



MARTIN O'MALLEY  
GOVERNOR

ANTHONY G. BROWN  
LT. GOVERNOR

STATE OF MARYLAND  
**MARYLAND STATE POLICE**  
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**COLONEL**  
**TERRENCE B. SHERIDAN**  
SUPERINTENDENT

April 15, 2010

Deborah A. Jeon  
Legal Director  
American Civil Liberties Union of Maryland Foundation  
2600 Clipper Mill Rd., Suite 350  
Baltimore, MD 21211

Dear Ms. Jeon,

The Maryland State Police (MSP) has reviewed your Public Information Act (PIA) request for records pertaining to "the internal investigation conducted by the Maryland State Police pursuant to the complaint lodged against Sergeant John Maiello by Teleta Dashiell on November 5, 2009, and closed the second week of February 2010, relating to the offensive voicemail message left on Ms. Dashiell's cell phone on November 3, 2009."

MSP is denying your request for records for the following reasons:

- The Law Enforcement Officers' Bill of Rights (LEOBR) prohibits disclosure of internal investigation reports outside the context of that law.
- Records of an individual employee's conduct related to a specific incident are personnel records and are not disclosable under the PIA.
- The records you requested are intra-agency memoranda and letters and it would not be in the public interest to inhibit candor in the decision making process.
- The records you requested are investigatory records and it would not be in the public interest to inhibit the candor of witnesses or to invade the personal privacy of individuals involved in the investigation.

Disclosure of internal investigation reports would be contrary to the provisions in the Law Enforcement Officers' Bill of Rights.

The records you requested are confidential by law and disclosure would be contrary to the provisions of the LEOBR, contained in MD. CODE ANN.—PUB. SAFETY §3-104 (n) and (o), therefore your request for disclosure must be denied pursuant to MD. CODE ANN.—STATE GOV'T. §10-615(1) & (2).

*"Maryland's Finest"*

The LEOBR is applicable when a law enforcement officer is under investigation by a law enforcement agency as a result of a disciplinary-type complaint lodged against the officer, exactly the circumstances under which the records you are requesting were created. *FOP Montgomery Cnty Lodge 35, Inc. v. Manger*, 175 Md.App. 476, 498 (2007). The legislature intended for the LEOBR to be the governing statute in its field of operations. *Baltimore City Police Dept. v. Andrews*, 318 Md. 3, 13 (1989).

The LEOBR contains specific provisions regarding the release of records created in the course of such an investigation and only permits the officer under investigation access to the records under certain conditions. Therefore, the LEOBR makes such records confidential. *See Robinson v. State*, 354 Md. 287, 308 (1999). The Maryland Court of Special Appeals has stated that “[s]ince the nature of the duties of police officers is different from that of other public employees, the establishment of different procedures covering any potential disciplinary action is justified.” *Cancelose v. City of Greenbelt*, 75 Md.App. 662, 666 (1988).

Records of an individual employee’s conduct related to a specific incident are personnel records and are not disclosable under the PIA.

In addition, the records you requested are personnel records and cannot be disclosed pursuant to MD. CODE ANN.—STATE GOV’T. §10-616(i). In your request, you stated that the Court of Special Appeals’ recent decision in *Maryland Department of State Police v. Maryland State Conference of NAACP Branches*, No. 1476 (February 2, 2010) may conflict with this denial. Please be advised that as of the date of this response, the Court of Appeals has granted a motion staying the effect of the Court of Special Appeals’ decision in that case pending further review. Therefore, the case has no precedential or persuasive value at this point in time.

Even considering the reasoning contained in that opinion, you are requesting records as to one officer regarding one particular incident. The file is maintained under the employee’s name and was conducted in order to determine appropriate personnel action. The records directly reflect MSP’s inquiry, as an employer, into an employee’s job performance, not a general investigation into possible racial profiling by MSP Troopers. As such, this record is a personnel record and is confidential by law.

The public policy considerations that are reflected in the legislature’s determination that personnel records are not disclosable are applicable here. Internal Investigation records reflect internal inquiries into Troopers’ behavior. If a complaint is lodged against a Trooper, the complaint is investigated and an internal investigation record is created. A Trooper’s supervisors and superiors then evaluate the results of the inquiry and determine whether and to what extent a Trooper violated a law or an internal policy. They then decide what personnel action to take, meaning reprimands, reductions in leave or pay, suspension, reassignment, demotion or termination.

Your request is also denied because inspection would be contrary to the public interest for the following reasons:

These records are intra-agency memoranda and it would not be in the public interest to inhibit candor in the decision making process.

The documents you requested are intra-agency memoranda that would not be available by law to a private party in litigation with the unit as provided in MD. CODE ANN.—STATE GOV'T. §10-618(b). These records were created by agency employees to assist another employee or official in the decision making function. In this circumstance, the decision to be made was whether and/or what type of employment action would be appropriate to take against an employee.

The information also reflects investigative facts underlying and intertwined with opinions and advice. The complex employment decisions involved in an internal investigation report require the utmost candor and thoughtfulness amongst agency decision makers. It is clearly in the public interest to encourage full candor and willingness to engage in difficult questions and analyses of employee behavior, and it would be contrary to the public interest to inhibit such candor. Because exposing the decision making process to external review would have the effect of inhibiting candor in the decision making process, disclosure is not in the public interest. Because of the intricacies involved in the investigation into employee misconduct, there is no reasonably severable portion of the record.

The records you requested are investigatory records and it would not be in the public interest to inhibit the candor of witnesses or to invade the personal privacy of individuals involved in the investigation.

Finally, the records you requested are records of investigations conducted by a police department and it would not be in the public interest to release these records; as such your request is denied pursuant to MD. CODE ANN.—STATE GOV'T. §10-618(f). Initially, Ms. Dashiell was not the subject of the investigation; therefore, she is not the person in interest for these records. *Mayor and City Council of Baltimore v. Maryland Committee Against the Gun Ban*, 329 Md. 78, 90 (1993).

Furthermore, it would not be in the public interest to release these records because subjecting the records to public scrutiny could have a chilling effect on witnesses coming forward to report public misconduct and to cooperate and involve themselves in such investigations. In addition, these records contain intimate details about individual Troopers' employment and releasing this information would invade their personal privacy, as well as the privacy of witnesses involved in the investigation.

MSP is committed to ensuring that allegations of misconduct by MSP Troopers are fully and thoroughly investigated and it is MSP's reasoned determination that maintaining the confidentiality of such investigations would encourage all persons with knowledge of important facts to be fully forthcoming without fear that the record of their

involvement, which would reveal their identity even if their names are redacted, will be subject to public scrutiny. In addition, all of the public policies that are implicated by the other exemptions set forth above indicate that the public interest is best served by maintaining the confidentiality of these records.

While the public has a right to transparency in government, the law recognizes that in certain circumstances, particularly when the government is acting as an employer, the interests of the public are better served by maintaining the confidentiality of certain records. As such, and for the reasons set forth above, MSP is compelled to deny your request for records.

You are entitled to administrative review of the denial pursuant to MD. CODE ANN.—STATE GOV'T. §10-622 and judicial review pursuant to MD. CODE ANN.—STATE GOV'T. §10-623.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Greene".

John Greene  
Captain ~ Commander  
Maryland State Police  
Internal Affairs Section