

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

MARYLAND STATE CONFERENCE	)	
OF NAACP BRANCHES, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 98-1098 (FPS)
	)	
MARYLAND STATE POLICE, et al.,	)	
	)	
Defendants.	)	

**ORDER DIRECTING MARYLAND STATE POLICE<sup>1</sup>**  
**TO TURN OVER REDACTED COPIES OF COMPLAINTS TO PLAINTIFFS**  
**AND DISMISSING COMPLAINT WITH PREJUDICE**

I. Background

This case arises out of traffic stops and vehicle searches initiated by Maryland State Police ("MSP") troopers on a specific section of Interstate Highway 95 between 1995 and 1998. The plaintiffs have alleged that the traffic stops and searches were motivated by racial animus in violation of the plaintiffs' constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution.

The parties have jointly represented to the undersigned judge that they have settled the disputed issues in this action, with the exception of one matter, which is set forth in § 6.1 of the parties' settlement agreement and which is discussed below. The remaining issue in dispute is whether copies of complaints of

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<sup>1</sup>Although the Maryland State Police ("MSP") is no longer a party to this action pursuant to an order entered by the Court on September 29, 2006, awarding summary judgment in favor of the MSP, it has been agreed that MSP is the entity that will provide the documents if the Court directs it to do so.

racial profiling filed against individual Maryland State Police troopers are subject to production under the terms of a Consent Decree entered in 2003 in a related case, and if so, whether in full or redacted form. The parties have agreed to submit this issue to the Court to clarify the requirements of the Consent Decree. Further, the parties have agreed that the Court's decision on the matter shall be determinative and that once the Court issues its decision this case should be dismissed and stricken from the active docket of the Court.

On April 3, 2008, the parties submitted to the undersigned judge a copy of their settlement agreement. On the same date, the parties filed a joint stipulation of dismissal. At a hearing before the undersigned judge on April 9, 2008, the parties stated that in their view, this complaint could be dismissed with prejudice, subject to resolution of the remaining issue set forth in § 6.1 of their settlement agreement. Because this order resolves the final issue in dispute between the parties, the complaint will be dismissed with prejudice and the case will be stricken from the active docket of the Court.

II. Relevant Provisions of the Parties'  
Settlement Agreement and the 2003 Consent Decree

Section 6.1 of the parties' settlement agreement provides:

In connection with their request for copies of complaints against individual troopers, plaintiffs have cited Attachment C to the 2003 Consent Decree (the "Decree"). The MSP will take the initiative to seek clarification on this issue from the Court within two weeks of the Effective Date of the settlement of this matter. If the Court rules that the plaintiffs are

entitled to the unredacted complaints pursuant to the 2003 Consent Decree, then the MSP will produce the unredacted complaints. If the Court rules that the complaints are not subject to disclosure under the Consent Decree, then the MSP will not agree to produce the complaints under this Agreement. Finally, if the Court determines that the complaints are producible, but only in an altered form, then the MSP will produce them accordingly.

(Settlement Agreement at ¶ 6.1.)

The Consent Decree to which the settlement agreement refers was entered in a related case, Wilkins, et al. v. Maryland State Police, No. 93-468 (D. Md., Apr. 22, 1997). Three portions of the Consent Decree, approved on May 23, 2003, appear to be relevant to this matter. They are ¶¶ 1.3, 3.3.1.11, and 4.5. The first portion, ¶ 1.3, provides the terms under which the Consent Decree may be modified. The other two sections refer to the parties' agreement concerning MSP quarterly reports, developed in conjunction with an independent consultant, which were to provide data on complaints alleging racial profiling that are filed with the MSP. Paragraph 3.3.1.11 also contains the following provision: "Counsel for plaintiffs may request additional information about any such complaint. Subject to confidentiality statutes binding upon MSP, MSP will provide such information upon request." (Consent Decree ¶ 3.3.1.11.) In ¶ 4.5, the parties agree that the MSP will continue to provide the Court and the plaintiffs with quarterly updates on the data collected pursuant to the Wilkins agreement, which is appended as Attachment A to the Consent Decree. (Consent Decree ¶ 4.5.)

In addition to the terms of the Consent Decree itself, Attachments A and C contain pertinent information concerning complaints and confidentiality. Attachment A is the Settlement Agreement in the Wilkins parties' agreement. It contains provisions concerning release of information about traffic stops, and additional identifying information, which was to be collected in computer records, starting on January 1, 1995. (Consent Decree Attachment A, ¶¶ 9, 10.) Attachment C is styled, "Clarifying Addendum to Consent Decree" and includes additional details concerning ¶ 3.3.1.11 of the original Consent Decree. Attachment C provides in pertinent part:

Paragraph 3.3.1.11: Information on Complaints. The additional information that plaintiffs' counsel may request and MSP be required to produce under this section is the complaint itself, all non-confidential information kept in the course of the complaint process, and any other non-confidential information relevant to the particular complaint, not information outside of the complaint or the complaint process.

(Consent Decree Attach. C ¶ 8.)

As required by § 6.1 of the settlement agreement, the MSP has filed its request for clarification, and the parties have fully briefed the court on their respective positions and supporting arguments. At the direction of the undersigned judge, the MSP submitted the subject documents for an in camera inspection for the undersigned judge to determine what documents, if any, are to be turned over to the plaintiffs and, if any documents are to be turned over, what information, if any, is to be redacted.

For the reasons that follow, the undersigned judge finds that copies of the complaints must be turned over to the plaintiff in redacted form, as directed below.

### III. Discussion

The defendants argue that the Consent Decree requires the MSP to disclose only information that is not subject to confidentiality statutes and that the Maryland Public Information Act ("MPIA") is a confidentiality statute which prohibits the release of personnel records and letters of reference. According to the defendants, the complaints are personnel records, or letters of reference, or both and, therefore, are subject to the MPIA's mandatory restrictions against disclosure. The defendants also argue that the MSP is permitted to deny disclosure of the complaints under the MPIA's discretionary disclosure provisions if the MSP, as custodian of the records, believes that public access would be contrary to the public interest and if the complaints constitute records of investigations. The defendants contend that such disclosure would be contrary to the public interest and that the MSP may rely upon that ground to deny public access to any complaint associated with an ongoing investigation.

In response, the plaintiffs argue that the bargained-for and unambiguous language of the Consent Decree requires the MSP to turn over the complaint itself, any non-confidential information kept in the course of the complaint process, and any non-confidential information relevant to the particular complaint. In the

plaintiffs' view, the terms of the parties' bargain reflect their intent that the complaints would be disclosed and that only the other information mentioned in the consent decree would be subject the MPIA. The plaintiffs further argue that the complaints are not personnel records, letters of reference, or records of investigation under the MPIA and, therefore, are not subject to its mandatory or discretionary disclosure restrictions.

The defendants' reply repeats their assertions that the complaints constitute personnel records, letters of reference and/or records of investigation and that as a result the complaints are subject to the MPIA's disclosure restrictions. The defendants claim that the bargained-for agreement between the parties as embodied in the Consent Decree and Attachment C thereto simply entitles the plaintiffs, without being subject to the charges that they could otherwise be compelled to pay under the MPIA, to have access to copies of complaint letters that are sent to the MSP but that any such access remains subject to all confidentiality restrictions limiting MSP's authority to disclose documents.

A. Mandatory Denials under the MPIA

The complaints are not subject to the MPIA's mandatory disclosure restrictions. The MPIA requires a custodian of records to deny public inspection of certain categories of records, two of which the defendants claim apply to this action. See Md. Code. Ann., State Gov't §§ 10-615, 10-618. First, subject to certain exceptions not relevant here, the MPIA prohibits "[public]

inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information." Md. Code. Ann., State Gov't § 10-615(i)(1). Second, the MPIA prohibits public inspection of a letter of reference. Md. Code. Ann., State Gov't § 10-615(d).

1. Personnel Records

The first question that must be answered is whether the complaints are personnel records and, therefore, subject to the MPIA's prohibition against disclosure on that basis. The undersigned judge finds that they are not.

The MPIA does not define the term "personnel record." However, the Maryland Attorney General explained in a 1993 advisory opinion that the "common meaning" of that term "is a record that identifies an employee, is kept by the employer, and relates to matters like hiring, promotion, discipline, or dismissal of the employee." (78 Md. Op. Atty. Gen. 291 (1993), 1993 WL 523385 at \*1). The Maryland Court of Appeals has elaborated:

The term "personnel record" is not expressly defined in the statute. Nonetheless, the language of subsection (i) discloses what type of documents the Legislature considered to be personnel records. The statute lists three categories of documents which are: (1) an application for employment; (2) performance rating; and (3) scholastic achievement. Although this list was probably not intended to be exhaustive, it does reflect a legislative intent that "personnel records" mean those documents that *directly* pertain to employment and an employee's ability to perform a job.

Kirwan v. The Diamondback, 721 A.2d 196 (Md. 1998)(emphasis added). See also Prince George's County v. The Washington Post Co., 815 A.2d 859 (Md. 2003).

The defendants contend that the complaints fall within the purview of the MPIA's mandatory disclosure restrictions because they identify specific employees, are kept by the troopers' employer (the MSP), and relate to employment matters such as discipline and dismissal. Specifically, the MSP contends, any complaint against a specific trooper is used in that trooper's job performance evaluations, even when the complaint's allegations do not justify disciplinary action. For these reasons, the defendants urge the view that the complaints alleging racial profiling against a specific trooper constitute personnel records, the disclosure of which must be denied.

The plaintiffs take the contrary view. They argue that the complaints are not personnel records and, therefore, not subject to the MPIA's mandatory disclosure restrictions. According to the plaintiffs, even if a complaint may possibly relate to a trooper's employment or ability to perform the job, any connection is merely incidental. The plaintiffs advance the position that a complaint does not directly relate to the hiring, promotion, discipline, or dismissal of the employee against whom a complaint is submitted. Instead, they argue, a complaint relates to the complainant's perception of how a particular trooper treated and interacted with the complainant, and the purpose of the complaint is to describe



the complainant's experience. The plaintiffs further argue that because the complaints allege violations of the complainants' constitutional rights, the conduct which the complaints describe falls beyond the scope of the trooper's duties and responsibilities. For these reasons, the plaintiffs contend, the complaints do not constitute personnel records.

The undersigned judge concludes that the complaints at issue in this action are not subject to the MPIA's prohibition against disclosure of personnel records. Personnel records are those documents that directly pertain to employment and employees' ability to perform a job. Further, the purpose of requiring a custodian to deny requests to inspect personnel records "is to preserve the privacy of personal information about a public employee that is accumulated during his or her employment." Prince George's County v. Washington Post, Inc., 815 A.2d 859 (Md. 2003)(quoting 78 Op. Att'y Gen. 291, 293 (1993)).

Here, the documents the plaintiffs seek do not meet the description of personnel records, and the release of those documents, redacted as directed by this order, does not run afoul of the MPIA's policy of protecting the troopers' personal information. First, the complaints do not directly pertain to the troopers' employment or to the troopers' ability to perform their job. Although a complaint may possibly indirectly relate to an individual trooper's hiring, promotion, discipline, or dismissal, the relationship between a complaint and such an employment action

is too attenuated to convert a complaint into a personnel record. Furthermore, the plaintiffs do not seek disclosure of individual troopers' personnel files. Merely placing a complaint within a personnel file or considering that complaint when determining whether to pursue an internal investigation is similarly insufficient to convert a complaint into a personnel record. The plaintiffs also do not ask to inspect the internal MSP personnel forms, referred to as "Form 16," which are generated in response to the filing of a complaint, nor do they seek any record of any internal reviews undertaken relating to the complaint. (Pls.' Resp. 7.) Thus, the plaintiffs are not seeking disclosure of any document that is directly related to a specific trooper's employment or ability to perform the job.

Second, releasing properly redacted complaints will protect the privacy interests that the MPIA's disclosure restrictions are intended to promote. The plaintiffs have stated that they are willing to accept redacted versions of the complaints to protect from disclosure the identities of the individual troopers against whom complaints were filed. (Pls.' Resp. 3 n.2.) Moreover, the defendants admit in their reply memorandum that the plaintiffs may be given access, free of the MPIA's procedures and fees, to complaints that allege that MSP as an organization racially profiled so long as those complaints do not identify a particular trooper. (Defs.' Reply 2.) Because the plaintiffs have indicated their willingness to accept copies of the complaints redacting

information which would identify the individual troopers against whom complaints have been submitted, the undersigned judge finds that the purpose of the MPIA's prohibition against disclosure of personnel records is met.

Under these circumstances, the undersigned judge concludes that the complaints are not subject to the MPIA's prohibition against disclosure of personnel records.

2. Letters of Reference

The second issue to address is whether the complaints are letters of reference and, therefore, subject to the MPIA's prohibition against disclosure on that basis. The undersigned judge concludes that they are not.

Under the MPIA, "[a] custodian of records shall deny inspection of a letter of reference." Md. Code. Ann., State Gov't § 10-616(d). Unlike "personnel records," the term "letter of reference" does not appear to have been the subject of further explanation by Maryland Court of Appeals.

The defendants attempt to bring the complaints sought by the plaintiffs within the scope of the MPIA's prohibition against disclosure of letters of reference by citing an opinion by the Maryland Attorney General which states that letters of reference include both solicited and unsolicited letters. (See 78 Md. Op. Atty. Gen. 291, 293-94 (1993), 1993 WL 523385 at \*2) (quoting 68 Op. Att'y Gen. 335, 338 (1983)). According to the defendants, because unsolicited letters of reference are subject to the MPIA,

so too are unsolicited complaints. The defendants cite no authority for this proposition, and the undersigned judge is unpersuaded.

In the absence of any authority defining the term "letter of reference" as used in the MPIA, the commonplace usage and understanding of that term applies. In the employment context, a letter of reference is typically written to provide information about the suitability and qualifications of an individual for a particular position with a current or potential employer. See, e.g., Webster's Ninth New Collegiate Dictionary 989 (1990) (providing relevant definition of "reference" as "a statement of the qualifications of a person seeking employment or appointment by someone familiar with that the person"); Merriam-Webster Pocket Dictionary 585 (1973) (providing relevant definition of "reference" as "a written recommendation of a person for employment"). By contrast, a complaint is typically submitted to voice displeasure or to obtain corrective action relating to conduct or service that the complainant has found objectionable or unacceptable for some reason. See, e.g., Webster's Ninth New Collegiate Dictionary 269 (1990) (providing relevant definition of "complaint" as "expression of grief, pain, or dissatisfaction"); Merriam-Webster Pocket Dictionary 155 (1973) (providing relevant definition of "complaint" as "expression of grief or discontent"). Given the different purposes and contents of a complaint and a letter of reference, the undersigned judge finds that a complaint does not fall under the

commonplace usage and understanding of the term "letter of reference." Accordingly, and because the plaintiffs seek disclosure of only the complaints and not any internal information generated therefrom, the undersigned judge concludes that the complaints sought by the plaintiffs do not constitute letters of reference subject to the MPIA's disclosure prohibition.

Based upon the foregoing, the undersigned judge concludes that the MPIA's mandatory restrictions on disclosure do not apply to the complaints alleging racial profiling by specific MSP troopers.

B. Permissive Denial Under the MPIA

Having determined that the MSP is not required to deny public access to the complaints sought by the plaintiffs, the next question is whether it is permitted to do so under the MPIA's discretionary disclosure provisions. The MPIA permits a custodian to deny inspection under several enumerated circumstances. The defendants assert that one of the enumerated circumstances--the provision allowing a custodian to deny access to "records of investigations"--applies to the documents in dispute here.

In pertinent part, the MPIA provides for discretionary denial of public inspection of records as follows:

[I]f a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section . . . . [A] custodian may deny inspection of . . . records of investigations conducted by the Attorney

General, a State's Attorney, a city or county attorney, a police department, or a sheriff.<sup>2</sup>

Md. Code. Ann., State Gov't § 10-618(a), (g).

The defendants argue that the MSP has discretion to deny inspection of the complaints because they constitute "records of investigations" and because allowing public access would be contrary to the public interest. In support of this assertion, they claim that disclosure of any complaints relating to an ongoing investigation would interfere with the investigation itself by making witnesses and evidence more difficult to gather and by potentially revealing investigative techniques. The defendants also argue that disclosure would violate the troopers' privacy rights. Even if privacy rights would not be invaded by disclosure, the defendants urge, any disclosure of complaints relating to an ongoing investigation should be deferred until any investigation is completed.

The plaintiffs respond by arguing that public policy favors disclosure where the information is being sought for the purpose of revealing misconduct by government officials. The plaintiffs cite public disclosure statutes from other states, the federal Freedom of Information Act, 5 U.S.C. § 552 et seq., and § 3-102 of the Uniform Information Practices Code as authority for their position. The plaintiffs also argue that allowing the MSP to protect the complaints from disclosure is illogical because the complainants

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<sup>2</sup>This provision is subject to certain exceptions not relevant to this action.

themselves could make copies of their complaints public at any time. The plaintiffs contend, further, that allowing the MSP to claim the "records of investigation" prohibition against disclosure gives the MSP too much leeway to avoid disclosure merely by initiating an unnecessary investigation into the issues complained of in the document. Finally, plaintiffs observe that the MSP does not assert that any active investigation is currently ongoing. They state that the MSP has failed to point to any specific, active, relevant investigation that would justify application of this exception to any of the complaints, let alone all of them.

In reply, the defendants argue that disclosure of a complaint while that complaint was being investigated would be detrimental to addressing the complaint and would potentially violate the complainants' privacy rights. The defendants repeat their assertion that if disclosure is required, the MSP should be permitted to delay disclosure of any complaint which is the subject of an ongoing investigation.

The undersigned judge believes that the release of the complaints, properly redacted as directed below, will not violate the privacy rights of the individual troopers or of the complainants. However, the undersigned judge finds that in some circumstances, the complaints sought by the plaintiffs may constitute records of investigation subject to the MPIA's discretionary disclosure provisions because the release of any complaint that is part of an ongoing investigation could

potentially impede investigative efforts. Accordingly, the undersigned judge agrees with the defendants that the release of any complaints that are part of an ongoing investigation should be delayed until the completion of that investigation.

#### IV. Conclusion

For the foregoing reasons, the undersigned judge concludes that the complaints sought by the plaintiffs are not subject to the mandatory disclosure restrictions of the Maryland Public Information Act but that any complaints that are part of an ongoing investigation are subject to its discretionary provisions. Accordingly, it is ORDERED that the Maryland State Police turn over to the plaintiffs any letters of complaint that are not part of an ongoing investigation as of the date of this order, redacted as follows: The names and any other identifying information (e.g., badge number) of individual troopers shall be redacted; and the names and any other personal identifiers (e.g., social security number, date of birth, residential and business addresses and telephone numbers) of the complainants shall be redacted. The Maryland State Police shall be permitted to delay disclosure of any complaint that is, as of the date of this order, part of an ongoing investigation until completion of that investigation. The Maryland State Police shall prepare a log of those complaints--to be retained with the Maryland State Police internally--and attach redacted and unredacted copies. Upon the conclusion of any pertinent investigation, the Maryland State Police shall turn over



to the plaintiffs the redacted copy of the relevant complaint or complaints.

In light of the parties' joint stipulation of dismissal and the resolution herein of the last remaining disputed issue as set forth in the parties' settlement agreement, it is further ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of the Court.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to counsel of record herein.

DATED: October 15, 2008

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE