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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-41

March 6, 2024

Montgomery County Public Schools, Custodian
Brian Lancaster, Complainant

In August 2023, complainant Brian Lancaster sent a Public Information Act (“PIA”) request to the Montgomery County Public Schools (“MCPS”) seeking certain records related to a construction project at a Montgomery County high school. MCPS estimated that the response would cost between \$1,100 and \$9,000, and suggested that the complainant narrow the scope of the request to reduce the fee, which the complainant did. MCPS also asked the complainant to consent to a thirty-day extension for production of records, as provided in § 4-203(d)(1)¹ of the PIA. In this complaint, the complainant alleges that MCPS “has failed to immediately provide portions of the request that are easily obtainable.” The complainant cites § 4-203(b)(1) and (2) of the PIA. MCPS responds that it has satisfied its obligations under the PIA and asks that we dismiss the complaint. As explained below, we conclude that MCPS’s search for responsive records was unreasonable and inadequate. In addition, we find that MCPS improperly excluded two email communications that were part of a responsive email chain that was disclosed. While we order no further relief regarding these two email communications, we direct MCPS to work with the complainant to conduct a reasonable search designed to locate all records responsive to the natural language of his PIA request.

Background

We take the following facts and timeline from the parties’ submissions. The complainant’s PIA request, sent to MCPS on August 10, 2023, initially sought four categories of records related to a construction project at Poolesville High School:

1. All communication between Mr. Seth Adams, Associate Superintendent, and Mr. Christopher Deraeau, Project Manager, pertaining to construction at Poolesville High School dated February 14, 2023 to present.
2. The contract awarded by the Montgomery County Board of Education to KCI Technologies, Inc in December, 2022 pertaining to Bid #4202.4.

¹ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise specified.

3. All communication between MCPS and KCI Technologies related to PHS construction dated January 1, 2023 to present.

4. The number and date of absences at Poolesville High School from January, 2023 to present with reason supplied.

The complainant asked MCPS to inform him if there was to be a charge for the records, and advised that he did not “intend to utilize the requested records for any for-profit purpose.”

After MCPS received the PIA request, an IT systems engineer searched the relevant email accounts using the search term “construction at Poolesville High School” to locate records responsive to the first part of the complainant’s request.² That search returned thirteen items. According to MCPS, the majority of those items were unresponsive to the complainant’s request and thus extracted from the records ultimately provided. MCPS applied redactions to the responsive records to protect material that it believed was subject to § 4-313’s mandatory exemption for student information. On September 15, 2023, MCPS provided those records to the complainant.

Before MCPS sent its final response, however, the complainant contacted the Public Access Ombudsman.³ On December 13, 2024, the Ombudsman issued a final determination stating that the disputes were partially resolved. The final determination indicates that the disputes addressed were the complainant’s concerns about the completeness of MCPS’s final response, his belief that the fee estimate was excessive, and his objection to MCPS’s request for an extension of time to respond. According to the final determination, after the mediation closed, the complainant “maintained his concerns about the completeness” of MCPS’s “final response and records production.”

In this complaint—which attaches the Ombudsman’s final determination—the complainant asks for our review and indicates that “[s]pecifically, item one has been resolved,” and “[i]tems 2-4 have not been provided, but have been resolved simply by

² Though MCPS’s response to the complaint does not mention it, the Ombudsman’s final determination indicates that MCPS sent the complainant a letter on August 24, 2023, providing the fee estimate and suggesting that the complainant narrow his request. The final determination states that the complainant agreed to exclude items three and four of his request. In his complaint, the complainant indicates that “[i]tems 2-4 have not been provided [by MCPS], but have been resolved simply by being disregarded or withdrawn.” Thus, we will focus on item one of the complainant’s PIA request for purposes of our decision here.

³ See § 4-1B-04(a) (charging the Ombudsman with making “reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records under [the PIA]”).

being disregarded or withdrawn.” When we asked the complainant for clarification as to what dispute was subject to this complaint, he provided the text of the first part of his PIA request—i.e., the request for communications between Seth Adams and Christopher Deraleau regarding the construction at Poolesville High School—and alleged that MCPS “has failed to immediately provide portions of the request that are easily attainable.” The complainant cited § 4-203(b)(1) and (2), which govern timing and procedure for approval of PIA requests.

In its response to the complaint, MCPS provides a broad timeline of the complainant’s PIA request and explains the steps it took to locate responsive records, including the search term used by its IT department when searching the relevant email accounts. Noting the complainant’s position that there are “additional emails that the [complainant] is aware of that exist,” MCPS denies that it is withholding records. MCPS asserts that it “ran the search [the complainant] requested,” and suggests that if he seeks additional records outside the scope of his original request, the complainant “should file a new and updated request.” As example, MCPS states that a new search expanding the scope to include the terms “construction” and “Poolesville” would return 3,892 records.⁴ MCPS thus contends that it has satisfied its obligations with respect to the complainant’s August 10, 2023, PIA request.

In his reply, the complainant asks several questions about MCPS’s search process. He asks whether the search included “correspondences in which the two staff members named were cc’d,” and “not just direct correspondence.” Noting that Mr. Deraleau’s name was misspelled at one point in MCPS’s response, the complainant also asks whether the search was “performed using the correct spelling.” The complainant also attaches documents he already has, which he contends are responsive to his PIA request, but were not provided by MCPS and asks why those records were not provided.

Analysis

The PIA charges us with reviewing and resolving complaints that allege certain violations of its provisions, including that a custodian wrongfully denied inspection of public records. *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.⁵ § 4-1A-05(a). If we conclude that the

⁴ MCPS indicates that “[t]his expanded search would require an assessment of a fee since it would be such a voluminous response that would involve extractions and redactions.”

⁵ When, as here, multiple disputes arise from a single PIA request, the Ombudsman’s final determination may indicate that the disputes were “partially resolved,” and explain which disputes remain unresolved after mediation. *See* COMAR 14.37.02.11 (Ombudsman regulation governing final determinations). In such cases, it is especially important that the complaint identify with precision the allegation before our Board. *See* COMAR 14.02.02.01 (governing

alleged violation of the PIA has occurred, we must issue a written decision and order a statutory remedy. § 4-1A-04(a)(2) and (3). When we find that a custodian has denied inspection of a public record in error, we must direct the custodian to “produce the public record for inspection.” § 4-1A-04(a)(3)(i); *see also* PIACB 24-08, at 6 (Sept. 28, 2023) (concluding that a custodian’s failure to search for electronic records may have led it to improperly withhold responsive records and thus ordering the custodian to search its electronic records and “produce any non-exempt responsive records to the complainant”).

This complaint raises some jurisdictional questions. Although we recognize that MCPS has not asked us to dismiss this complaint on jurisdictional grounds, the submissions cause us to question the exact nature of the complainant’s dispute and whether we are authorized to entertain it. The Ombudsman’s final determination indicates that the sole dispute that remained unresolved—and thus the only dispute potentially within our jurisdiction—was the complainant’s concern “about the completeness” of MCPS’s “final response and records production associated with item #1 of the [PIA] request.” The complaint, however, initially indicated that “item one has been resolved.” And, when asked to clarify the nature of the allegation before our Board, the complainant stated that he disputed MCPS’s failure to “immediately provide portions of the request that are easily attainable” under § 4-203(b)(1) and (2), which govern timing.

While the PIA does empower us to review complaints that allege violations of the PIA’s timing provisions, that authority is specific to certain subsections within § 4-203—i.e., § 4-203(a) and 4-203(d). § 4-1A-04(a)(1)(iii). Section 4-203(a) requires a custodian to “grant or deny” a PIA request “promptly, but not more than 30 days after receiving the [request].” Section 4-203(d) governs extensions of time to respond, allowing an extension of no more than thirty days with the requester’s consent and requiring an extension “pending resolution of [a] dispute” by the Ombudsman or our Board. Subparagraphs (1) and (2) of § 4-203(b), which are cited by the complainant provide:

(1) A custodian who approves the application shall produce the public record immediately or within a reasonable period that is needed to retrieve the public record, but not more than 30 days after receipt of the application.

(2) If the custodian reasonably believes that it will take more than 10 working days to produce the public record, the custodian shall indicate in writing or by electronic mail within 10 working days after receipt of the request:

(i) the amount of time that the custodian anticipates it will take to produce the public record;

complaints and requiring the complaint to “[p]ertain only to the [unresolved] dispute described in the Final Determination”).

- (ii) an estimate of the range of fees that may be charged to comply with the request for public records; and
- (iii) the reason for the delay.

Regardless of whether MCPS complied with these provisions, we simply lack jurisdiction address an allegation that it did not.⁶ And, in any event, the Ombudsman’s final determination does not indicate that any dispute under § 4-203 remained unresolved—a requirement of a properly filed complaint. *See* § 4-1A-05(a)(2).

At the same time, we recognize that the PIA’s “broad remedial purpose” requires that its provisions—which include those that govern our Board—be “liberally construed” in favor of disclosure. *Kirwan v. Diamondback*, 352 Md. 74, 81 (1998). We are also mindful that, as noted above, MCPS has not raised a jurisdictional argument based on § 4-203(b). Thus, to the degree that the complainant’s allegation that MCPS has not “provide[d] portions of the request that are easily attainable” might be interpreted to refer to records that MCPS did not already disclose, we will review the complaint. However, we emphasize the importance of articulating the allegations in complaints to our Board with precision and clarity, so that we have a clear understanding of the issues to address and so that the responding party (i.e., the custodian or the PIA requester) may fully and adequately respond to the allegations.

“Except as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time.” § 4-201(a)(1). When a custodian receives a PIA request, they must “conduct a search in good faith that is reasonably designed to capture all responsive records.” *Glass v. Anne Arundel County*, 453 Md. 201, 232 (2017). Based on the submissions, it does not appear that MCPS has done this. The complainant requested “[a]ll communication[s] between” two specific individuals—Seth Adams and Christopher Deraleau—related to construction at Poolesville High School that were exchanged from February 14, 2023, to “present”—i.e., August 10, 2023, the date the PIA request was sent.

To locate responsive records, an MCPS IT systems engineer conducted a search identifying two email accounts—Mr. Adams’s and Mr. Deraleau’s—and using the search term “construction at Poolesville High School.” As revealed in an exhibit MCPS attaches to its response, that search returned seventy pages worth of emails, many of them

⁶ To the extent that the complainant continues to have issues with MCPS’s request for an extension of time under § 4-203(d), we lack jurisdiction to entertain those issues because the Ombudsman’s final determination indicates that the dispute about the complainant’s “objection to [MCPS’s] request for a 30-day extension” was resolved. § 4-1A-05(a)(2).

duplicates. As MCPS points out, some of these emails were not emails or communications exchanged “between” Mr. Adams and Mr. Deraleau.⁷

Before turning to the question of MCPS’s search efforts, we briefly address an issue apparent upon review of MCPS’s search return exhibit. As we see it, MCPS improperly truncated an email chain to exclude integral emails in that chain. A portion of that email chain was provided to the complainant, and properly so, given that it was an email from Seth Adams to Christopher Deraleau dated July 11, 2023, regarding an “inquiry” from Senator Feldman’s office about the “ongoing construction project at Poolesville High School.” While MCPS provided the email from the Senator’s office that contained the “inquiry,” it did not provide two other emails in that chain. Specifically, (1) an email from a different Montgomery County senator containing (2) the “email from one of Senator Feldman’s constituents” referenced in the email from Sen. Feldman to MCPS that MCPS disclosed.

While a custodian “may not redact non-responsive portions of otherwise responsive records,” *Gellman v. Dep’t of Homeland Sec.*, 613 F.Supp.3d 124, 135 (D.D.C. 2020), we are aware that at least one federal court has held that, under the Freedom of Information Act (“FOIA”), a custodian may, under some circumstances, elect to treat each email in an email chain as a separate record, *see id.* at 136 (“[A]n agency may define individual emails within a chain as separate records, as long as that decision (1) does not deviate from its prior position in responding to a particular FOIA request and (2) is reasonable under the circumstances.”).

Assuming without deciding that similar logic may apply in Maryland, we think MCPS’s apparent decision to exclude the two emails contained in the email chain as non-responsive, separate records was improper.⁸ While we have no indication as to what MCPS’s “prior position,” *id.*, is regarding the treatment of emails in email chains, even if its position is that each email constitutes a separate record, it did not follow that position here. Rather, it provided an email in the chain dated July 5, 2023, 3:32 p.m. from Sen. Feldman’s office to MCPS. Arguably, because this email itself was not exchanged between Mr. Adams and Mr. Deraleau, it is also non-responsive (if treated as an entirely separate record), yet MCPS disclosed it. Further—and we think more compelling—the excluded emails are not on “on disparate topics,” *id.* at 135, as the redacted emails in *Gellman* were.

⁷ Here we note the complainant’s question as to whether the search included “correspondences in which the two staff members named were cc’d,” and “not just direct correspondence.” Given the complainant’s use of the word “between,” we cannot find it wholly unreasonable to read the PIA request as seeking the direct correspondence of Mr. Adams and Mr. Deraleau, i.e., correspondence in which one or both of them is listed in the “to” or “from” fields. However, in light of the liberal construction of the statute discussed above, it is a cramped form of reasonable.

⁸ One is an email from Sen. Craig Zucker dated July 5, 2023, 12:24 p.m., and the other is an email from Krisna Becker dated July 4, 2023, 7:33 a.m.

Rather, they are on the same topic—the Poolesville High School construction—and integrated by reference into the emails that were disclosed. Thus, the emails were part of a responsive record and should have been provided to the complainant.

We turn next to the issue of MCPS’s search. The exhibit attached to the complainant’s reply contains emails he argues are responsive to his request, yet not returned by MCPS’s search. We agree with the complainant that these emails are responsive to the complainant’s PIA request. All of them address issues arising from a construction project at Poolesville High School and include either Mr. Adams, Mr. Deraleau, or both. That these emails do not appear to have been returned by MCPS’s search illustrates one of the difficulties that email records present. If the search terms are too broad, a very large volume of potentially responsive records results, often along with a high fee. If the search terms are too narrow, however—e.g., “construction at Poolesville High School”—the search risks missing records that are responsive. Notably, here, the word “Poolesville” only appears four times in the records provided by the complainant—once in a URL, twice in the Principal’s signature line, and once in the substantive content of an email. The only time the term “Poolesville High School” appears is in the Principal’s signature line. But, the acronym “PHS” appears at multiple points throughout the records, suggesting that, if MCPS had used this search term, more records may have been returned.

To us, it is significant that the complainant did not request email communications that contain the term, in quotes, “construction at Poolesville High School.” Rather, he requested email communications generally “pertaining to” that construction project. It is clear from the PIA request that the complainant expected to receive records responsive to his natural language request, and not records containing only the precise term “construction at Poolesville High School.” For this reason, we find that MCPS’s search for responsive records was unreasonable and inadequate. It was not “designed to capture all responsive records.” *Glass*, 453 Md. at 232.

Our State Supreme Court has instructed that, “[i]n practice, a productive response to a PIA request is often an iterative process in which the agency reports on the type and scope of the files it holds that may include responsive records, and the requestor refines the request to reduce the labor (and expense) of searching those records.” *Id.* at 233. In the context of email records, then, it is often necessary for the custodian and requester to engage in a back-and-forth regarding the specific search terms to be used and how many records those terms return. Give our conclusion regarding MCPS’s search, we thus direct MCPS to engage in this process with the complainant—assuming he is still interested—and to settle on search terms to manage the cost so that he may obtain records in which Mr. Adams and Mr. Deraleau were included that actually “pertain” to construction at Poolesville High School.

As to the emails in the email chain that we determined were improperly excluded, normally, when we conclude that a custodian has improperly denied inspection of a public

record, we must direct the custodian to “produce the public record for inspection.” § 4-1A-04(a)(3)(i). Here, however, the complainant has been provided a copy of the exhibit containing the additional emails referenced above, which MCPS attached to its response. *See* COMAR 14.02.02.03G (requiring that an applicant/complainant be copied on the custodian’s response to a Board complaint). He thus now has those full records, and we do not order any further relief there.

Conclusion

We conclude that MCPS’s search for records responsive to the complainant’s PIA request was unreasonable and inadequate, and therefore likely failed to locate all records responsive to the complainant’s PIA request. We thus direct MCPS to work with the complainant to conduct a reasonable search designed to uncover the responsive records he seeks. Further, upon review of the records returned by the search performed (inadequate though it was), we find that MCPS improperly excluded two emails from a responsive email chain. However, because the complainant now has those emails, we order no further relief regarding that issue.

Public Information Act Compliance Board*

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* Board Members Michele L. Cohen, Esq. and Nivek M. Johnson did not participate in the deliberation, preparation, or issuing of this decision.