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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 23-17

May 25, 2023

Baltimore City Fire Department, Custodian
Lynn Weisberg & Jamie Davidson Baumann, Complainants

In November of 2022, the complainants, Lynn Weisberg and Jamie Davidson Baumann, requested certain records from the Baltimore City Fire Department (“BCFD”) related to an incident and the BCFD’s subsequent investigation into that incident. The BCFD disclosed some records but withheld others on grounds that they were exempt from disclosure because they were personnel records. Unhappy with the BCFD’s response, the complainants sought dispute resolution through the Public Access Ombudsman. The Ombudsman was unable to resolve the dispute. In a complaint filed with this Board, the complainants continue to challenge the BCFD’s response to their Public Information Act (“PIA”) request. The BCFD responds that it properly denied inspection of responsive records that constitute protected personnel records. We conclude that the BCFD has not violated the PIA and explain further below.

Background

On October 24, 2020, the complainants’ family member, Jeremy Davidson, died after suffering a medical emergency. Just prior to his death, emergency medical technicians (“EMT”) from the BCFD were among the first responders who arrived at the scene of the emergency. Since that devastating loss, Mr. Davidson’s family has sought to understand what happened, in part by making PIA requests of the various agencies involved.¹ The complainants sent the request at issue here to the BCFD in November of 2022. That PIA request asked for “any and all BCFD reports and information pertaining to the first responder investigation” and records related to “any corrective measures taken.” The BCFD responded by producing records including the CAD² and emergency medical services (“EMS”) reports, and several audio files of 911 calls. However, the BCFD

¹ We recently reviewed a complaint filed by the complainants involving a different agency. *See* PIACB 23-11 (Apr. 4, 2023).

² “CAD” stands for “Computer-Aided Dispatch.” CAD reports contain “highly detailed information” about a first responder’s activities, including, e.g., the “identity of [a] responding officer, time of dispatch, time of arrival, and whether other officers were also dispatched.” *State v. Cates*, 417 Md. 678, 700 n.15 (2011) (quoting *Prince George’s County v. Brent*, 414 Md. 334, 351 (2010)).

withheld an investigative report that was, as the BCFD explained it, contained within “the disciplinary record of a City employee.” The BCFD cited § 4-311,³ the PIA’s exemption for a “personnel record of an individual,” as grounds for withholding the report.

The complainants were not satisfied with the BCFD’s response to their PIA request. So, in December of 2022, the complainants requested assistance from the Ombudsman regarding the BCFD’s denial of access to the investigative report. As a result of the dispute resolution process, the BCFD sent a supplemental response in which it indicated that “all records in the custody of and currently maintained by the BCFD concerning its response to emergency calls for service involving Jeremy Davidson have been supplied,” and that “no investigative report or other records concerning the death of Mr. Davidson exist that can be provided in response to [the complainants’ PIA] request.” Ultimately, despite the BCFD’s supplemental response, the Ombudsman issued a final determination that the dispute was not resolved.

In their complaint, the complainants continue to challenge the BCFD’s denial of access to any records or reports related to the BCFD’s investigation into the EMTs’ treatment of Mr. Davidson on the scene. They note that BCFD personnel advised that the BCFD would investigate the EMTs’ conduct, and that, months later, counsel for the BCFD told the complainants that, though the investigation was complete, they could not have access to information about it. In the complainants’ view, the BCFD’s two responses to their PIA request are contradictory—denying access under the PIA’s mandatory exemption for personnel records on the one hand, and then representing that investigative records do not exist on the other.

In its response to the Board complaint, the BCFD explains the two letters that it issued in response to the complainants’ PIA request. The first letter advised that the BCFD was denying inspection of “an investigative report contained in a BCFD personnel record.” The second, supplemental response letter was meant to “clarify that, apart from the record in the personnel file, no additional investigative records existed.” The BCFD maintains that the responsive investigatory report was properly withheld under § 4-311 because it falls “squarely within this exemption” as an “investigatory record related to a BCFD employee’s discipline” that is “contained in that employee’s personnel file.”

Analysis

Under §§ 4-1A-04 and 4-1A-05, we are charged with reviewing and resolving complaints that allege certain violations of the PIA, including an allegation that a custodian has wrongfully “denied inspection of a public record.” *See* § 4-1A-04(a)(1)(i). A complainant must “attempt[] to resolve the [PIA] dispute through the Office of a Public

³ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise specified.

Access Ombudsman” before a complaint with this Board may be filed. § 4-1A-05(a)(1). Once a complaint has been filed, we must determine whether a violation of the PIA has occurred, issue a written decision, and order a statutory remedy, if applicable. § 4-1A-04(a)(2), (3). In cases where we determine that a custodian 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 PIA “establishes a public policy and a general presumption in favor of disclosure of government or public documents,” and “reflect[s] the legislative intent that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government.” *Kirwan v. Diamondback*, 352 Md. 74, 80-81 (1998) (quoting *A.S. Abell Publishing Co. v. Mezzanote*, 297 Md. 26, 32 (1983)). Thus, unless “otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time.” § 4-201(a)(1). The PIA itself provides exceptions to this general mandate in favor of disclosure, including § 4-311, the exemption for personnel records at issue here. Section 4-311(a) requires that a custodian deny inspection of “a personnel record of an individual, including an application, a performance rating, or scholastic achievement information.”⁴ Describing this list as not “exhaustive,” Maryland’s highest court has interpreted § 4-311 to protect records that “directly pertain to employment and an employee’s ability to perform a job.” *Kirwan*, 352 Md. at 83; *see also Md. Dep’t of State Police v. Dashiell*, 443 Md. 435, 454 (2015) (“[A] ‘personnel record’ relates to an employee’s hiring, discipline, promotion, dismissal, or any matter involving his status as an employee.” (citation and quotation omitted)). With these definitions in mind, we turn to the records the complainants seek.

As general background for their PIA request, the complainants allege that the responding EMTs acted with “indifference, unprofessionalism, and disregard” for protocol, and that they ignored and otherwise mistreated the signs of Mr. Davidson’s medical distress. These concerns—which came to light after the complainants saw body camera footage from the incident—formed the basis for the complainants’ request that the BCFD investigate the situation. In turn, the complainants’ November 2022 PIA request sought “any and all BCFD reports and information” related to that investigation, as well as records of “any corrective measures taken” as a result. In other words, records of an employer’s (the BCFD’s) investigation into employees’ (the EMTs) alleged misconduct. For purposes of the PIA, such records—which relate to “an employee’s . . . discipline . . . dismissal, or any matter involving his status as an employee,” *Dashiell*, 443 Md. at 454—are personnel

⁴ There are exceptions to this general rule against disclosure, including for those individuals wishing to inspect their own personnel files or for an “appointed official who supervises the work of the individual,” *see* § 4-311(b), but the exceptions are not implicated here.

records exempt from disclosure under § 4-311.⁵ This is especially clear given that the BCFD (i.e., the EMTs' employer) created the disputed report.⁶

Finally, we address the complainants' contention that the BCFD's initial and supplemental responses to the complainants' PIA requests are contradictory. As the complainants read them, the BCFD's first letter acknowledges the existence of a responsive investigative report but denies access to that report, while the second letter denies that any responsive reports exist in the first place. We do not read the letters that way—especially in light of the clarification provided in the BCFD's response to the Board complaint. Instead, the BCFD's representation, in its second supplemental PIA response letter, that “no investigative report or other records concerning the death of Mr. Davidson exist *that can be provided in response to your request*” means that the BCFD does not have any *non-exempt* investigative reports responsive to the complainants' PIA request—not that the BCFD does not have any responsive reports at all.

Conclusion

Based on the PIA request, which explicitly sought records related to the BCFD's investigation into alleged employee misconduct, and the BCFD's representation that the disputed investigative report is contained in that employee's personnel file, we find that the BCFD properly denied inspection of the investigative report under § 4-311 of the PIA.

⁵ In 2021, the Legislature amended § 4-311 to remove records “relating to an administrative or criminal investigation of misconduct by a police officer,” from its ambit, though records related to “technical infractions” by police officers continue to be considered exempt personnel records. *See* 2021 Md. Laws, ch. 62, codified at § 4-311(c). The BCFD EMTs who responded to Mr. Davidson's emergency are not police officers as defined by the PIA, thus their personnel records are not implicated by the 2021 amendments. *See* § 4-101(i) (defining, by cross-reference to § 3-201 of the Public Safety Article, “police officer”); *see also Maryland Public Information Act Manual* (17th ed. July 2022), at 3-12 (“[R]ecords related to an employer's investigation of alleged misconduct by government employees *other than police officers* also remain subject to GP § 4-311's mandatory exemption.” (emphasis original)).

⁶ If the report had been created by an agency that does *not* have supervisory authority over the EMTs, then the personnel exemption likely would not apply. For example—and hypothetically speaking—had the BCFD referred a matter involving the EMTs for criminal prosecution, records related to a police department's investigation of that matter would not be considered personnel records, even if the underlying incident occurred during the course of the EMTs' employment. *Cf. Prince George's County v. Washington Post Co.*, 149 Md. App. 289, 331 (2003) (records of a Human Rights Commission's investigation into complaints about on-duty actions of a police officer were not personnel records because they were “produced by an agency with no supervisory authority over the individual”).

Public Information Act Compliance Board*

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* Board member Deborah Moore-Carter did not participate in the preparation or issuing of this decision.