



**LGIT'S COMMANDER'S LOG
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Under Maryland's Public Information Act, the warden is the official custodian of the correctional institution's records.

QUESTION: Can a warden who receives a request for public records under the Public Information Act ("PIA") respond by directing the requesting person to contact the specific departments that physically maintain the records?

ANSWER: No. Under the PIA, the warden has the same duties and responsibilities as the physical custodian of records and must respond accordingly.

CASE: *Robert Lamont Ireland v. Warden Bobby Shearin*
Court of Appeals of Maryland, Decided December 20, 2010

In this case, the Court of Appeals of Maryland considered a Public Information Act ("PIA") request made to John Rowley, then the Warden of the North Branch Correctional Institution ("NBCI"). On November 10, 2008, inmate Robert Lamont Ireland sent a letter to Warden Rowley requesting the disclosure of certain public records maintained at NBCI. Ireland requested four categories of documents: (1) Correctional Medical Services Contract Records; (2) Records pertaining to the Inmate Welfare Fund; (3) Institutional Operations Records (such as documents relating to security restrictions, security violations, and complaints from inmates about their conditions of confinement); and (4) Copying Card Records. Eleven days after Ireland sent his letter, the warden's secretary issued a response letter, directing Ireland to make separate requests to each department. The letter stated:

Your request has been reviewed; however, the information [that] you have requested is not kept on file in the Warden's Office. Each department is responsible for maintaining files that are related to that particular department. Please direct your request to each department in which the request is relevant.

The letter directed Ireland to the specific offices in which the records were maintained. Ireland did not write to the specific departments. A month and a half later, he still had not received any documents from the warden. As a result, Ireland filed a complaint under the PIA, alleging that Warden Rowley improperly denied his PIA request. Ireland requested compensatory and punitive damages for each denial. Bobby Shearin, the warden who succeeded Warden Rowley, moved to dismiss the complaint. He argued that his predecessor had not withheld disclosure in violation of the PIA and could not have granted Ireland's request because the requested documents were not maintained by the Warden's Office, but rather were housed in other NBCI departments. The circuit court granted the warden's motion and dismissed the case. Ireland appealed and the Court of Appeals accepted the case for review.

The Court of Appeals reversed the judgment entered in the warden's favor. It did so because even though Warden Rowley was not the "physical" custodian of the records, he was, pursuant to the PIA, the "official" custodian. The PIA defines a "custodian" as someone who is the "official custodian" or "any other authorized individual who has physical custody and control of a public record." State Government (SG) Article, § 10-611 (d). The "official custodian" is an "officer or employee of the State or of a political subdivision who, whether or not the officer or employee has physical custody and control of a public record, is responsible for keeping the public record." SG § 10-611(d). The term "warden" falls within the definition of "managing official" under the Correctional Services (CS) Article. *See* CS § 1-101(k) (defining "Managing official" as the "administrator, director, warden, superintendent, sheriff, or other individual responsible for the management of a correctional facility.") As such, the individual responsible for "managing" NBCI or any other correctional facility is responsible for maintaining records at the institution. It follows that such person qualifies, as did Warden Rowley, as the official custodian of records under the PIA. As the official custodian, the warden incurred the same duties and responsibilities as the physical custodian of records. Because Warden Rowley was the official custodian, he was not authorized to simply redirect Ireland to other departments. Instead, the burden to collect and assemble the requested documents fell squarely on him. In short, Warden Rowley could only grant or deny Ireland's application because of his status as the official custodian of the records. Because he failed to do so, the case was remanded to the circuit court to determine whether the warden "knowingly and willfully failed to disclose a public record that [Ireland] was entitled to inspect" and, if so, to determine the amount of Ireland's damages, if any.

NOTE: If the court had adopted the warden's argument, an agency could unduly prolong an applicant's request by continually re-routing the requesting party through each level of bureaucracy. As the court said, "[t]his would not only multiply the cost and delay of the requesting party, but it would also contradict the spirit of disclosure underlying the [PIA]." It needs to be understood, however, that the ruling in this case does not obligate the official or physical custodian of public records to gather the requested documents so that they will be available for inspection at a centralized location. Obviously, this would interfere with official business at most public entities, including correctional facilities. Rather, the PIA requires each official custodian to "adopt reasonable rules or regulations that ... govern timely production and inspection of a public record." The Secretary of the Department of Public Safety and Correctional Services has issued guidelines requiring a custodian to make a public record available "during the agency's normal working day." The regulations also provide that the record be inspected or copied at the location where it is maintained, "unless the custodian determines that another location would better serve the needs of the individual inspecting or copying the public record of the Department." Here, the warden could have complied with the PIA if he had timely directed each department to produce the requested rerecords for inspection. Further, since Ireland was incarcerated, the warden was at liberty to mail copies of the records at Ireland's expense. In light of this case, please review your facility's obligations under the PIA in order to avoid needless litigation.

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