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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-33

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Maryland Department of Human Services, Custodian
Ian Riden, Complainant

The complainant, Ian Riden, challenges the Maryland Department of Human Services’s (“DHS”) denial of his Public Information Act (“PIA”) request for records of DHS’s communications with a certain hospital related to the birth of the complainant’s daughter and records of DHS’s investigation following those communications. Though DHS initially denied the request outright, it provides a single redacted record in response to the complaint and maintains that Maryland law requires those redactions. The complainant contends that those redactions are overly broad. As explained below, we agree with the complainant and conclude that DHS improperly redacted certain information and thus violated the PIA.

Background

On August 16, 2023,¹ the complainant sent a PIA request to DHS for records of “(A) any and all communication and records with Christiana Care/Union Hospital in Elkton, MD, on 15-9-2022, regarding the birth and subsequent discharge of our minor daughter, Baby Girl Riden” and “(B) any and all subsequent records of investigation or discussion of the above mentioned record.” The complainant indicated that he was making the request on behalf of himself, his wife, and their minor daughter, and that he and his wife were persons in interest.

DHS responded to the PIA request on August 30, 2023, and denied inspection of the records, citing §§ 4-301 and 4-307² of the PIA, which preclude inspection of records that are “by law” confidential and records that “relate to welfare for an individual,” respectively. DHS further explained that, under § 1-202 of the Human Services Article (“HS”), DHS cannot disclose “confidential information related to child protective services investigations to a parent” unless certain conditions are met—namely that “provisions are made for the protection of the identity of the reporter or any other person whose life or

¹ In his PIA request, which was sent by email, the complainant indicated that the request was a “follow up” to written requests sent via post in January and May 2023.

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

safety is likely to be endangered by disclosing the information.” Given that provision, DHS had “determined that there are no records that fall within its discretionary authority to release.”

Dissatisfied with DHS’s response, the complainant sought dispute resolution assistance through the Public Access Ombudsman, who ultimately issued a final determination stating that the dispute was not resolved. The complainant then filed a complaint with our Board alleging that DHS “failed to deliver [his] lawfully requested records.”³

In its response to the complaint, DHS traces the history of the dispute and notes that, on December 1, 2023, it supplemented its August 30 response with a redacted copy of an intake worksheet. DHS attaches this redacted record to its response, along with the supplemental response letter. DHS explains that the record was redacted to “protect the identity of the reporting source,” and that it has no discretion to release the identity of that source. DHS asserts that it has “provided every record that it has regarding the [complainant’s] PIA request,” and that there are no additional records that DHS has withheld.⁴

Noting that he received the redacted record from DHS after he filed this complaint, the complainant, in reply, contends that the redactions applied to the intake worksheet are “overly broad, and obscure far more than what is lawfully needed to protect the name of the reporter.” While the complainant appears to concede that DHS must deny inspection of the reporting source, he argues that DHS has nevertheless violated the PIA “with their aggressive usage of redaction.”⁵

³ The complaint also alleges that DHS “failed to fulfill their statements during mediation.” We lack authority to review this allegation. *See* § 4-1A-04 (providing our Board narrow jurisdiction to review alleged improper denials, failures to respond within certain timeframes, unreasonable fees, and frivolous, vexatious, or bad faith requests). Additionally, review of this allegation would likely require disclosure of confidential mediation communications, which is prohibited. *See, e.g.,* § 4-1B-04(d)(3) (requiring the Ombudsman to protect “the confidentiality of communications made or received in the course of attempting to resolve [a] dispute”).

⁴ DHS also addresses allegations that the complainant apparently made directly to DHS after he filed this complaint. These allegations relate to DHS’s usage of GovQA and the complainant’s belief that someone “knowingly provided false fraudulent narrative data” to DHS. As these allegations are not contained in the complaint and are, in any event, beyond our jurisdiction, we do not address them.

⁵ The complainant’s reply also states that the intake worksheet “includes fraudulently provided misinformation” and that DHS has “not responded to [his] requests for amendment.” We note that the PIA provides a process by which “[a] person in interest may request a unit of the State to correct inaccurate or incomplete information in a public record.” § 4-502. We have no authority as to this provision, however. *See* § 4-502(e) (providing, “[i]f a unit is subject to Title

Analysis

The PIA authorizes us to review and resolve complaints that allege certain violations of its provisions, including that a custodian wrongfully denied inspection of a public record. *See* § 4-1A-04(a)(1)(i). 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). Once a complaint is filed, we forward it to the appropriate custodian for a response. § 4-1A-06(a). If, after review of the submissions, we need more information to resolve a complaint, the PIA empowers us to ask for it. *See, e.g.,* § 4-1A-06(b)(2)(ii)(1) (“On request of the Board, the custodian shall provide . . . a copy of the public record, descriptive index of the public record, or written reason why the record cannot be disclosed, as appropriate.”). When we conclude that the alleged violation of the PIA has occurred, we must issue a written decision and order a statutory remedy, *e.g.,* that the custodian “produce the public record for inspection.” § 4-1A-04(a)(2) and (3)(i).

The PIA “establishes a public policy and a general presumption in favor of disclosure of government or public documents.” *Kirwan v. Diamondback*, 352 Md. 74, 80 (1998); *see also* § 4-103(b) (providing a general rule of construction that, “unless an unwarranted invasion of the privacy of a person in interest would result, [the PIA] shall be construed in favor of allowing inspection of a public record”). Sometimes, however, other interests outweigh the general interest in disclosure of public records. The PIA recognizes this in at least two ways. First, in § 4-301(a) the PIA defers to law outside of its provisions and requires that a custodian deny inspection when “by law, the public record is privileged or confidential,” or when “inspection would be contrary to,” *e.g.,* “a State statute.” *See, e.g., MacPhail v. Comptroller*, 178 Md. App. 115, 120, 122 (2008) (estate tax return exempt under what is now § 4-301(a)(2)(i) because § 13-202 of the Tax-General Article “prohibits State employees from disclosing ‘in any manner, any tax information’”).

Second, the PIA contains exemptions for certain specific records or information that the Legislature has deemed non-disclosable in light of competing policy interests. *See Glenn v. Maryland Dep’t of Health & Mental Hygiene*, 446 Md. 378, 386 (2016) (explaining that “[t]he ability to rebut the presumption in favor of disclosure is found in the exceptions to the general rule favoring disclosure”) (quotation and citation omitted). Section 4-307, the PIA’s exemption for “records that relate to welfare for an individual” cited by DHS, is one example. *See also, e.g.,* § 4-306 (required denial for “hospital records”); § 4-329(b)(1) (required denial for “medical or psychological information about an individual”).

10, Subtitle 2 of the State Government Article,” that a person “may seek administrative and judicial review in accordance with that subtitle”).

We turn first to § 4-301(a), which requires a custodian to deny inspection of a record or any part of the record if “by law, the public record is privileged or confidential,” or if “inspection would be contrary to . . . a State statute.” Section 1-202(a) of the Human Services Article generally provides that “a person may not disclose a report or record concerning child abuse or neglect.” *See also* COMAR 07.02.07.21 (regulations governing the confidentiality of child abuse and neglect records and reports); *Freed v. Worcester County Dep’t Social Servs.*, 69 Md. App. 447, 454-55 (1986) (“[T]he purpose behind the nondisclosure laws is to encourage the reporting of child neglect cases.”); 71 Md. Op. Att’y Gen. 368, 373 (1986) (explaining that regulations “focus on ensuring that reports of suspected child abuse are made to the local departments in complete confidentiality and on protecting the privacy of the subjects of such a report”).

Notably, “[t]he provisions concerning the confidentiality of records and reports concerning alleged child abuse apply to the records and reports, and the information they contain, without regard to the identity of the custodian of records.” 82 Md. Op. Att’y Gen. 72, 74 (1997). The non-disclosure mandate is not absolute, however, and certain portions of report or record of alleged child abuse or neglect “may be disclosed on request to . . . a parent or other person who has permanent or temporary care and custody of the child.”⁶ HS § 1-202(c)(1)(vi); *see also State v. Runge*, 317 Md. 613, 620-21 (1989) (stressing that the provision is not mandatory, but rather vests DHS with discretion to disclose). Such disclosure is permitted only “if provisions are made for the protection of the identity of the reporter or any other person whose life or safety is likely to be endangered by disclosing the information.”⁷ HS § 1-202(c)(1)(vi).

Thus, except for certain limited circumstances, “a report or record concerning child abuse or neglect” is exempt from disclosure under § 4-301(a) of the PIA because such records and reports are confidential by law and because inspection would be “contrary to” HS § 1-202(a), a State statute. And, in the event that disclosure to, e.g., a parent was authorized, § 4-301(a) would require redaction of the information protected by HS § 1-202(c)(1)(vi)—that is, “the identity of the reporter or any other person whose life or safety is likely to be endangered by disclosing the information.” The complainant requested records related to the “birth, and subsequent discharge of [his] minor daughter,” so HS § 1-202(c)(1)(vi) appears to apply here. Indeed, DHS has disclosed a responsive intake

⁶ There are some instances in which disclosure is required, *see* HS § 1-202(b), and a number of other instances in which disclosure is authorized, *id.* § 1-202(c). None of these other exceptions to the general rule of non-disclosure are relevant here.

⁷ The specific non-disclosure exception for parents and other custodial caregivers was added in 1986, *see* 1986 Md. Laws, ch. 234, to “greatly simplify the process of planning for the welfare of abused and neglected children by enabling those most directly responsible for such children’s care and treatment”—e.g., parents—“to have access to the information they need to fulfill their responsibilities,” Committee Report, Senate Jud. Proc. Comm., H.B. 882, 1986 Leg., Reg. Sess., at 2.

worksheet, but indicates that, “[b]ecause much of the referral document is linked to the reporter identity,” DHS has “made extensive redactions.”⁸

As explained above, the complainant disputes the redactions applied to the intake worksheet as overly broad. He contends that DHS has redacted information that would not disclose or otherwise allow “the name of the reporter” to be determined. Focusing on the narrative portion of the worksheet in particular, the complainant argues that it contains “massive redactions beyond [the] reporting person.” Because examination of the redacted version of the record alone does not allow us to properly resolve the question, we asked DHS to provide an unredacted version of the intake worksheet, *see* § 4-1A-06(b)(2)(ii)(1), which DHS did. We will maintain the confidentiality of this record, as required by law. *See* § 4-1A-06(b)(5); COMAR 14.02.06 (regulations governing the Board’s treatment of the confidential records it obtains during the course of reviewing a complaint).

After review of the unredacted intake worksheet, we find that, while some of the redacted information is tied to the identity of the reporting source, DHS has improperly redacted certain portions of the worksheet. Under HS § 1-202(c)(1)(vi), DHS must protect “the identity of the reporter or any other person whose life or safety is likely to be endangered by disclosing the information.” DHS focuses here on the “identity of the reporter,” and contends that the redacted material is “linked to the reporter identity.” Addressing first the redactions we find proper, we note that the statute uses the word “identity,” and not “name.” Thus, the statute clearly precludes disclosure of information that could lead to the identification of the reporter of abuse or neglect, and not simply that person’s name. We are further mindful the Legislature intended that the identity of such a reporter be subject to strong protections. Indeed, our Appellate Court has observed:

The statutes foreclose the easiest manner of determining the identity of the person who reports suspected child neglect. Those persons who are aggrieved at being unjustly reported are at liberty, however, to employ whatever lawful investigative processes are available so as to ascertain the identity of the informer. Admittedly, their task is made difficult by the nondisclosure statutes, but then that is presumably what was intended by the Legislature.

⁸ As discussed above, § 4-307 provides a more general exemption for “records that relate to welfare for an individual.” Assuming the responsive records constitute records that “relate to welfare for an individual,” then it would seem that § 4-307 requires DHS to deny the complainant’s PIA request. However, the PIA directs a custodian to deny inspection of certain types of records, including welfare records, “[u]nless otherwise provided by law.” § 4-304. So, while DHS might be required, under § 4-307, to deny inspection of the entire responsive intake worksheet here if requested by a member of the general public, HS § 1-202(c)(1)(vi), which provides a limited exception for parents and custodial caregivers of the welfare subject, allows DHS to disclose the redacted worksheet to the complainant.

Freed, 69 Md. App. at 455.

In addition, the parental / custodial caregiver exception found in HS § 1-202(c)(1)(vi) was enacted with a specific purpose—i.e., to allow for the provision of information that a parent or caregiver needs “in order to understand and meet the needs of the child for emotional support and/or therapy.” Committee Report, Senate Jud. Proc. Comm., H.B. 882, 1986 Leg., Reg. Sess., at 2. Specifically, the Legislature intended that the law allow parents and custodial caregivers to learn “significant background information, including history of abuse and neglect, so that the most appropriate treatment and care can be given to the child.” *Id.* Thus, in our view, if there is information in a report of child abuse or neglect that might risk, even slightly, the identification of the reporter, and that information is not information that would assist a parent in “meet[ing] the needs of the child,” then the balance tips toward non-disclosure. This is so even despite the PIA’s strong presumption in favor of disclosure.

Some of the redacted information falls into this category—i.e., disclosure might risk identification of the reporter, and would not further HS § 1-202(c)(1)(vi)’s purpose. For instance, disclosure of the date and time a referral was received and recorded may well significantly narrow the pool of possible reporters to the point that identification of a specific person is possible. And, this information does not seem especially relevant to ensuring that an abused or neglected child receives proper care and support. Admittedly, the information in the narrative on page two of the report—which the complainant focuses on in particular—may fall more squarely within the category of “background information” that the exception is concerned with. However, the redacted portion of the narrative here is sufficiently detailed and specific that we do not question DHS’s determination that the information is “linked to the reporter identity.”

However, in our view, DHS also applied redactions to a lot of information that has nothing to do with, and could not lead to, the identity of the reporter. Under many other circumstances, the incident location certainly could, but here we do not think such is the case. Likewise, the screening decision and overrides (both at the beginning and end of the record) have nothing to do with the reporter. And, the names and contact information related to the “household” do not in any way suggest the identity of the reporter.⁹ We thus find that DHS improperly redacted this and other information as indicated below.

⁹ We are unable to provide a more specific explanation of our reasoning without potentially revealing the redacted information. As noted above, when we ask a custodian to provide “a copy of the public record” pursuant to § 4-1A-06(b)(2)(ii)(1), we are required to “maintain the confidentiality” of that record, § 4-1A-06(b)(5). Our regulations thus provide that, in our decisions, references to records or information obtained under this provision in the PIA must be “by generic descriptions or characterizations.” COMAR 14.02.06.05. Here, we cannot provide generic descriptions or characterizations beyond what is already in the redacted record without potentially disclosing the information that DHS redacted.

After review of the unredacted record, and in light of the legal authority discussed above, we order that DHS provide the complainant a copy of the intake worksheet with the following redactions removed:

On page one of the worksheet: Incident Location
Screening Decision
Overrides
Screener Jurisdiction
All information under “Head of Household”
All information under “Other Members of Household”

On page two of the worksheet: Mother
Father
Child
Address
Mother’s cell phone
Created By
Information under “History Clearance Information”
Screening Decision
Overrides

On page three of the worksheet: Organization

Because we agree with DHS’s determination that the following information could lead to the identity of the reporting source, these redactions should remain in the copy of the intake worksheet provided to the complainant:

On page one of the worksheet: Date/Time Received
Date/Time Recorded

On page two of the worksheet: On-call referral received
The information immediately below “On-call referral received”
The narrative content of the worksheet
Date Created
Last updated on

On page three of the worksheet: Referral Name

Conclusion

After review of the submissions, including the unredacted version of the disputed public record provided by DHS, we conclude that DHS improperly redacted certain portions of the responsive record and therefore violated the PIA. While some of the information in the record is subject to HS § 1-202(c)(1)(iv) and § 4-301(a), much of this information is not. Accordingly, we order DHS to produce a copy of the responsive intake worksheet to the complainant with redactions removed as outlined above. § 4-1A-04(a)(3)(i).

Public Information Act Compliance Board

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