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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-51

March 14, 2024

Montgomery County Department of Transportation, Custodian
George Carlisle, Complainant

In May 2023, complainant George Carlisle sent a Public Information Act (“PIA”) request to the Montgomery County Department of Transportation (“MCDOT”) seeking certain records related to the County’s Ride On bus service. In July, MCDOT produced records in response. Concerned that MCDOT had not disclosed all responsive records, the complainant contacted the Ombudsman for dispute resolution assistance. After the Ombudsman issued a final determination stating that the dispute was not resolved, the complainant filed this complaint alleging that his PIA request “was not fulfilled completely.” MCDOT maintains that it provided the records the complainant requested. After review, we cannot find that MCDOT’s response violated the PIA. However, we nevertheless urge MCDOT to produce any additional non-exempt records the complainant may be seeking. We explain our conclusion below.

Background

On May 7, 2023, the complainant sent a PIA request to MCDOT asking for:

1. An organization chart of the talented leaders that manage directly the “RideOn Reimagined” Program(s).
2. [A] copy of “all” the Future RideOn routes presented during the March 23rd, 2023 Germantown Library Meeting.

According to the complaint, MCDOT fulfilled the first part of the PIA request on July 20, 2023. As to the second part of the request, the complainant states that MDCOT has “provided everything but what [he] requested,” and provides background to explain.

The complainant states that MCDOT, “through a contractor, held transit meetings throughout Montgomery County to optimize their transit services after covid,” calling the plan “RideOn Reimagined.” One of those meetings was held at the library in Germantown in March 2023. The complainant states that, at that meeting, they spent two hours “viewing and commenting on proposed routes” and “made comments about each of the individual routes” in writing on the back of hardcopies of the routes distributed at the meeting.

Because there was not time to view all the routes, the complainant asked for copies, presumably to take with him. MCDOT apparently declined to provide copies at that time, and thus the complainant sent his May PIA request.

The complainant provides the records he was sent on July 20, 2023, in response to the second part of his PIA request.¹ Those records include “a consolidated route map but for the other side of the county.” The records, the complainant states, did not satisfy his PIA request. Then, on December 18, 2023, MCDOT sent the complainant his “comments from the Upcounty meeting,” which the complainant explains was a “summary map of ‘Upcounty’ but not the individual bus maps.” These too, were unsatisfactory. MCDOT tried again. At some point during the holidays, MCDOT sent the complainant a fifteen-page PDF of his “comments with the individual maps that [he] commented on from the [Germantown Library] meeting.” But, this apparently still was not what the complainant wanted.

The complainant explains that he wants “ALL the individual maps” so that he can “keep track of the changes so [he] could make [his] case to the county executive and county council for changes at MCDOT.” On December 27, 2023, the complainant sent MCDOT an email (which he includes with his complaint) in response to MCDOT’s transmittal of the fifteen-page PDF. In that email, the complainant stated that MCDOT is “working so hard,” and that he would “grant [MCDOT] the ability to enjoy your life til January 2nd, 2024.” However, the complainant asked MCDOT to “remember, your bag of work will be there when you come back.” It appears that this was the last communication the complainant sent to MCDOT regarding his PIA request.

Noting that he has had “numerous discussions with Montgomery County directly,” the complainant has “reached the conclusion that they don’t want to provide the information.” The complainant maintains that MCDOT is “unwilling to collate all the individual routes from all the other sessions and this one”—presumably meaning the March 23, 2023, meeting in Germantown—to “satisfy [his] PIA request.”²

In response to the complaint, MCDOT states simply that it “provided the requested response on December 27, 2023,” and that the complainant “acknowledged receipt of the

¹ The complainant does not challenge the response to the first part of his PIA request.

² We note that the complainant has included information about communications exchanged by the parties and with the Ombudsman during mediation. We have not reviewed or considered those communications because they are confidential. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-1803(b)(1) (prohibiting a party to a mediation from disclosing mediation communications in “any judicial, administrative, or other proceeding”); *cf. also* Md. Code Ann., Gen. Provisions § 4-1B-04(d)(3) (allowing the Ombudsman to transfer “basic information about a dispute” to the Board only “if appropriate steps have been taken to protect the confidentiality of communications made or received in the course of attempting to resolve the dispute”).

information and indicated that he would follow up in the new year.” MCDOT indicates that it has not “received any direct correspondence from [the complainant] indicating specific issues with the response provided.” MCDOT attaches both its December 27, 2023, email transmitting the records to the complainant and the complainant’s response to that email, sent the same day.

Analysis

We are authorized to review and resolve complaints that allege certain violations of the PIA, including that a custodian wrongfully denied inspection of public records.³ *See* § 4-1A-04(a)(1)(i).⁴ Most often this sort of allegation is raised when a custodian locates a record but denies inspection, citing an exemption from disclosure in the PIA. *See, e.g.*, PIACB 24-06 (Sept. 6, 2023) (reviewing a denial under § 4-301(a)(1), an exemption for records that are privileged or confidential “by law”). Sometimes, however, a complainant alleges that a custodian constructively denied inspection of public records by conducting an inadequate search that fails to locate all responsive records, or by withholding records without explaining why. *See, e.g.*, PIACB 24-28 (Jan. 5, 2024). In both cases, we must review the submissions and, if we conclude that the 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 determine that a custodian has improperly denied inspection of public records, we must “order the custodian to . . . produce the public record[s] for inspection.” § 4-1A-04(a)(3)(i). For a constructive denial, we may direct a custodian to conduct another search and “produce any non-exempt responsive records” that are found. *See, e.g.*, PIACB 24-08, at 6 (Sept. 28, 2023).

A custodian who receives a PIA request must “conduct a search in good faith that is reasonably designed to capture all responsive records” and that is “focused on where responsive records are likely to be found.” *Glass v. Anne Arundel County*, 453 Md. 201, 232 (2017). The PIA does not require a “perfect search that leaves no stone unturned,” but rather a “*reasonable* search designed to locate all records responsive to the particular PIA request.” *Id.* at 233 (emphasis original). Reasonableness is “measured against the specificity of the request and the willingness of the requestor to focus a request to improve the efficiency of the search.” *Id.*

Upon review of the submissions here—particularly the maps that were disclosed on December 27, 2023, which MCDOT provides with its response—we cannot find that MCDOT violated the PIA. The complainant requested “a copy of ‘all’ the Future RideOn

³ 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. Md. Code Ann., Gen. Provisions § 4-1A-05(a).

⁴ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise indicated.

routes presented during the March 23rd, 2023 Germantown Library Meeting.” While the maps that MCDOT first produced in response to the PIA request apparently were not “all” the maps presented at the library meeting, the maps produced on December 27 seem to be a reasonable response to the request. They are maps of individual bus routes “from the second Focus Group exercise” with handwritten notes on them. To the extent that the complainant is seeking “all the individual routes from all the *other sessions* and this one,” we note that his PIA request did not ask for the maps from “other sessions.” It sought the maps “presented during the March 23rd, 2023 Germantown Library Meeting.”

We understand that there may have been negotiations along the way to this Board complaint, and that as a result of those negotiations, the complainant may have expected MCDOT to produce more than it did on December 27, 2023. But, as explained above, based on the record before us—which is confusing, to say the least—we cannot find that MCDOT’s ultimate response violated the PIA. That said, to the extent that (1) the complainant’s PIA request sought bus route maps with *others’* comments on them, and (2) he is now seeking bus route maps presented at *other* focus group sessions, MCDOT should produce those records to the complainant.

Conclusion

After review of the complaint and other submissions, we cannot find that MCDOT has constructively denied the complainant’s PIA request and, therefore, find no violation of the PIA. However, if MCDOT is in possession of the additional public records described immediately above, MCDOT should disclose those records to the complainant.

Public Information Act Compliance Board

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