

April 30, 2015

VIA EMAIL

Captain John Eric Kowalczyk
Public Information Officer
Baltimore City Police Department
601 E. Fayette Street
Baltimore, MD 21202-4014

Re: Public Information Act Requests to Baltimore Police Department

Dear Captain Kowalczyk:

I write on behalf of interested news organizations, including The Associated Press, The Baltimore Sun, Bloomberg L.P., BuzzFeed, National Public Radio, Inc., The New York Times Company, Reporters Committee for Freedom of the Press, The Wall Street Journal, The Washington Post, WBAL Radio, WBAL-TV and WJZ-TV to address the Baltimore Police Department's failure to respond to several requests for documents related to the Freddie Gray matter, which have been submitted to the Department over the past few weeks pursuant to the Maryland Public Information Act ("MPIA"). I write to request that at least with respect to records for which there is no possible PIA exemption that could apply in whole or in part—including but not limited to records of arrests, 911 tapes, call logs, etc.—that the Department provide such information immediately, consistent with the requirements of the MPIA.

Under the MPIA, the public and the news media have the right to inspect a police record unless the statute exempts it. And it is well-settled that certain categories of records must be disclosed because they do not fall within any potential statutory exemption. For example, the Maryland Attorney General's Office opined many years ago that arrest logs are not investigatory records because they simply reflect the result of an investigation, rather than the investigation itself. 63 Md. Op. Att'y Gen. 543. Similarly, 911 calls initiated by citizens are not investigatory records. We recognize that there are also some categories of records for which the custodian may deny access if he or she believes that granting access to it would be "contrary to the public interest." MD. CODE ANN., GENERAL PROVISIONS § 4-343; *Office of the Governor v. The Washington Post*, 360 Md. 520, 554 (2000).

However, any time the Department may require to review records to determine whether it believes an exemption should apply should not delay the release of records that clearly must be

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disclosed. Generally, under the MPIA the Department's obligation is to "grant or deny the application *promptly*" and then "produce the public record *immediately* or within the reasonable period that is needed to retrieve the public record." MPIA § 4-203(a)-(b) (emphases added). Indeed, the plain meaning of the statute makes clear that the 30-day period referred to in the statute represents an outer maximum, but does not constitute a presumptively reasonable amount of time regardless of the circumstances of the particular request. Otherwise, the statute would essentially become a vehicle for delay. The Maryland Attorney General's MPIA Manual specifically addresses this situation and states:

Under GP § 4-203(b), if a record is found to be responsive to a request and is recognized to be open to inspection, it must be produced "immediately" after receipt of the written request. An additional reasonable period "not to exceed 30 days" is available only where the additional period of time is required to retrieve the records and assess their status under the PIA.

MPIA Manual at 4-3 (13th ed., Oct. 2014). The Attorney General's Manual further emphasizes that custodians should "immediately grant[] access where the right of access is clear." *Id.* Moreover, even with respect to that portion of a request that may require review, "a custodian should not wait the full 30 days to allow or deny access to a record if that amount of time is not needed to respond." *Id.* at 4-2. We therefore request that any records requested by members of the news media not subject to an exemption be released immediately, and any others as soon as possible.

In addition, the Department's investigation into Mr. Gray's arrest and treatment was completed and presented to the State's Attorney this morning. Members of the news media have already submitted PIA requests to the Department for this report. We believe this report should be released to the public immediately. This is a matter for which no review should be required because there is enormous public interest in and an expectation of transparency with regard to this matter, and release of the document would therefore only serve the public interest. In this particular situation any effort to withhold the report, even temporarily, would itself be manifestly contrary to the public interest.

Please feel free to contact me directly if it would aid expedition of the release of these important public records.

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 
Nathan E. Siegel

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cc: Suzanne Sangree, Chief Legal Counsel
Legal Affairs Practice Group, Baltimore City

Marilyn Mosby, State's Attorney for Baltimore City