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**STATE OF MARYLAND**  
**PUBLIC INFORMATION ACT COMPLIANCE BOARD**

**PIACB 23-19**

**May 30, 2023**

**Baltimore Police Department, Custodian**  
**John Crosset, Complainant**

In September of 2022, the complainant, John Crosset, sent a Public Information Act (“PIA”) request to the Baltimore Police Department (“BPD”) seeking body worn camera footage related to a high profile incident—the death of BPD detective Sean Suiter. The BPD denied the PIA request on grounds that the footage was part of an open investigation and that release of the footage would be contrary to the public interest. After unsuccessfully attempting to resolve his dispute through the Public Access Ombudsman, the complainant now challenges the BPD’s denial of access to the body worn camera footage before this Board. As we explain below, we conclude that the BPD’s exercise of discretion to withhold the records did not violate the PIA.

**Background**

Detective Sean Suiter was killed by a gunshot to the head in November 2017 while he was investigating a homicide in West Baltimore. As would be expected, Det. Suiter’s death generated a lot of media attention,<sup>1</sup> much of which centered around questions raised by the fact that he was shot with his own service weapon.<sup>2</sup> Though the medical examiner initially ruled Det. Suiter’s death a homicide, an independent board commissioned to review the case concluded, in 2018, that Det. Suiter took his own life. *See* Report to the Comm’r of the Police Dep’t of Baltimore City Concerning an Independent Review of the Nov. 15, 2017 Incident and Its Aftermath 50, 75 (Aug. 27, 2018) (“Suiter Report”), <https://www.baltimorepolice.org/sites/default/files/General%20Website%20PDFs/Suiter%20Report%20Public.pdf>. Despite the release of the Suiter Report, the Baltimore City State’s Attorney’s Office (“SAO”) announced, in late 2019, that the investigation into the circumstances surrounding Det. Suiter’s death remained open. Jessica Anderson, *Probe of Suiter Death Continues, Baltimore Police Commissioner Says: Status of Final “Tasks” Remains Unclear*, Balt. Sun, Dec. 13, 2019. According to a memo related to the matter,

<sup>1</sup> *See, e.g.,* Peter Hermann et al., *Baltimore Officer Dies in Shooting*, Wash. Post, Nov. 17, 2017, at B01; Justin Fenton, *Procession Honors Slain Detective: Police Hope Autopsy Offers Clues About Shooting as Search Continues for Killer*, Balt. Sun, Nov. 19, 2017, at 2.

<sup>2</sup> *See, e.g.,* Peter Hermann, *City Asks FBI to Run Murder Inquiry*, Wash. Post, Dec. 2, 2017, at B03.

police and prosecutors were “running down a tip from a federal confidential informant who told detectives about secondhand information he received from a potential witness.” *Id.*

More than two and a half years after the BPD and the SAO announced that the investigation into Det. Suiter’s death was open and ongoing, the complainant sent a PIA request to the BPD seeking the body worn camera footage from two patrol officers who were on the scene soon after Det. Suiter was shot. The complainant explained that he was working on a documentary-style podcast that would constitute “an in-depth investigation” into Det. Suiter’s death and the “controversial conclusion of an independent review board that Detective Suiter intentionally took his own life.”

The BPD denied the request, citing §§ 4-343 and 4-351.<sup>3</sup> The BPD asserted that the footage was “part and parcel to an open and pending investigation,” and that “release of any portion of footage that is currently part of an open and pending investigation would be contrary to the public interest.” Disagreeing with the denial of his request, the complainant sought dispute resolution assistance from the Public Access Ombudsman. Ultimately, the Ombudsman was unable to resolve the dispute, and thus the complainant filed this complaint now pending before our Board.

The complainant stresses the age of the matter and contends that it “strains credulity to believe there is still any investigation of the Suiter case.” Noting the journalistic purpose motivating his PIA request, the complainant argues that the body worn camera footage from the officers first on the scene is an important part of his “mission to gather and reveal the facts” in the case. The complainant also argues that the footage is already “in the public domain” by virtue of the Suiter report and an HBO special called *The Slow Hustle*,<sup>4</sup> and that it is therefore hard to believe that disclosing the footage in response to his PIA request would have a negative effect on any investigation or prosecution.

In response to the complaint, the BPD maintains that the responsive body worn camera footage—which totals about 90 minutes in length between the two videos—is part of an open investigation into Det. Suiter’s death. The BPD explains that the footage depicts “among other things, the discovery of Detective Suiter’s body and subsequent transportation to the hospital,” and that the BPD has “never knowingly authorized the release of the audio/video” from the footage. Characterizing the allegation as a challenge to the SAO’s and BPD’s decision to keep the investigation into Det. Suiter’s death open, the BPD stresses that the only question before the Board is whether the BPD abused its

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<sup>3</sup> Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise indicated.

<sup>4</sup> See HBO, *The Slow Hustle*, <https://www.hbo.com/movies/the-slow-hustle> (last visited May 8, 2023). Released in 2021, *The Slow Hustle* is a documentary that “chronicles the still unsolved death of Baltimore police detective Sean Suiter” and “explores the ongoing speculation about what really happened that day.” *Id.*

discretion when it denied the complainant's PIA request, and not whether the BPD should close its investigation.

Regarding its denial of the complainant's PIA request, the BPD first points out that the complainant is not a person in interest—i.e., he is not the subject of the records he seeks. The BPD further argues that, because the responsive footage relates to an open and ongoing investigation, § 4-351 does not require the BPD to make a particularized showing as to why disclosure of the body worn camera footage would be contrary to the public interest. At the same time, the BPD states that it nevertheless considered other public interest factors, including whether disclosure would cause an unwarranted invasion of privacy or deprive a person of the right to a fair trial. To support its contention that the investigation is open and ongoing, the BPD attaches an affidavit from the Deputy Chief of Staff for the BPD attesting that “the investigation into the death of Detective Suiter remains an open investigation of BPD” and that the SAO also “considers the matter an active and unresolved homicide investigation for which there is an assigned prosecutor.”

Finally, the BPD responds to the complainant's argument that the BPD's application of § 4-351 is improper because the footage, or portions of the footage, are already in the public domain. The BPD maintains that it has never “knowingly authorized” the release of the body worn camera footage, and that the entirety of the footage responsive to the complainant's PIA request exceeds the portions publicly available through *The Slow Hustle*. The fact that portions of the footage were depicted in a documentary—or that stills from the footage were published in the *Suiter Report*—does not, the BPD argues, mean that the BPD is required to release all 90 minutes of the footage.

In reply, the complainant contends that at the very least, the BPD should redact the portions of the body worn camera footage that might compromise any open investigation and release the rest. Further, noting that the BPD and the SAO have not “made an appeal for tips in the case since the [Suiter Report] in 2018,” or “updated the public on the status of the investigation since 2019,” the complainant argues that the BPD has not offered any specific evidence that an investigation is ongoing, instead asking the public to simply trust its representations to that effect. The complainant emphasizes journalists' role in “[h]olding the government accountable,” and suggests that it is possible that the BPD could be “resisting transparency for reasons other than protecting an investigation.”

### **Analysis**

The PIA charges us with resolving complaints that allege certain violations of its provisions, including that a custodian wrongfully denied inspection of a public record. *See* § 4-1A-04(a)(1)(i). Once a complaint has been filed, we must determine whether a violation of the PIA has occurred, issue a written decision and, if applicable, order a

statutory remedy.<sup>5</sup> § 4-1A-04(a)(2) and (3). Our conclusions are based on the written submissions of the complainant and custodian (or, in some cases, the applicant),<sup>6</sup> and any additional information we might request to aid in our review. *See* § 4-1A-06(b) (governing responses to complaints and allowing the Board to request additional information, including a copy or descriptive index of the record). If we determine that a custodian “denied inspection of a public record in violation of [the PIA],” then we must order the custodian to “produce the public record for inspection.” § 4-1A-04(a)(3)(i).

The PIA “establishes a public policy that favors disclosure of government or public documents,” and generally must be “construed liberally in favor of disclosure.” *Bowen v. Davidson*, 135 Md. App. 152, 157 (2000). At the same time, the PIA “provide[s] exceptions to the general rule favoring disclosure.” *Id.* One of those exceptions is found in § 4-351(a), which may be invoked to shield “records of investigations conducted by . . . a police department” from disclosure if “a custodian believes that inspection of a part of [such a] record by the applicant would be contrary to the public interest.” § 4-343. Under subsection (b), a custodian may deny inspection by a person in interest<sup>7</sup> “only to the extent that inspection would” result in at least one of seven specific harms. *E.g.*, § 4-351(b)(1) and (3) (“interfere with a valid and proper law enforcement proceeding” or “constitute an unwarranted invasion of personal privacy”). Thus, while a person in interest is entitled to “more favorable treatment,” *Office of the State Prosecutor v. Judicial Watch*, 356 Md. 118, 139 (1999), a custodian has broader discretion to deny inspection to non-persons in interest under § 4-351(a) 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).

The concerns listed in § 4-351(b) “would also justify withholding a record from a requester who does not qualify as a ‘person in interest.’” 92 Md. Op. Att’y Gen. 26, 42 (2007). As noted above, one of those concerns is that disclosure would “interfere with a valid and proper law enforcement proceeding.” § 4-351(b)(1). The status of an investigation—i.e., whether it is open and ongoing or closed—is relevant to how a custodian may prove that disclosure would cause such interference. As the Appellate Court of Maryland has explained, “[i]n cases where defendants are awaiting trial or whe[re] criminal investigations are ongoing, the reason why it is in the public interest to withhold the contents of an investigative file is obvious,” *Randall Family*, 154 Md. App. at 566, and

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<sup>5</sup> Before a complaint may be filed, a complainant must attempt to resolve the dispute through the Public Access Ombudsman, and receive a final determination from the Ombudsman that the dispute was not resolved. § 4-1A-05(a). Upon receipt of the final determination, a complainant has thirty days in which to file a complaint with this Board. *Id.*

<sup>6</sup> See § 4-1A-04(b), regarding complaints by custodians that “an applicant’s request or pattern of requests is frivolous, vexatious, or in bad faith.”

<sup>7</sup> The PIA defines a “person in interest” as, among other things, “a person . . . that is the subject of a public record.” § 4-101(g)(1).

a custodian may “show that disclosure could constitute interference generically, rather than having to show particularized interference on an *ad hoc*, case-by-case basis,” *Blythe v. State*, 161 Md. App. 492, 538 (2005).

Turning to the matter before us, we first address the complainant’s skepticism that the BPD’s investigation into Det. Suiter’s death is truly open and ongoing, especially in light of the amount of time that has passed since the detective’s death and the release of the Suiter Report. The BPD has asserted, through a sworn affidavit from its Deputy Chief of Staff, that the “investigation into the death of Detective Suiter remains an open investigation of BPD,” and that the SAO also “considers the matter an active and unresolved homicide investigation for which there is an assigned prosecutor.” The affidavit provides some detail about what the responsive body worn camera footage contains and attests that the footage “is part of the open investigation of both the BPD and the SAO.”

In his reply, the complainant contends that the BPD’s additional investigation consisted of looking into a cellphone missing from the evidence room and testing trace DNA. Citing a recent news report, the complainant points out that the investigation into the missing cellphone evidence concluded in January of 2023, and suggests that more than enough time has passed for the BPD to conduct any further testing on DNA that it has collected. But, the very same article cited by the complainant contains references to the open investigation and reports that, in addition to the cellphone and DNA issues, prosecutors had “tracked down a person of interest living in the Midwest.” Justin Fenton, *Sean Suiter Case: No Wrongdoing Found in Probe Involving Phones Removed from Evidence Control*, *The Baltimore Banner* (Jan. 6, 2023), <https://www.thebaltimorebanner.com/community/criminal-justice/sean-suiter-baltimore-police-department-TM7GFWYIXVGSDEQAKU2Y34KBFI/> (last visited May 9, 2023). Thus, though we are mindful that the General Assembly “clearly did not intend for public agencies to avoid disclosure under the PIA by failing to conclude investigations,” *Fioretti v. Maryland State Bd. of Dental Examiners*, 351 Md. 66, 91 (1998), we do not have concerns that the BPD is doing so here. Both the BPD’s affidavit and recent reporting about Det. Suiter’s death are, in our view, sufficient to show that the BPD’s investigation is indeed open and ongoing.

Next, we turn to whether the BPD has justified its application of § 4-351 to withhold the body worn camera footage responsive to the complainant’s PIA request. At the outset, we note that both parties appear to agree that the complainant does not have the “favored status,” *Blythe*, 161 Md. App. at 531, of a person in interest. He is not the subject of the records he seeks. Thus, in explaining why inspection of footage related to the *open and ongoing* investigation into Det. Suiter’s death would be “contrary to the public interest,” § 4-343, the BPD is not required to make a “particularized showing” that the exemption applies as to “every document withheld,” *Randall Family*, 154 Md. App. at 562, or, as we see it, to each and every frame of the responsive footage, *see Mayor & City Council of*

*Baltimore v. Maryland Comm. Against the Gun Ban*, 329 Md. 78, 96 (1993) (explaining that the “statutory mandate” in what is now § 4-351(b) that “inspection may be denied to the person in interest ‘only to the extent’ that the inspection would give rise to one of the seven enumerated circumstances . . . requires analyzing the investigation file material in order to distinguish between that which reflects one or more of the enumerated circumstances and that which does not”); *see also Randall Family*, 154 Md. App. at 565-66 (discussing the “distinction between open and closed investigative reports”).

We find no error in the BPD’s application of § 4-351(a) to withhold, at this point, the body camera footage that the complainant requested. First, there is no question that the records fall within the scope of the exemption. They are “records of [an] investigation[.]”—i.e., an investigation in to Det. Suiter’s death—“conducted by . . . a police department.” § 4-351(a)(1). The only question then, is whether the BPD has adequately demonstrated that disclosure to the complainant—a non-person in interest—would be “contrary to the public interest.” § 4-343. Based on the submissions before us, we think the answer is yes. The affidavit from the BPD’s Deputy Chief of Staff provides some detail about the footage and the circumstances surrounding the events that it depicts, and attests that the BPD’s and the SAO’s investigation into Det. Suiter’s death is open and continuing. Nothing we have reviewed or considered gives us reason to doubt that assertion. And, in its response to the PIA request, the BPD explained that the footage was “part and parcel” to that open investigation and that “release of *any portion* of footage that is currently part of an open and pending investigation would be contrary to the public interest.” Thus, the BPD has shown—albeit somewhat “generically”—that disclosure of the responsive body worn camera footage would be “contrary to the public interest,” § 4-343, because disclosure would “interfere with a valid and proper law enforcement proceeding,” § 4-351(b)(1).

Finally, we address the complainant’s argument that the body worn camera footage is already in the public domain and that, therefore, disclosure of the footage in response to his PIA request would not have any negative effect on the BPD’s investigation. While it may be true that “if identical information is truly public, then enforcement of an exemption cannot fulfill its purposes,” *Niagara Mohawk Power Corp. v. United States Dep’t of Energy*, 169 F.3d 16, 19 (D.C. Cir. 1999), we do not view the select portions of the footage that have been published in some way as “identical” to the entire 90 minutes of body worn camera footage, *cf. Pike v. United States Dep’t of Justice*, 306 F.Supp.3d 400, 411 (D.D.C. 2016) (explaining that it was “wrong to insist that the government’s disclosure of some, but not all, of [a] transcript warrants a court order compelling the release of *all* of that document,” (emphasis original)). Nor does the fact that the Suiter Report contains still photographs taken from the footage mean that the footage surrounding those frames must be disclosed. *Cf. id.* at 412 (“[W]ritten transcripts of recordings do not contain information that is identical to the *audio* recorded version.” (emphasis original)).

## **Conclusion**

After review and consideration of the parties' submissions, we conclude that the BPD did not violate the PIA by denying the complainant's request for body worn camera footage from two police officers who arrived on scene shortly after Det. Suiter's death. Rather, the BPD's application of § 4-351 to withhold these records was an appropriate exercise of discretion. The records clearly fall within the scope of the exemption, and the BPD has shown that disclosure of the footage would be contrary to the public interest because disclosure would interfere with the open and ongoing investigation into Det. Suiter's death.

## **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.