See Cranford v. Montgomery County*, 300 Md. 759, 771 (1984); *cf. also* § 4-362(b)(2) (defendant in suit brought under the PIA has the burden of "sustaining a decision to . . . deny inspection of a public record"). Under § 4-351, then, the HCSO must demonstrate first that the records fall within the ambit of the exemption, and second that disclosure of those records would be "contrary to the public interest." There is no question that the records are covered by § 4-351—they are plainly records of an investigation conducted by the HCSO. The primary issue we must decide is thus whether the HCSO has sufficiently shown that disclosure of the records that the complainant seeks would be against the public interest. To do so, the HCSO must state "with particularity and not in purely conclusory terms, precisely why the disclosure 'would be contrary to the public interest.'" *Blythe v. State*, 161 Md. App. 492, 527 (2005).

Both the complainant and the HCSO agree that the complainant is a "person in interest"; he is the subject of the investigatory records he seeks. § 4-101(g)(1). Thus, under § 4-351(b), the HCSO may deny inspection as contrary to the public interest "only to the extent that the inspection" would cause one of seven specifically enumerated harms—e.g., if inspection would "interfere with a valid and proper law enforcement proceeding," "constitute an unwarranted invasion of personal privacy," or "disclose an investigative technique or procedure." Noting the "favored status" of a person in interest, the Court of Special Appeals has explained that "the obligation on the custodian is particularly heavy

to justify an exemption pursuant to [§ 4-351(b)][2]," and that the 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." *Blythe*, 161 Md. App. at 531. Moreover, a denial of inspection under § 4-351 is not a "blanket denial[] for an entire record" but rather a "more narrowly focused denial[] of 'a part of a public record.'" *Id.* at 518 (quoting what is now § 4-343); *see also* § 4-203(c)(1)(ii) ("A custodian who denies the application shall . . . allow inspection of any part of the record that is subject to inspection."); *Frederick v. Randall Family, LLC*, 154 Md. App. 543, 561-62 (2004) (for records withheld under § 4-351(b), a "particularized showing" of why disclosure would be contrary to the public interest is necessary "as to *every document* withheld," (emphasis original)).

The HCSO maintains that disclosure of the responsive records here would cause an "unwarranted invasion of personal privacy," § 4-351(b)(3), of the alleged victim in this case. It asserts that "victims should never have the details of their traumatic and humiliating experiences publicly disseminated without their consent," and that "[r]espect for victims' dignity and privacy must preclude the public—especially the accused—from obtaining police reports containing the violations perpetrated against them." To support its position, the HCSO cites an Illinois case, *McGee v. Kelley*, in which an appellate court held that police reports related to a sexual assault were properly withheld on grounds that disclosure would cause a "substantial" invasion of the victim's personal privacy. 95 N.E.3d 1179, 1183 (Ill. App. Ct. 2017). The HCSO further claims that it was compelled to deny access entirely because "no amount of redaction[]" would protect the alleged victim's privacy, given that the complainant knows her identity. In a reply filed on September 29, 2022, the complainant argues that the Illinois case is inapplicable here, in that there are "stark differences between this matter and someone who has faced their accuser and was convicted in a criminal court."[3]

After having reviewed the submissions—and, in particular, the descriptive index provided by the HCSO—we conclude that the HCSO properly applied § 4-351. To start, the HCSO's investigative file is not voluminous. It comprises only a handful of records, all of which contain—as the HCSO indicates in its response—"explicit details of an alleged non-consensual encounter between [the complainant] and the alleged victim." While it is clear that, in Maryland, a custodian who seeks to deny a person in interest access to investigatory records may not issue a "blanket denial" of all records in an entire file, *Blythe*, 161 Md. App. at 518, and that, instead, a custodian must justify denial as to each document withheld, *Randall Family, LLC*, 154 Md. App. at 562, in our view, the HCSO has

[2] In 2005, when the Court of Special Appeals decided *Blythe*, the exemption for investigative records was found in § 10-618(f) of the State Government Article.

[3] The complainant concluded his reply by indicating that he had "chosen to rescind [his] privacy act request to HCSO regarding this matter for personal reasons." Upon asking for clarification of that statement, the complainant confirmed that he wishes to proceed with his Board complaint.

adequately demonstrated that disclosure of each responsive record would "constitute an unwarranted invasion of personal privacy," § 4-351(b)(3). Specifically, the HCSO explains that, in light of the circumstances surrounding the complainant's PIA request, disclosure would "likely cause [the alleged victim] to have to relive her experience against her wishes through uninvited harassment and inquiries from [the complainant], lawyers, employment investigators, and possibly others."[4]

This case is different from cases such as *Maryland Comm. Against the Gun Ban v. Mayor & City Council of Baltimore*, where the Court of Special Appeals found, regarding certain internal investigation division ("IID") police reports, that there was "not even a suggestion, much less evidence, that disclosure of *this* report would invade anyone's personal privacy." 91 Md. App. 251, 265 (1992), *rev'd on other grounds*, 329 Md. 78 (1993) (emphasis original). In so finding, the court rejected the argument that "because some reports contain personal information that needs to be protected, it is necessary to shield *all* IID reports," and explained that "the law does not allow such generic, sweeping protection. It looks to the nature of the individual records actually sought, not that of other records compiled under different circumstances." *Id.* (emphasis original). Here, looking at the "nature of the individual records actually sought," there is specific factual information supporting the HCSO's contention that disclosure of these records would cause an unwarranted invasion of personal privacy. Hence, we cannot conclude that the HCSO improperly exercised its discretion in denying inspection of the records under § 4-351(b)(3).

We stress, however, that our decision here is based on the specific responsive records at issue, and that it should not be construed to mean that a custodian is always justified in denying inspection of records related to a sexual assault investigation under § 4-351(b)(3). We do not accept wholesale the HCSO's contention that privacy considerations must always "preclude the public—especially the accused—from obtaining police reports containing the [sexual] violations perpetrated."[5] The Legislature did not

[4] We recognize that the PIA forbids a custodian from "condition[ing] the grant of an application on . . . a disclosure by the applicant of the purpose for an application," § 4-204(a)(3), and that the HCSO's reasoning could be interpreted to suggest that it denied inspection because the complainant may use the requested records in an attempt to settle his "administrative matters" with his employer. However, we note that, in his PIA request, the complainant did not refer to his employment issues or otherwise indicate his purpose in seeking the records. Thus, we interpret the HCSO's explanation as accounting for the fact that, after a public record is disclosed, a custodian generally cannot restrict the use to which the record is put or the manner and amount of subsequent disclosure. Certainly, the prospect of subsequent disclosure of a record containing sensitive and personal information is relevant to a determination of whether disclosure under the PIA would "constitute an unwarranted invasion of personal privacy."

[5] Similarly, we do not rely on the Illinois case cited by the HCSO in its response. To analyze the propriety of the exemption applied in that case—5 Ill. Comp. Stat. 140/7(1)(c)—the court applied a balancing test specific to that state's exemption. That test included factors not necessarily

include records of a sexual assault investigation as among those for which disclosure is never permitted. *See* § 4-301 (general grounds for denial) ; §§ 4-304 to 4-327 (required denials for specific records); §§ 4-328 to 4-341 (required denials for specific information). Rather, when presented with a request for records related to an investigation into allegations of sexual assault, a custodian must "examine a file closely for the purpose of possible severability," and "distinguish between [information] which reflects one or more of the enumerated circumstances and that which does not." *Blythe*, 161 Md. App. at 530 (quoting *Baltimore v. Maryland Comm. Against the Gun Ban*, 329 Md. 78, 96-97 (1993)).

Conclusion

After review of the submissions and the HCSO's descriptive index, we conclude that the HCSO did not violate the PIA by denying inspection of the records requested here under § 4-351. The records are clearly "records of [an] investigation[] conducted by . . . a sheriff," § 4-351(a)(1), and the HCSO has sufficiently demonstrated that disclosure of these records to the complainant (a "person in interest") would "constitute an unwarranted invasion of personal privacy," § 4-351(b)(3).

Public Information Act Compliance Board

John H. West, III, Esq., Chair
Michele L. Cohen, Esq.
Christopher Eddings
Darren S. Wigfield

relevant to the question of whether a Maryland custodian has justified the application of § 4-351. *See McGee*, 95 N.E.3d at 1183 (when determining whether disclosure of records would constitute an unwarranted invasion of personal privacy courts consider "(1) the plaintiff's interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining the requested information").