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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-63

April 11, 2024

University of Maryland, College Park, Custodian
Joel Lev-Tov, Complainant

Complainant Joel Lev-Tov sent a Public Information Act (“PIA”) request to the University of Maryland, College Park (“UMCP”) for police reports related to a specific incident. UMCP produced records, but applied redactions pursuant to §§ 4-330 and 4-351¹ of the PIA. The complainant challenges those redactions. As explained below, we conclude that UMCP has not violated the PIA.

Background

In November of last year, the complainant sent a PIA request to UMCP seeking “[c]opies of police reports and any other materials relevant to the case for UMPD cases 2023-00107217 and 2023-96819.” UMCP acknowledged the request and advised that the relevant reports had been “pulled” and were “under review.” UMCP produced the reports, but redacted the name and identifying information of the complainants and subjects of the reports. After receiving the records, the complainant contacted UMCP and asked that redactions to the names in one of the reports be removed, arguing, among other things, that disclosure of the names would not be contrary to the public interest because the case was closed and no litigation was pending. After exchanging emails regarding the propriety of the redactions, UMCP advised the complainant that they may contact the Public Access Ombudsman.²

The complainant did contact the Ombudsman, who ultimately issued a final determination stating that the dispute was not resolved. The complainant then filed this complaint with our Board in which they continue to challenge the redactions. The complainant asserts that it is in the public interest to release the names of the complainant and “the person the complainant called about.”

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

² The Ombudsman is charged with making “reasonable attempts to resolve disputes” between PIA requesters and custodians, including disputes about “redactions of information in the public record.” § 4-1B-04(a)(2).

In response to the complaint, UMCP states that, under § 4-351, a custodian may withhold or redact a record if disclosure would “constitute an unwarranted invasion of personal privacy” or “endanger the life or physical safety of an individual.”³ Emphasizing that “[e]ither rationale is sufficient to support redaction of the names,” UMCP maintains that it exercised its discretion to redact the report in a manner that was not arbitrary or capricious. UMCP points out that it did not withhold the entire report, but rather redacted the “name of the person who contacted law enforcement, and the name of the person upon whom law enforcement was called,” information that UMCP describes as “potentially harmful.” UMCP argues that the redacted report satisfies the PIA’s purpose of providing information about the transaction of State business, and that “[k]nowing the name of the affected party in the report does not shed light on government operations or the transaction of [S]tate business.”

Acknowledging that the underlying matter is closed, UMCP argues that it has provided a “significant factual basis” for the redactions it has applied. UMCP explains that the incident described in the report occurred in front of the University’s Hillel Jewish Center, where there have been reports of “hateful slurs” directed toward organization members such that law enforcement has increased patrols in the area. UMCP contends that, “though October 7, 2023, may seem temporally remote,” the “situation remains volatile and dynamic.”⁴ UMCP additionally contends that disclosing the names “would serve as a chilling effect upon those who elect to report perceived instances of hate/bias,” and that “[i]n a campus setting, having a student’s name makes them easy to locate and, therefore, potentially targeted.” UMCP states that it “does not want to contribute to the phenomena of ‘doxing’ where records are used to target individuals.”

UMCP also advises that it contacted one of the individuals named in the report and that the individual “strenuously indicated that they did NOT want their name released.” That individual, UMCP states, referred to “the slurs members of their organization still suffer as they attend programs at the [Hillel] Center,” and “remain[ed] cautious and fearful for their safety.”⁵

³ UMCP does not rely on § 4-330, the PIA’s exemption for “sociological information,” in its response to the complaint. Section § 4-330 requires denial of such information, but only if “the official custodian has adopted rules or regulations that define sociological information.” UMCP has adopted rules that define sociological information, but the definition does not cover an individual’s name—and the redactions to the names are the only redactions challenged in this complaint. See Rules on Public Records Containing Sociological Information (Feb. 1, 2020), <https://ogc.umd.edu/uploads/files/soc.pdf> (last visited Apr. 10, 2024).

⁴ October 7, 2023, was the day of Hamas’s surprise attack on Israel. See Ephrat Livni & Gaya Gupta, *What We Know About the War Between Israel and Hamas*, N.Y. Times (Nov. 20, 2023), <https://www.nytimes.com/article/israel-gaza-hamas-what-we-know.html>.

⁵ UMCP explicitly stresses that it does not suggest that this complainant would do anything inappropriate with the information.

The complainant, in reply, argues that the section of the PIA that permits redaction if disclosure would “endanger the life or physical safety of an individual” does not apply here. The complainant points to UMCP’s reliance on reported slurs and contends that “[w]hile this is certainly deplorable, it is not physical violence.” The complainant notes that the report disclosed reveals that the complainant in the incident “told the officer that the interaction that started it all was ‘not confrontational.’” In addition, the complainant contends that UMCP’s administration has “emphasized the civility of the conversation on campus,” and that the increased patrols occurred “shortly after the Oct. 7 events in Israel,” and not “in response to a specific threat.”

The complainant also disputes UMCP’s argument that disclosure of the names would have a chilling effect on the reporting of hate or bias. The complainant argues that the underlying incident was “not a bias/hate investigation,” but rather “should be viewed as a property dispute, where one person hung posters on private property.”

The complainant argues that UMCP “interprets [the PIA’s] purpose too narrowly.” Recognizing that the individuals named in the report “are not members of the government,” the complainant argues that the government’s choice “not to move forward with the case . . . touches the two students and the entire UMD community.” The complainant contends that the names are “integral to understanding how the government functioned in this case as only these two students whose names were redacted can speak out about the experience of interacting with [U]niversity police and its effects.” Further, the complainant notes that UMCP did not redact the physical description—which was fairly detailed—of one of the individuals and suggests that “there is no reasonable reason to release the descriptions of the student putting up the poster but not release the names.”

Analysis

We are authorized to review and resolve complaints that allege certain violations of the PIA, including that a custodian improperly “denied inspection of a public record,” either by withholding a record entirely or by redacting information within a record.⁶ § 4-1A-04(a)(1)(i). After considering the parties’ submissions, we must issue a written decision and order a statutory remedy, if we conclude that the alleged violation occurred. § 4-1A-04(a)(2) and (3). In cases where we determine that a custodian improperly denied inspection of a public record, we must “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(3)(i).

The provisions of the PIA are meant to embody the principle that “[a]ll persons are entitled to have access to information about the affairs of government and the official acts

⁶ Before filing a complaint, a complainant must “attempt[] to resolve the dispute” through the Ombudsman and receive a “final determination stating that the dispute was not resolved.” § 4-1A-05(a).

of public officials and employees.” § 4-103(a); *see also Immanuel v. Comptroller*, 449 Md. 76, 89 (2016) (explaining that “the legislative purpose” of the PIA is to “inform citizens about the workings of their government”). At the same time, a custodian’s “duty to disclose certain records is limited by the scope of the statutory exemptions” in the PIA. *Immanuel*, 449 Md. at 88. As our State’s Supreme Court has explained, “[w]hile the public policy of the MPIA favors disclosure, the purpose of the Act reveals a legislative goal other than complete *carte blanche*, unrestricted disclosure of all public records.” *Id.* The Court observed that cases interpreting the PIA establish a “balance between disclosure and maintaining privacy of individual information.” *Id.* at 91.

Section 4-351, the exemption cited by UMCP as authority for the redactions it applied here, is a discretionary exemption that permits a custodian to withhold all or part of, among others, “records of investigations conducted by . . . a police department” if the custodian determines that disclosure would be “contrary to the public interest.” §§ 4-343, 4-351(a)(1). If the requester is a “person in interest”—e.g., a person “that is the subject of a public record,” § 4-101(g)(1)—then a custodian may deny inspection “only to the extent that the inspection would” cause at least one of seven enumerated consequences, including causing an “unwarranted invasion of personal privacy,” § 4-351(b). If a requester is *not* a “person in interest,” then a custodian may deny inspection “if, for any reason, disclosure would be contrary to the public interest.” *Frederick v. Randall Family LLC*, 154 Md. App. 543, 561 (2004). The circumstances outlined in § 4-351(b) certainly are, however, relevant considerations in cases involving non-“persons in interest.” *See* 64 Md. Op. Att’y Gen. 236, 241-42 (1979). To justify withholding records or information under § 4-351, a custodian ordinarily must provide a “particularized factual basis for the ‘public interest’ denial.”⁷ *Randall Family*, 154 Md. App. at 567.

The complainant does not purport to be a “person in interest” for purposes of the police reports they seek, meaning that UMCP may deny inspection of the names contained therein if “for any reason” disclosure of those names would be contrary to the public interest. Nevertheless, UMCP turns to subsection (b) and maintains that disclosure of the individuals’ names would both “constitute an unwarranted invasion of personal privacy” and “endanger the life or physical safety of an individual.” § 4-351(b)(3) and (7). Taking the privacy claim first, we note that we have looked to federal cases interpreting a similar exemption in the Freedom of Information Act⁸ (“FOIA”) for guidance in the past. *See*,

⁷ Note, however, that “[i]n cases where defendants are awaiting trial or [when] criminal investigations are ongoing, the reason why it is in the public interest to withhold the contents of an investigative file is obvious, i.e., disclosure almost always would ‘interfere with law enforcement proceedings.’” *Frederick v. Randall Family LLC*, 154 Md. App. 543, 566 (2004) (citation omitted).

⁸ *See* 5 U.S.C.A. § 552(b)(7)(C), which permits withholding of “records or information compiled for law enforcement purposes, but only to the extent that the production” would have certain

e.g., PIACB 23-18 (June 7, 2023). Those cases teach that “[a]n agency may not withhold records under exemption 7(C) solely because disclosure would infringe legitimate privacy interests, but must balance privacy interests against the public’s interest in learning about the operations of its government.” *Campbell v. U.S. Dep’t Just.*, 164 F.3d 20, 33 (D.C. Cir. 1998); *see also Lahr v. Nat’l Transp. Safety Bd.*, 569 F.3d 964, 974 (9th Cir. 2009) (“[T]he only relevant public interest in the FOIA [exemption 7(C)] balancing analysis is the extent to which disclosure of the information sought would shed light on an agency’s performance of its statutory duties or otherwise let citizens know what their government is up to.”).

We have little trouble concluding, based on case law, that individuals have a “legitimate privacy interest” in personal information about them contained in law enforcement records. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763 (1989) (“[B]oth the common law and the literal understandings of privacy encompass the individual’s control of information concerning his or her person.”); *Lahr*, 569 F.3d at 975 (“[T]he privacy interests of citizens are highest when disclosure would reveal information collected about them in conjunction with a criminal inquiry.”).

We also find that the privacy interests in this particular matter are strong. UMCP represents—and we have no reason to doubt this representation—that it has contacted one of the individuals involved in the incident. That individual was apparently unequivocal in their desire to keep their name from being released in connection with the incident. In this regard, we are persuaded by the reasoning of the Ninth Circuit in finding that eyewitnesses had a strong privacy interest in redactions of their names and other identifying information in law enforcement reports:

The potential for unwanted contact by third parties, including . . . media entities, and commercial solicitors, nonetheless remains. The case law establishes that protection from such unwanted contact facilitated by disclosure of a connection to government operations and investigations is a cognizable privacy interest under Exemptions 6 and 7(C).

Lahr, 569 F.3d at 975-76; *cf. also Nat’l Archives & Recs. Admin. v. Favish*, 541 U.S. 157, 166 (2004) (recognizing a family’s privacy interest in “secur[ing] their own refuge from a sensation-seeking culture for their own peace of mind and tranquility”). Moreover, the political context of the underlying incident is relevant to the privacy interests. We are not persuaded by the complainant’s characterization of the incident as a simple “property dispute.” While it may not have risen to the level of a “hate” or “bias” crime, we cannot

consequences, including that disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.”

ignore the fact that there is volatility surrounding the conflict in the Middle East. We do not take UMCP's reference to, e.g., doxing⁹ as mere hyperbole.¹⁰

But the existence of strong privacy interests in the redacted information does not end the inquiry. Rather, a custodian must “balance privacy interests against the public’s interest in learning about the operations of its government.” *Campbell*, 164 F.3d at 33; *see also Immanuel*, 449 Md. at 90 (reviewing FOIA cases involving privacy concerns and observing that “[d]isclosure under the FOIA is not an end for its own sake, but instead must be for the purpose of helping citizens understand and oversee the workings of government”). The complainant argues that disclosure here will “advance the public interest in assessing how well the government does its job,” and that the individuals’ names are “integral to understanding how the government functioned” because these students are the only ones who can “speak about the experience of interacting with university police and its effects.”

We first note that, by disclosing the redacted report, UMCP has released information that “help[s] citizens understand and oversee the workings of government.” *Immanuel*, 449 Md. at 90. The report identifies the officer who responded, and details the officer’s interactions with the complainant and steps taken to investigate—e.g., checking to see if there were cameras in the area. In light of the fact that at least one of the two individuals named in the report appears unlikely to “speak out” about the experience,¹¹ it does not seem to us that releasing the individuals’ names will add much value, if any, to what the public already knows about the incident and the University police’s role in it. *See Eil v. U.S. Drug Enf’t Admin.*, 878 F.3d 392, 399 (1st Cir. 2017) (finding arguments related to the public interest in disclosure “unconvincing” where there had already been “substantial disclosure of pertinent information”); *see also* PIACB 23-18, at 10 (June 7, 2023) (observing that the custodian “did not redact any information related to the police officers who responded and stopped the complainant, nor did it redact any statements made by the witnesses,” and that

⁹ “Doxing” means “to publicly identify or publish private information about (someone) especially as a form of punishment or revenge.” *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/dox> (last visited Apr. 10, 2024).

¹⁰ *See* Susan Svrluga, *After Turmoil, Harvard Students Return to Changed Campus*, Wash. Post, Feb. 13, 2024, at A06 (reporting on the steps that Harvard University had taken to “support pro-Palestinian students who were doxed,” and quoting a Jewish student who stated, “[w]e don’t feel safe”).

¹¹ We take the complainant’s point that, in releasing a relatively detailed physical description of one of the individuals, UMCP has already disclosed *some* information that might lead to the identification of that individual. However, the privacy invasion potential is much higher with the release of names—especially considering that the large population of UMCP’s campus likely makes it much more difficult to make a precise identification on description alone. *See* Univ. of Maryland, Rankings & Fast Facts, <https://www.umd.edu/rankings-and-fast-facts> (last visited Apr. 10, 2024) (indicating that there are 40,800+ students and 4,474 faculty members at UMCP).

this disclosed information was “far more likely to provide insight as to how [police] handled the situation”). And, while it is possible that the individual that UMCP has apparently not spoken to might be more open to contact from, e.g., the media, revealing that individual’s name would also make it far easier to discern the name of the individual who does not wish to be identified. One would only need contact the individual willing to speak and ask.

To justify redaction of the names in the police report, UMCP was required to provide a “particularized factual basis,” *Randall Family*, 154 Md. App. at 567, for why disclosure of the names would be “contrary to the public interest,” §§ 4-343, 4-351(a). After review, we think UMCP has done that here. Based on the arguments and representations in the submissions, we cannot find that UMCP improperly determined that release of the individuals’ names would constitute an “unwarranted invasion of personal privacy.” Rather, UMCP has sufficiently explained that, due to the nature of the underlying incident and one of the individuals’ stated preferences, the privacy interests outweigh any public interest that disclosure would serve, especially given that UMCP *has* disclosed information that furthers the public interest.

Because we have determined that UMCP has supported the redaction of the names in the report under § 4-351(a)(1) on privacy grounds, we do not resolve whether the other justifications it advances—i.e., that disclosure would “endanger the life or physical safety of an individual” or deter other individuals from reporting hate or bias crimes in the future—also supports non-disclosure.

Conclusion

After review of the submissions, we conclude that UMCP has not improperly invoked § 4-351(a)(1) to redact the names of the complainant and subject from the police report at issue here. Rather, UMCP has advanced a sufficiently particularized explanation for its determination that disclosure of the names would be contrary to the public interest. We therefore find no violation of the PIA.

Public Information Act Compliance Board

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