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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-12
October 30, 2023
Office of the Chief Medical Examiner, Custodian
Bruce Goldfarb, Complainant

The complainant, Bruce Goldfarb, sent a Public Information Act (“PIA”) request to the Office of the Chief Medical Examiner (“OCME”) seeking “access to the Nutshell Studies of Unexplained Death.” In its response to the PIA request, the OCME took the position that the Nutshell Studies were not “a record received by the OCME in connection with the transaction of the OCME’s public business,” and advised that it was unable to open the Nutshell Studies to the public at that time. The complainant challenges the OCME’s position and argues that the Nutshell Studies are public records. He alleges, accordingly, that the OCME violated the PIA by denying his request to inspect those public records. The OCME maintains that the Nutshell Studies are not public records or, if they are, that the restrictions that the OCME has placed on viewing the Nutshell Studies—most notably that a member of the public must make an appointment to view them—are reasonable under the PIA. As explained below, we find no violation of the PIA.

Background

In the 1940s and 1950s, a woman named Frances Glessner Lee created a series of “crime scene dollhouses” that are “so convincing that they are still used in forensic investigative training today.” Arthur L. Rizer III, *The Nutshell Studies of Unexplained Death*, 52 Fed. Law. 57, 57 (2005) (book review). The dioramas “feature handmade objects to render scenes with exacting accuracy and meticulous detail,” and their every element—“from the angle of miniscule bullet holes, the placement of latches on windows, the patterns of blood spatters, and the discoloration of painstakingly painted miniature corpses—challenges trainees’ powers of observation and deduction.” Smithsonian American Art Museum, *Murder is Her Hobby: Frances Glessner Lee and the Nutshell Studies of Unexplained Death*, <https://americanart.si.edu/exhibitions/nutshells> (last visited Oct. 30, 2023). Though the Nutshell Studies are on permanent loan to the OCME from the Harvard Medical School, they are not always kept in the OCME’s custody. *See id.* (noting that the Nutshell Studies, which were displayed at the Smithsonian American Art Museum’s Renwick Gallery from Oct. 20, 2017, to Jan. 28, 2018, were “on loan to the museum from the Harvard Medical School via the [OCME]”).

According to the complainant, the OCME has accommodated “[v]isits by professionals and others with an interest in viewing the Nutshell Studies . . . without issue for years.” In March of this year, however, the complainant “heard that the OCME was informing people that the Nutshell Studies [were] closed to the public.” Apparently concerned by this rumor, the complainant sent a PIA request to the OCME seeking to inspect the Nutshell Studies. In his PIA request the complainant contended that the Nutshell Studies were public records as defined by the PIA and advised that he could “let somebody know the specific dates and times that [he] would like to exercise [his] right to access the Nutshells.”¹

In a letter sent on March 23, 2023, the OCME took the position that the Nutshell Studies were not public records for purposes of the PIA and explained that, while the PIA “encompass[ed] records maintained in a broad range of formats,” public records included only “items which are collected or retained in connection with public business.” The OCME explained further that its public business was to “perform post mortem examinations” as provided by the Health General Article. At the same time, the OCME advised that it was “mindful that the Nutshell Studies hold academic and cultural interest for many members of the public,” and thus the OCME sought to “make the Nutshell Series available for public viewing when time and staffing permits.” However, the OCME continued, at that time the OCME was “unable to open the Nutshell Series to the public,” though it “hope[d] to resolve [the] current staffing issue as soon as possible” and “to make them available to the public in the near future.”

The complainant responded to the OCME by letter dated March 29, 2023. He countered that the OCME’s public business included more than post mortem examinations, noting that Maryland’s Code also directs the OCME to “maintain training programs.” The complainant attached the job description for the position of Chief Medical Examiner and suggested that the “Franc[e]s Glessner Lee Homicide Investigation Seminar fits well within ‘Directs the overall operation of the office’ as well as acting as a liaison/coordinator with other governmental agencies.” In addition, the complainant pointed out that the dioramas’ power and maintenance costs are paid by the State, and thus connected to public business.

On March 31, 2023, the complainant sent the OCME another letter advising that his PIA request “still stands.” He claimed that the OCME’s March 23 response letter “conced[ed] that the Nutshells are records,” and that he believed his request, which limited visits to the Nutshell Studies “only to those with a professional need or interest to see the dioramas” with advance notice to the OCME was reasonable and did not overly burden the OCME staff or resources. The complainant argued that the PIA is “quite clear that any member of the public has the right to access records at any reasonable time,” and that

¹ The complainant also asked for “copies of all emails to or from Tom Brown that mention [him] or the Nutshells from September 6, 2022 to the present.” That aspect of the complainant’s PIA request is not at issue in this complaint.

“[p]rohibiting all visits is not reasonable, and not in compliance with the law.” He contended that OCME had not provided him with a legal basis for denying access to the Nutshell Studies. The OCME responded that it was “simply unable to open the Nutshell Series to the public at this time.”

The complainant continued to dispute the OCME’s response to his PIA request and contacted the Public Access Ombudsman for assistance in resolving that dispute. After the Ombudsman issued a final determination stating that the dispute was not resolved, the complainant filed this complaint. He alleges that the OCME violated the PIA by denying him access to the Nutshell Studies. In particular, he takes issue with the OCME’s position that the Nutshell Studies, which he describes as “educational materials in the custody and control of the OCME,” are not public records subject to the PIA.

In response to the complaint, the OCME confirms that it has possession of the Nutshell Studies and that in past years, visitors to the OCME have been permitted to take tours of the dioramas. In more recent years, however, the OCME discontinued public tours due to both the Covid-19 pandemic and staffing shortages. Such was the state of things when the complainant sent his PIA request in March of 2023. However, the OCME indicates that the tours have resumed and that a member of the public may schedule a tour by contacting the OCME’s Assistant to the Chief. The renewed public access to the Nutshell Studies notwithstanding, however, the OCME asserts that the dioramas are not public records for purposes of the PIA.

Stressing that public records are made or received “in connection with the transaction of public business,” § 4-101(k)(1),² the OCME maintains that the Nutshell Studies are not so connected to its “public business” as to render them public records. The OCME explains that its public business is to “investigate suspicious deaths that occur in the State,” not to “curate art exhibits.” Citing § 4-103(a), the OCME further argues that the Nutshell Studies are not public records because they do not provide “information about the affairs of government and the official acts of public officials and employees.” Nor does the fact that the OCME uses the dioramas as educational materials mean that the dioramas are public records. The OCME argues that finding otherwise would necessarily mean that, e.g., the obstacle courses and firearms used in police training are also public records, a result that the OCME maintains is absurd.

Finally, the OCME contends that, even if the Nutshell Studies are public records for purposes of the PIA, the PIA allows an agency to place reasonable restrictions on the inspection of public records. The OCME argues that the restrictions now in place are reasonable given that the Nutshell Studies are “housed in a busy State building that conducts sensitive medical procedures on a daily basis.”

² Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise specified.

In reply, the complainant first provides more specific detail about the nature of the agreement that led the OCME to come into possession of the Nutshell Studies. Citing an agreement that is “on file at the OCME and the Office of the Attorney General,” the complainant explains that the dioramas are on permanent loan to the Maryland Medical-Legal Foundation—which is housed within the OCME’s offices—for “the purposes of training in the seminar on homicide investigation.” Thus, the complainant contends that they are “instructional media,” and not “meaningless ornamental objects.”

The complainant also elaborates on his argument that the Nutshell Studies are in fact connected to the OCME’s “public business.” Citing § 5-302 of the Health-General Article, the complainant emphasizes that one of the OCME’s duties is to “advance forensic science through medical education and research,” and notes that the Nutshell Studies are used in training seminars for homicide detectives. Moreover, the complainant points out that the seminar’s coordinator is a full-time State employee. As to what the public might glean about the affairs of government from viewing the Nutshell Studies, the complainant suggests that they provide a “greater understanding of how the OCME trains homicide investigators.”

The complainant also addresses the rationale that the OCME offers for the restrictions it has placed on viewing the Nutshell Studies. He explains that the dioramas are housed in two rooms off of the OCME’s main lobby, and that those rooms are “isolated from the rest of the building by doors locked with swipe-card access” and “under continuous video surveillance by several ceiling-mounted video cameras.”³ In the complainant’s view, “[a]llowing access to the Nutshell Studies requires no more staff attention than pressing a button to permit entrance,” and thus the visits’ impact on the OCME staff is “negligible.” The complainant also argues that the OCME’s decision to limit visits to the first Tuesday of the month—a “day and time [that] simply does not work for everybody”—is arbitrary and cannot possibly accommodate all those who wish to see the Nutshell Studies.

The complainant concludes by asserting that the Nutshell Studies fit the plain language of the PIA’s definition of “public record” and that the OCME has failed to demonstrate otherwise. He advises that he is not seeking “any specific remedy,” but rather asks that “the Nutshell Studies and other forensic pathology material on display at the OCME . . . be recognized as public records.”

Analysis

Section 4-1A-04(a) authorizes us to review and resolve complaints by PIA requesters that allege certain violations of the PIA’s provisions. Specifically, we are

³ The complainant is a former OCME employee. Thus his familiarity with both the Nutshell Studies themselves and the operations of the OCME.

empowered to review allegations that a custodian “denied inspection of a public record in violation of [the PIA],” “charged an unreasonable fee . . . of more than \$350,” and “failed to respond to a request for a public record within [certain] time limits.”⁴ § 4-1A-04(a)(1). If, after consideration of the submissions and information before us, we conclude that the alleged violation of the PIA has occurred, we must order a specific remedy provided by the statute—e.g., when we find that a custodian has denied inspection of a public record in error, we must direct the custodian to “produce the public record for inspection.” § 4-1A-04(a)(3)(i).

The PIA defines the term “public record” broadly. A public record is “the original or any copy of *any documentary material*” that is made or received by a “unit or an instrumentality of the State or of a political subdivision . . . *in connection with the transaction of public business.*” § 4-101(k)(1)(i) (emphases added). A public record may take “*any form,*” including, for example, “a drawing,” “a photograph or photostat,” or “a recording.” § 4-101(k)(1)(ii) (emphasis added). In general, the PIA must be “construed in favor of allowing inspection of a public record, with the least cost and least delay,” unless “an unwarranted invasion of the privacy of a person in interest would result.” § 4-103(b); *see also Office of the Governor v. Washington Post Co.*, 360 Md. 520, 544 (2000) (“[T]he statute should be interpreted to favor disclosure.”). “Except as 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). In addition, “[t]o protect public records and to prevent unnecessary interference with official business,” the official custodian must “adopt reasonable rules and regulations that, subject to [the PIA], govern timely production and inspection of a public record.” § 4-201(b).

The central question here is whether the Nutshell Studies—i.e., the eighteen dioramas themselves—are public records within the meaning of § 4-101(k). If they are, then they are subject to inspection under the PIA’s provisions. If they are not, then the PIA simply does not apply. The complainant argues that the Nutshell Studies are “educational materials” and “instructional media” directly related to the OCME’s public duty to “advance forensic science through medical education and research” as provided in § 5-302 of the Health-General Article. The OCME, on the other hand, takes a narrower view of its “public business” and argues that that the Nutshell Studies were not made or received by the OCME in “connection with the transaction of [its] public business,” as required by § 4-101(k)(1)(i).

This complaint thus presents a novel question. We are unaware of any caselaw in Maryland—or anywhere else for that matter—that addresses whether objects such as the

⁴ Before filing a complaint, a complainant must attempt to resolve a dispute through the Public Access Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a); *see also* COMAR 14.02.02.01B (“The complaint shall . . . [p]ertain only to the dispute described in the Final Determination.”).

Nutshell Studies dioramas might constitute public records. So, we start with the language of the PIA. Certain elements of the PIA’s definition of “public record” are clearly met. The OCME is, without a doubt, a “unit . . . of the State.” § 4-101(k)(1)(i); *see* Md. Code Ann., Health-Gen. (“HG”) § 5-302(a) (“There is an Office of the Chief Medical Examiner in the [Maryland Department of Health].”). And, though perhaps less clear, we think that the Nutshell Studies were “received by” the OCME “in connection with the transaction of public business.” § 4-101(k)(1)(i). While the OCME’s duty to “advance forensic science through medical education and research” may be secondary to the investigative and other duties outlined in HG § 5-308—after all, the OCME’s educational and research functions are to be conducted “[a]s allowed by staffing,” HG § 5-302(b)(1)—education of the forensic medical community is at least part of the OCME’s public business, *see* Maryland Dep’t of Health, Office of Chief Medical Examiner, OCME Educational and Training Programs, <https://health.maryland.gov/ocme/Pages/education-training.aspx> (last visited Oct. 30, 2023) (providing details about various training programs, including the Frances Glessner Lee Seminar in Homicide Investigation). And, in any event, the Nutshell Studies’ connection to the OCME is certainly not private in nature. *Compare, e.g., Washington Post Co.*, 360 Md. at 538 (concluding that the “home telephone bills of the Governor and his family”—which were generated from the Government House—were not public records covered by the PIA). Finally, given that public records may take “any form,” and that the PIA provides a long, non-exhaustive, and varied list of examples, it does not seem to us that the nature of the Nutshell Studies alone—i.e., that they are three-dimensional dioramas—excludes them from the PIA’s definition of a public record.

In our view, the more difficult question here is whether the Nutshell Studies dioramas qualify as “documentary material”—a question that neither party addresses in any depth. The term “document,” when used as a verb, means “to record the details of an event, a process, etc.” or “to record information about something important by writing about it or photographing it.”⁵ For purposes of the PIA, then, “documentary” material is material that records and documents the affairs and workings of the governmental unit in some way. Viewed in this way, the Nutshell Studies are not public records of the OCME. The dioramas have artistic and educational value more akin to the works of art hanging in a public museum. Though the Nutshell Studies may, as the complainant points out, inspire and educate others in the field of forensic medicine—just as artwork inspires visitors to a museum—that inspiration does not transform the Nutshell Studies into “documentary material” within the meaning of the PIA. And, that the dioramas are tools or objects used by the OCME to carry out the educational aspect of its duties does not necessarily mean that the dioramas themselves constitute “documentary material” of the OCME. Rather, the Nutshell Studies are more like the tasers or firearms used by police in the training of cadets

⁵ *See* Cambridge Dictionary, “Document,” <https://dictionary.cambridge.org/us/dictionary/english/document>, (last visited Oct. 30, 2023).

or the items used as evidence in mock trials conducted to train government attorneys.⁶ Documentary material *about* the Nutshell Studies—e.g., records related to their transfer to the Smithsonian American Art Museum in 2017—may well constitute public records subject to the PIA. In our view, however, the Nutshell Studies themselves are not.⁷

Even if the Nutshell Studies do qualify as public records under an extremely broad interpretation of the PIA’s definition, we agree with the OCME that the restrictions it has placed on inspection are reasonable. The dioramas are unlike most public records, which are generally easy to reproduce and copy. That is not the case here. While OCME’s custodian could conceivably provide a “photograph of the public record,” *see* § 4-205(b)(1), a person who wishes to see the Nutshell Studies in their full form must inspect them in-person. Consistent with § 4-201(b), which requires the official custodian to “adopt reasonable rules or regulations” so as to “protect public records and to prevent unnecessary interference with official business,” the OCME has created a visitor policy for those who want to see the Nutshell Studies. In our view, that policy—which permits visits by advance registration on the second Tuesday of every month and considers requests to visit at other times on a case-by-case basis—is reasonable given the unique nature of the dioramas and that the OCME’s primary duties relate to the investigation of deaths that occur under certain circumstances, and not to the Nutshell Studies. *See* HG § 5-308; *see also* HG § 5-302(b)(1) (“*As allowed by staffing,*” the OCME shall “advance forensic science through medical education and research,” (emphasis added)).

⁶ We do not mean to suggest that all training material used by agencies falls outside the scope of the PIA. Indeed, a lot of training material—e.g., PowerPoint slides or handouts given to trainees—will be documentary in nature and thus fall within the PIA’s definition of “public record.”

⁷ In his PIA request, the complainant explained that when he worked at the OCME he “turned away the vast majority of people who asked to see the Nutshells” and “would not give time for casual tourists,” but “only allowed visits for people who had a professional interest or need to visit the Nutshells.” Pleading his case further, the complaint suggested that he could let the OCME know when he wanted to visit the Nutshell Studies and “continue to tell people that they are closed to the public” because “[a]s a private citizen, [he could] lie.” As the OCME points out in its response, these sorts of arrangements are completely inconsistent with the purpose and spirit of the PIA. *See* § 4-103(a) (“*All persons* are entitled to have access to information about the affairs of government and the official acts of public officials and employees.” (emphasis added)); § 4-204(a) (generally forbidding a custodian from conditioning inspection on an applicant’s identity, organizational or other affiliation, or the purpose for inspection). Though in reply the complainant explains that he is not an attorney or an expert in the PIA and argues that his “grasp of the MPIA at any point in time has no bearing on whether or not the Nutshell Studies are public records,” we nevertheless find his perspective telling as to the nature of the Nutshell Studies. We wonder whether the complainant would have suggested the same limitations on access regarding autopsy reports or other records generated by the OCME.

Conclusion

Based on the information before us, we conclude that the Nutshell Studies are not public records within the meaning of § 4-101(k) of the PIA. And, even if we were to conclude otherwise, we find that the restrictions that the OCME has placed on in-person inspection of the Nutshell Studies dioramas are “reasonable rules or regulations,” § 4-201(b), that would govern inspection of those public records. Therefore, the OCME has not violated the PIA.

Public Information Act Compliance Board*

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* For the reasons outlined briefly below, Board member Debra Lynn Gardner does not join in this decision in full.

Though I agree that the restrictions that the OCME has placed on in-person inspection of the Nutshell Studies are, on balance, reasonable, I would find that the Nutshell Studies are public records under the definition provided in the PIA. In my view, these dioramas are documentary material as envisioned by the PIA. They document various causes of death and hypothetical crime scenes in such a way that they remain invaluable training tools. I do not see how they differ from photographs, videos, or PowerPoint slides that may also be used in the OMCE's forensic medical trainings. The Nutshell Studies are not mere art—although they may also be art. The fact that they are three-dimensional objects does not alter their basic character as documentary material for purposes of the PIA. Given that there is no applicable or persuasive precedent, and that there are no reasons consistent with the purposes of the PIA to rule narrowly, I would conclude that the Nutshell Studies are public records but that the OCME has now made them available at reasonable times.

Debra Lynn Gardner