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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-94

June 24, 2024

Maryland State Board of Dental Examiners, Custodian
Hannah Klein, Complainant

Complainant Hannah Klein alleges that the Maryland State Board of Dental Examiners (“MSBDE”) violated the Public Information Act (“PIA”) when it denied the complainant’s request for correspondence related to complaints she filed against a dentist. The MSBDE cited § 4-333,¹ the PIA’s exemption for licensing records, as authority for its denial. In response to the complaint, the MSBDE maintains that § 4-333 requires that it deny the complainant’s request because the records relate to discipline and the dentist’s licensure, and do not fall within any of the classes of information that MSBDE is required to disclose under the exemption. After review of the submissions, we conclude that the MSBDE has not violated the PIA. We explain below.

Background

In February of this year, the complainant sent a PIA request to the MSBDE seeking “[a]ll correspondence between the Maryland Department of Health and the Maryland State Dental Society and Khalfani Walker DMD pertaining to complaints 2021-188 and 2023-071, filed by Hannah Klein.” In early March, the MSBDE denied the complainant’s PIA request, citing § 4-333, which prohibits disclosure of “information about the licensing of an individual in an occupation or a profession.”

The complainant disagreed with the MSBDE’s denial of her PIA request so she contacted the Public Access Ombudsman for dispute resolution assistance.² After the Ombudsman issued a final determination stating that the dispute was not resolved, the complainant filed this complaint with our Board. The complainant continues to challenge the MSBDE’s denial of her request.

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

² See § 4-1B-04(a), which charges the Ombudsman with making “reasonable attempts to resolve disputes between [PIA] applicants and custodians relating to requests for public records.” Before filing a complaint with our Board, an applicant or custodian must attempt to resolve the dispute through the Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a).

In response to the complaint, the MSBDE explains that there are two records responsive to the complainant's PIA request. Those records are letters to Dr. Walker that notify him that the MSBDE has reviewed the complaint against him and is "opting to close the matter with no formal action." One letter also contains "general statements advising Dr. Walker on best practices in the delivery of dental care." The MSBDE stresses that Dr. Walker "has never been formally disciplined by the MSBDE, and his license to practice dentistry in the State of Maryland is in good standing."

The complainant attaches (1) a letter, dated November 23, 2022, from Dr. Walker to the MSBDE related to one of the complaints filed against him,³ and (2) a second letter, dated February 16, 2024, apparently filed by Dr. Walker in connection with a civil complaint filed against him by the complainant in the District Court of Maryland for Montgomery County.⁴ Those letters provide background about the situation leading up to the complaints and reference correspondence "to and from the various groups" that "dismissed or declined to pursue any action." The MSBDE argues that these letters do not affect its duty, under § 4-333, to deny inspection.

The MSBDE also contends that the district court litigation strengthens the case for denial. This is because, the MSBDE explains, it acts as a dental review committee under § 4-501 of the Health Occupations Article ("HO") when it reviews disciplinary complaints. The MSBDE cites HO § 4-501(d), which provides that "the proceedings, records, and files of a dental review committee are not discoverable and are not admissible in evidence in any civil action arising out of matters that are being reviewed and evaluated by the dental review committee." Though it acknowledges that it did not refer to HO § 4-501 in its response to the complainant's PIA request, the MSBDE argues that the provision applies to the responsive records here and that therefore § 4-301(a)(1), which precludes disclosure of records that are "by law" privileged or confidential, is an additional basis for its denial.

Analysis

We are authorized to review and resolve complaints that allege certain violations of the PIA's provisions, including that a custodian wrongfully denied inspection of public

³ The MSBDE notes that it did not provide this letter to the complainant.

⁴ The complainant supplied a third attachment with her complaint, but we have not reviewed or considered this attachment because it consists entirely of email communications exchanged between the complainant and the Ombudsman and her office during the mediation. Such communications are confidential, and may not be disclosed "in any judicial, administrative, or other proceeding." Md. Code Ann., Cts. & Jud. Proc. § 3-1803(b)(1); *see also id.* § 3-1801(c) (defining "mediation communication"). We also note that § 4-1B-04(d)(3) permits the Ombudsman to "transfer basic information about a dispute" to our Board, but 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."

records. § 4-1A-04(a)(1)(i). If, after review of the submissions, we find that the alleged violation 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 a public record, we are to “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(3)(i).

The PIA is grounded in the premise that “[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). Thus, “unless an unwarranted invasion of the privacy of a person in interest would result,” the PIA must be “construed in favor of allowing inspection of a public record.” § 4-103(b). At the same time, the PIA’s purpose “reveals a legislative goal other than complete *carte blanche*, unrestricted disclosure of all public records.” *Immanuel v. Comptroller*, 449 Md. 76, 88 (2016). Instead, the PIA contains exemptions for certain records or information, some of which are mandatory in nature, and some of which permit a custodian to deny inspection if inspection would be “contrary to the public interest.” *See, e.g.*, § 4-311 (mandatory exemption for personnel records); § 4-351(a) (discretionary exemption for certain investigatory records).

Section 4-333, the exemption at issue here, is a mandatory exemption that requires a custodian to deny inspection of “the part of a public record that . . . contains information about the licensing of an individual in an occupation or a profession.” § 4-333(a)(1). This general non-disclosure mandate notwithstanding, § 4-333 also provides that a custodian must allow inspection of certain information, *e.g.*, “the name of the licensee,” “the educational and occupational background of the licensee,” or “any orders and findings that result from formal disciplinary actions.” § 4-333(b). In addition, a custodian has discretion to permit inspection of other information about a licensee if there is a “compelling public purpose” and “the rules or regulations of the official custodian allow the inspection.”⁵ § 4-333(c). Finally, a custodian must allow inspection by a “person in interest.” § 4-333(d); *see also* § 4-101(g) (defining “person in interest,” which includes the person “that is the subject of a public record”).⁶

Turning to the records at issue here, which the MSBDE describes as letters sent to the dentist regarding the complaints that the complainant filed against him, one of which contains information about “best practices,” we find no error in the MSBDE’s denial of inspection. Based on the MSBDE’s description of the responsive records and the PIA

⁵ The MSBDE has adopted a regulation governing disclosure for a compelling public purpose. *See* COMAR 10.44.25.01. None of circumstances described in that regulation appear relevant here.

⁶ Though she filed the complaints, the complainant is not considered a “person in interest” as to the complaints or the records related to them. *See Maryland Dep’t State Police v. Dashiell*, 443 Md. 435, 463 (2015) (finding that a person who filed a complaint against a police officer was not a “person in interest” because “[t]he subject of the investigation” was “the officer targeted by the investigation”).

request itself, which sought “correspondence” between the Department of Health and the Maryland Dental Society “pertaining to complaints,” it is clear that the records relate to disciplinary matters of an MSBDE licensee. *See* HO § 4-301(a)(1) (generally requiring that an individual be licensed by the MSBDE before engaging in the practice of dentistry). The records are thus “information about the licensing of an individual in an occupation or a profession.” § 4-333(a)(1). Though § 4-333(b)(7) requires disclosure of “any orders and findings that result from formal disciplinary actions,” the records here do not appear to fit that description, given that no “formal” disciplinary proceedings arose in connection with the complaints.⁷ Thus, disclosure is not required under that subsection. *See* 71 Md. Op. Att’y Gen. 305, 311 (1986) (referring to what is now § 4-333(b)(7) and explaining that “[b]y implication, any form of disciplinary action that has not culminated in a formal order or finding by the agency cannot be disclosed unless authorized by regulation after the custodian has found a compelling public purpose”).

To the extent that the complainant takes the position that Dr. Walker has “waived” the non-disclosure mandate of § 4-333(a)(1) by virtue of referring, in the letters he submitted to the MSBDE and the district court, to correspondence exchanged with “various groups” in the course of responding to the complaints that the complainant filed, we find any such argument unconvincing. The text of the exemption is clear: “a custodian shall deny inspection of the part of a public record that . . . contains information about the licensing of an individual in an occupation or a profession.” § 4-333(a)(1). The MSBDE’s obligations under this provision are not affected by the fact that “information about the licensing” of Dr. Walker may have been disclosed by someone else—including Dr. Walker himself—in a different context. Maryland’s Supreme Court has applied similar reasoning in the context of records held by a medical review committee, explaining that the committee’s records are not disclosable by the committee, even if they are “properly available from other sources.” *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assoc.*, 392 Md. 75, 101 (2006).

Because we find that the MSBDE has properly applied § 4-333 to the records at issue here, we do not address its additional argument, made for the first time in response to this complaint, that denial is also required by § 4-301(a)(1) because the records constitute records of a dental review committee. We draw no conclusions about whether the disclosure restrictions in HO § 4-501(d) are implicated here.

Conclusion

After review of the submissions, we conclude that the MSBDE has not violated the PIA. Because the PIA request sought information about a licensee’s disciplinary matters—

⁷ The public can access some disciplinary orders on the MSBDE’s website. *See* Maryland Dep’t Health, Board of Dental Examiners, Public Disciplinary Orders, <https://health.maryland.gov/dental/Pages/Public-Orders.aspx> (last visited June 20, 2024),

matters which did not result in any formal disciplinary proceedings—§ 4-333(a)(1) precludes disclosure of the responsive records.

Public Information Act Compliance Board

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