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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-65

May 24, 2024

Prince George's County Fire & Emergency Services Department, Custodian
Bryan Lau, Complainant

The complainant, Bryan Lau, sent a Public Information Act ("PIA") request to the Prince George's County Fire and Emergency Services Department ("PGFEMS") seeking copies of reports provided to the County's Fire Commission that list the monthly payments to Length of Service Award Program ("LOSAP") recipients for the months of April and May, 2023. PGFEMS denied the request, citing §§ 4-312 and 4-331¹ of the PIA, which, respectively, exempt retirement records and certain information about public employees from disclosure. The complainant challenges PGFEMS's denial. In response to the complaint, PGFEMS maintains that the PIA requires denial of the complainant's request, and cites § 4-336, which shields an individual's financial information from disclosure, as an additional basis for denial. As explained below, we conclude that § 4-336 applies to the information about LOSAP benefit amounts, and thus those amounts may not be disclosed. PGFEMS should redact that information from the monthly reports and disclose the plan name, benefit type, and recipient, which is information specifically requested by the complainant.

Background

In September of last year, the complainant asked PGFEMS to produce certain reports related to the County's LOSAP program. The PIA request was as follows:

Each month the [Office of Human Resources Management, or "OHRM"] prepares a listing of payments to LOSAP recipients for the Fire Commission.

This includes Payees and Surviving Spouses.

The following is the format of the monthly report.

The ssn is redacted to only show the last 4 [digits]. It can be redacted in full if that is [a] concern.

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

I request copies of 2 reports.

LOSAP May 2023, and
LOSAP April 2023

These are canned monthly reports.

PGFEMS denied the complainant's PIA request, citing §§ 4-312 and 4-331 of the PIA. Section 4-312(a) generally prohibits disclosure of "a retirement record for an individual." Section 4-331 requires a custodian to deny inspection of "the part of a public record that contains the home address, personal telephone number, or personal e-mail address of an employee of a unit or an instrumentality of the State or of a political subdivision."

The complainant disagreed with PGFEMS's response to his PIA request and contacted the Public Access Ombudsman for assistance with resolving the dispute.² After the Ombudsman issued a final determination stating that the dispute was not resolved, the complainant filed this complaint with our Board. He argues that Prince George's County has "apparently released payment information for another retirement plan," and that "other jurisdictions in Maryland have released retirement payment information, i.e. Anne Arundel County Pensions recipients." The complainant also contends that "LOSAP is not a retirement or pension plan according to the State of Maryland and IRS."

PGFEMS responds first that any previous disclosure of LOSAP or other retirement payment information by Prince George's or any other county does not bear on its decision here because "PIA requests are reviewed on a case by case basis" with "every intention to uphold the current MPIA laws." Noting that the responsive records "contain benefit information which includes sums paid out to family members," PGFEMS primarily argues that § 4-336, a mandatory exemption for "information about the finances of an individual," requires denial of the complainant's PIA request. PGFEMS maintains that redaction of the financial information is not a solution because "the records would be heavily redacted for personal identifying information such as social security numbers, dates of birth, home addresses and phone numbers" pursuant to § 4-331.

In his reply, the complainant provides a link to a section of GovSalaries that provides individualized "salary" information for the Prince George's Police Civilian Supplemental Pension Plan. The complainant points out that the website indicates that the information is gathered via "FOIA," or Freedom of Information Act, requests—the

² The PIA charges the Ombudsman with making "reasonable attempts to resolve disputes" that arise under the PIA between records requesters and custodians. § 4-1B-04(a). Before filing a complaint with our Board, 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).

apparent implication being that Prince George's County must have provided the information in response to a FOIA request. The complainant also disputes PGFEMS's assertion that LOSAP is a retirement or pension plan, noting that, for State and federal tax purposes, LOSAP is treated differently from other retirement or pension plans. The complainant also disagrees that § 4-336 applies to the LOSAP payment amounts because he did not request information about "assets, income, liabilities, net worth, bank balances, financial history or activities, or credit worthiness," which is what that exemption protects. He also states that he did not request any home addresses, personal telephone numbers, or social security numbers, but rather simply "Plan Information, Name and Gross Benefit for the respective period of time."

Analysis

We are authorized to review and resolve complaints from PIA requesters that allege certain violations of the PIA's provisions, including that a custodian improperly denied inspection of a public record. § 4-1A-04(a)(1)(i). After reviewing the complaint and all submissions, we must issue a written decision and order a statutory remedy, if we find that the alleged violation occurred. § 4-1A-04(a)(2) and (3). If we determine that the custodian wrongfully 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 PIA provides a "right to broad disclosure of government or public documents with exemptions for specific kinds of information." *Immanuel v. Comptroller*, 449 Md. 76, 81 (2016); *see also* § 4-103(b) ("[U]nless 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."). Consistent with this focus on government, our State's Supreme Court has explained that the PIA's exemptions to disclosure "are intended to address the reasonable expectation of privacy that a person in interest has in certain types of records identified by the Legislature." *Immanuel*, 449 Md. at 82 (quotation and citation omitted). Thus, "[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.* at 88.

All three of the exemptions cited by PGFEMS are mandatory, meaning that if the record or information falls within their scope, PGFEMS has no choice but to withhold the record or information from disclosure. Section 4-312 requires a custodian to deny inspection of "a retirement record for an individual," although, "[o]n request, a custodian shall state whether the individual receives a retirement or pension allowance." Under § 4-331, a custodian must deny inspection of "the part of a public record that contains the home address, personal telephone number, or personal e-mail address of an employee of a unit

or an instrumentality of the State or of a political subdivision.”³ Finally, § 4-336(b) requires denial of “information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.” Notably, § 4-336 “does not apply to the salary of a public employee.” § 4-336(a). In instances where specific *information* is exempt from disclosure, a custodian ordinarily must redact that information where it appears in the record and disclose the rest. *See* § 4-203(c)(1)(ii) (requiring a custodian to “allow inspection of any part of the record that is subject to inspection”).

Before turning to the PIA questions raised by this complaint, some brief background about the nature of the records is in order. The complainant has requested certain reports prepared for the Fire Commission regarding payments to LOSAP recipients. The Fire Commission is a public entity created by the Prince George’s County Code that consists of nine County residents who are appointed by the County Executive, subject to confirmation by the County Council. Prince George’s County Code, § 11-301. The Fire Commission is charged with reviewing “the financial needs and requests for public funds of each volunteer fire company,” and formulating annually “one capital budget, one capital improvement program, and one current expense budget for all volunteer fire companies with respect to the expenditure of public funds.” *Id.* § 11-302.

According to the Fire Commission’s website, there are forty-five fire stations in Prince George’s County, twenty-nine of which are “volunteer-owned.” Prince George’s County Fire Commission, LOSAP, <https://www.firecommission.com/losap/> (last visited May 24, 2024). There are “36 volunteer corporations with over 1,600 active volunteers (operational and administrative) serving Prince George’s County.” *Id.* Those volunteers who reach the age of fifty-five and have completed at least twenty-five years of “certified active volunteer service with any Prince George’s County volunteer fire company or volunteer rescue squad or combination thereof” are eligible to participate in the County’s LOSAP program. *See* Prince George’s County Code, § 11-328. Generally, “LOSAPs are pension-like programs administered at the local level that are used as an incentive for the recruitment and retention of volunteer firefighters and emergency medical services (EMS) personnel.” Fiscal & Policy Note, H.B. 1515, 2018 Leg., Reg. Sess., at 1. Through this program, qualified volunteers in Prince George’s County receive monthly payments as prescribed by the Code. Prince George’s County Code § 11-328(c)(1). “In the event that any qualified volunteer shall die while receiving [LOSAP] benefits, then his or her surviving spouse is entitled to benefits equal to fifty percent (50%) of the volunteer’s benefits.” *Id.* § 11-328(c)(7).

³ A custodian may disclose the information covered by § 4-331 if “the employee gives permission for the inspection” or “the unit or instrumentality that employs the individual determines that inspection is needed to protect the public interest.”

Though volunteer fire companies are regulated by both the County and the State, volunteer firefighters are not considered public officials or public employees. *Macy v. Heverin*, 44 Md. App. 358, 364 (1979); *see also* 74 Md. Op. Att’y Gen. 275, 276 (1989) (explaining that while volunteer firefighters’ efforts “certainly promote the public welfare, the giving by the citizens of their time and effort does not make them public officers or public employees,” (cleaned up)); *cf. Haavistola v. Cmty. Fire Co. of Rising Sun, Inc.*, 6 F.3d 211, 215-16 (4th Cir. 1993) (concluding that there is no “symbiotic relationship” between volunteer fire companies and the State for purposes of 42 U.S.C. § 1983, in part because “Maryland statutes governing volunteer fire departments contain no provisions regarding department membership,” and the company is “free to select its members by any means it chooses”). The case law finding so is consistent with commonly understood definitions of “employee.” *See Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/employee> (last visited May 24, 2024) (defining “employee” as “one employed by another *usually for wages or salary*, and in a position below the executive level,” (emphasis added)).

Turning to the exemptions cited by PGFEMS, we first observe that § 4-331 would not appear to apply here, given that the LOSAP recipients are volunteer firefighters and therefore not public employees. Section 4-331 applies to certain information of “an employee of a unit or an instrumentality of the State or of a political subdivision,”—i.e., not volunteers.⁴ And, though we understand that the LOSAP program is a “pension-like program[],” Fiscal & Policy Note, H.B. 1515, 2018 Leg., Reg. Sess., at 1, it is not clear to us that these reports, prepared for the Fire Commission, would constitute a “retirement record *for an individual*,” § 4-312(a) (emphasis added). Although we are unaware of any Maryland appellate opinions that interpret § 4-312(a), we note that the State Retirement and Pension System has, in regulations governing PIA requests, defined “retirement record” as “any record, regardless of physical form or characteristics, indexed by a participant’s name, participant’s home address, Social Security number, or other identification number.” COMAR 22.01.02.02B(15). As we see it, it is unlikely that the Fire Commission LOSAP reports fit this definition. *But see* Letter from Assistant Attorney General Kathryn M. Rowe to Sen. Leo E. Green, at 2 (May 13, 2002) (names of applicants for a county Board cannot be disclosed because they “would have to come from the resumes or applications submitted by those seeking the positions,” which are subject to the personnel records exemption).

We do, however, conclude that § 4-336 applies here. Both parties indicated that the reports contain the LOSAP amounts paid to specific, named individuals. Section § 4-336(b) precludes disclosure of “information about the finances of an individual,” including

⁴ We also note the complainant’s representation that he is not seeking the information that § 4-331 protects, e.g., home addresses or personal telephone numbers or email addresses. In addition, the complainant’s PIA request also indicates that any social security numbers “can be redacted in full if that is [a] concern.”

“income.” In our view, LOSAP payments constitute “income” for purposes of this exemption. See *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/income> (last visited Mar. 28, 2024) (“income” means “a gain or recurrent benefit usually measured in money that derives from capital or labor”). This interpretation is supported by Maryland law governing income tax. Section 10-207(g) of the Tax-General Article (“TG”) allows LOSAP payments to be subtracted from an individual’s “federal adjusted gross *income*,” for purpose of determining that individual’s “Maryland adjusted gross *income*.” TG § 10-207(g) (emphases added); see also TG § 10-207(a). And, though § 4-336 excludes from its reach “the salary of a public employee,” as discussed above, the volunteer firefighters and their surviving family members are not, for purposes of LOSAP, “public employees.”⁵

Because the LOSAP payment amounts may not be disclosed under § 4-336(b), PGFEMS must redact that information from the two monthly Fire Commission reports that the complainant requested. The remaining information that the complainant seeks—as he describes it, “Plan Information,⁶ Name”—should be disclosed. Though we do not conclusively resolve whether the monthly reports qualify as a “retirement records” themselves, we nevertheless note that § 4-312(d)(1) requires a custodian to “state whether the individual receives a retirement or pension allowance,” if such information is requested. To the extent that LOSAP may be viewed as a publicly-funded “retirement or pension allowance,” it seems that disclosure of the names alone—without any information about the *amount* of the benefit—would be permissible under the exemption.

Conclusion

After review of the submissions, we conclude that the LOSAP benefit amounts are subject to § 4-336(b) and must therefore be redacted from the two Fire Commission reports

⁵ In any event, we do not resolve whether payments from programs such as LOSAP constitute a “salary.”

⁶ Because it was unclear to us whether there are actually different benefit plans available under the County’s LOSAP program, we asked PGFEMS to provide more detail about this information. PGFEMS advised that the records contain the “plan name”—which is simply “LOSAP”—and “benefit type.” Maryland’s Public Information Act Manual suggests that “information concerning the *specific benefits choices* made by specific employees must be withheld” under the personnel records exemption found in § 4-311 because “[b]enefits choices made by an individual employee can reveal information about the employee’s family circumstances and medical needs, as well as disclose personal financial decisions.” *Maryland Public Information Act Manual* (18th ed. Oct 2023), at 3-15 (emphasis added); see also § 4-311(a) (required denial for “a personnel record of an individual”). In our view neither the “plan name” nor “benefit type” fall within the scope of § 4-311. The “plan name” is general, and does not reflect a choice made by the recipients. Similarly, the limited “benefit type” information reflects status, not a selection or choice. Thus, we do not think § 4-311 precludes the release of this information.

that the complainant has requested. The remaining information sought by the complainant, namely the plan name, benefit type, and the name of the LOSAP recipient, should be disclosed.

Public Information Act Compliance Board

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