**STATE OF MARYLAND**
**PUBLIC INFORMATION ACT COMPLIANCE BOARD**

**PIACB 24-02**
**November 8, 2023**
**Maryland Department of the Environment, Custodian**
**J. Marks Moore, III, Complainant**

The complainant, J. Marks Moore, III, alleges that the Maryland Department of the Environment ("MDE") wrongfully denied inspection of certain records related to notices of children with elevated blood-lead levels. MDE responds that the Public Information Act ("PIA") required it to deny the complainant's PIA request because inspection would be contrary to both Maryland's Confidentiality of Medical Records Act and the public interest. We conclude that MDE violated the PIA by denying inspection and order that MDE produce the records in full without any redaction to the complainant. We explain further below.

## Background

In May 2022, the complainant sent a PIA request to MDE seeking "[a]ll letters or other notices" sent by MDE between January 1, 2020, and the date of the request "to any property owner containing a blood-lead level greater than or equal to the 'reference level' as set forth in § 6-304(b)(2) of the Environment Article."[1] After acknowledging the request and indicating that it would take thirty days or fewer to produce the records, MDE advised that it did not appear that MDE had saved the letters themselves, but that each mailing was "logged" by date sent to the property owner. Ultimately, MDE produced, on July 1, responsive data in the form of an Excel spreadsheet. That spreadsheet contained four columns of information related to each letter: (1) address and/or patient/guardian address; (2) property owner; (3) property owner address; and (4) the date the letter was mailed.[2]

[1] Those reference levels are set out in § 6-304(a) of the Environment Article, which "establishes case management assistance and notification requirements for cases of children with elevated blood levels greater than or equal to" certain threshold levels. Relevant to the complainant's PIA requests, those threshold levels are: "(1) Between July 1, 2022, and October 27, 2022, inclusive, 5 micrograms per deciliter (µg/dl); [and] (2) Between October 28, 2022, and December 31, 2023, inclusive, 3.5 µg/dl." *Id.* § 6-304(a)(1) and (2).

[2] The complainant's reply, discussed below, indicates that the spreadsheet contained information about 1,702 notices.

Then, in January 2023, the complainant sent a second PIA request seeking the same information, but for letters sent between January 1 and December 31, 2022. This time, however, counsel for MDE contacted the complainant by telephone and advised that MDE planned to deny his second PIA request because the responsive information constituted "personal information." When the complainant told counsel that MDE had already produced a spreadsheet containing the same type of responsive information covering a different time period, counsel stated that MDE should not have produced the spreadsheet.

The complainant provided the spreadsheet and relevant communications related to his first PIA request to counsel for MDE. Though counsel subsequently indicated several times that MDE would deny the complainant's second PIA request (and instruct that he not use or further disseminate the Excel spreadsheet produced in response to his first PIA request), MDE ultimately failed to issue a final written response to that request. Thus, in June 2023, the complainant contacted the Public Access Ombudsman for assistance in resolving two disputes: (1) MDE's denial of inspection of the responsive records; and (2) MDE's failure to provide a final written response to the second PIA request. At the close of the mediation, the Ombudsman issued a final determination stating that the first dispute remained unresolved. The complainant then filed this complaint with our Board.

In his complaint, the complainant alleges that MDE wrongfully withheld records responsive to his PIA requests. He contends that nothing in the PIA or other law allows MDE to deny his second PIA request or forbid him to use or further disseminate the data MDE produced in response to his first PIA request. The complainant disputes that the responsive spreadsheets contain "personal information" and/or "protected health information," which, he explains, is the basis for withholding that MDE provided to him. He also argues, contrary to MDE's position, that the spreadsheets do not constitute a medical record. Rather, they contain the address to which the lead notice was sent, the name and address of the property owner, and the date that MDE sent the notice. None of this information, the complainant maintains, meets the definition of "medical record" in the Confidentiality of Medical Records Act ("CMRA").

Stressing that MDE did not produce the actual letters or notices, the complainant suggests that the only spreadsheet information that MDE could possibly argue is protected is the address of the child—which, the complainant contends, may or may not be contained in the spreadsheet. But, the complainant argues, "address" is not part of the definition of "personal information" provided in § 10-1301(c)(1) of the State Government Article and, in any event, he maintains that "knowing the address where a child may or may not reside or have resided, in no way enables [him] to identify the child's name or his/her blood-lead level."

In response to the complaint, MDE first points to § 4-301(a)[3] of the PIA, which requires a custodian to deny inspection of a public record if, among other things, "by law, the public record is privileged or confidential" or if "inspection would be contrary to . . . a State statute." MDE argues that Maryland's CMRA makes medical records—as defined in that Act—confidential and prohibits redisclosure by a person to whom a medical record is disclosed. According to MDE, the spreadsheets responsive to the complainant's PIA requests fit the definition of "medical record" provided by the CMRA. MDE contends that "simply providing the address of lead poisoned children, during a specific period of time, falls within the category of protected medical records." Thus, MDE argues, § 4-301(a) precludes disclosure of the spreadsheets.

MDE also argues that § 4-343 allows it to deny inspection of the responsive spreadsheets because MDE has determined that disclosure would be contrary to the public interest. As MDE sees it, disclosure of the spreadsheets will permit attorneys to directly solicit the families of lead poisoned children for legal representation against a landlord or vice versa. And, MDE contends, businesses such as lead remediation companies may also similarly solicit those families. MDE argues that the State has an interest in making sure that such families are "not dissuaded from having their children lead tested for fear of the information being made public and being directly solicited based on testing they are required by law to have performed."

In reply, the complainant suggests that MDE is objecting only to his use of the "patient/guardian" addresses in the spreadsheet, and not the other information that it contains—i.e., the property owner's name, the property owner's address, and the date the notice was sent. Though the complainant argues that MDE has not met its burden of proof as to any of the information withheld, he maintains that, at the least, he should be able to use that other information.[4]

The complainant also challenges MDE's assertion that the information in the spreadsheets constitutes a protected "medical record." First, he contends that the "patient/guardian" address is likely no longer the residence of the child with elevated blood-lead levels. He provides two reasons for this assumption: (1) that "[o]ften the address given to the doctor or testing lab is a mail drop address and not the child's actual residence"; and (2) "in the case of many rental residences, turnover occurs in six months to a year." Second, he questions whether MDE ever made the required determinations as to whether the child lived at a property owned by the child's parent or guardian. The complainant suggests that MDE did a "blanket mailing" to every owner of a property

[3] Statutory citations are to the General Provisions Article of Maryland's Annotated Code, unless otherwise indicated.

[4] The complainant also stresses that he never requested that MDE produce the name of the child with elevated blood-lead levels, or the blood-lead levels themselves.

without any type of investigation. Given that MDE has the burden of sustaining its decision to deny inspection of records, the complainant argues that MDE must prove that the addresses in the spreadsheet are "the actual residences of children with elevated blood-lead levels." The complainant maintains that MDE has failed to do this.

## Analysis

The PIA authorizes us to resolve complaints that allege certain violations of its provisions, including that a custodian wrongfully denied inspection of a public record. *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. § 4-1A-05(a). If, after considering a complaint, the response, and any other information before us, we conclude that a violation of the PIA has occurred, we must issue a written decision and order an appropriate remedy, as provided by the statute. § 4-1A-04(a)(2) and (3). For example, if we determine that a custodian has denied inspection in violation of the PIA, then we must order the custodian to "produce the public record for inspection." § 4-1A-04(a)(3)(i).

Ordinarily, the PIA must be construed liberally in favor of disclosure. *Glenn v. Maryland Dep't of Health & Mental Hygiene*, 446 Md. 378, 384 (2016). This is because "the PIA was established with the over-arching purpose of allowing oversight of the government, resulting in a strong practice of disclosure." *Id.* at 385. There are exceptions to the general rule of disclosure, however. For example, the PIA requires custodians to deny inspection of certain specific records, e.g., hospital records (§ 4-306) or welfare records (§ 4-307), and specific information within otherwise disclosable records, e.g., medical or psychological information (§ 4-329) or individuals' financial information (§ 4-336). And, under some circumstances, law outside of the PIA may compel a custodian to withhold records from disclosure. *See* § 4-301(a) (requiring denial when the record is legally "privileged or confidential" or where inspection would be contrary to a State statute or federal law); *see, e.g.*, *MacPhail v. Comptroller*, 178 Md. App. 115, 122 (2008) (information in an estate tax return fell within the definition of "tax information," the disclosure of which was prohibited by § 13-202 of the Tax-General Article, thus the tax return was exempt from disclosure under what is now § 4-301(a) of the PIA). The PIA also contains discretionary exemptions—i.e., exemptions for records or information that a custodian may withhold if the custodian determines that "inspection . . . by the applicant would be contrary to the public interest." § 4-343; *see, e.g.*, § 4-351 (discretionary exemption for certain law enforcement records).

Before turning to the records at issue here, and the arguments for and against their disclosure, some background information about the records' genesis is necessary. In Maryland, a child's primary care provider is, with some exceptions, required to test the child for lead poisoning during the child's 12-month and 24-month visits. COMAR 10.11.04.04. The laboratory or office that draws the blood for these tests must collect

certain information, including "the address, date of birth, sex, and race of the child," and send that information, along with the blood sample, to the medical laboratory that will perform the test for lead. Md. Code Ann., Env't ("Env't") § 6-303(a). That medical laboratory, in turn, must report the results of the lead test to MDE, and provide the information collected by the laboratory or office that drew the blood. *Id.* § 6-303(a)(3); *see also* COMAR 26.02.01.02 (governing lead testing related information to be collected and reported). If the results show an elevated blood-lead level, then MDE "assist[s] local governments, if necessary, to provide case management" of those children with elevated lead levels. Env't § 6-304(b). In addition, MDE or a local health department must send notice of the results showing an elevated blood level to "[t]he child's parent or legal guardian" and "[i]f the child does not reside at a property owned by the child's parent or legal guardian, the owner of the property where the child resides." *Id.* § 6-304(c); *see also id.* § 6-846 (governing notification by health departments of blood-lead test results). With narrow exceptions, "the blood lead test results" may not be disclosed, and a person who violates the non-disclosure provisions "is subject to the penalties provided in § 4-309 of the Health-General Article."[5] *Id.* § 6-847.

As detailed above, the disputed records here do not contain the actual numerical blood-lead levels.[6] Rather, the records—Excel spreadsheets—contain certain other information that the law requires doctor's offices and laboratories to collect—i.e., the name of the parent or guardian and address of the child being tested—and information related to the notices sent out by local health departments and/or MDE, i.e., the owner of the property where the child resided when tested, the address of the property owner (which, presumably, in some cases is the same as the address where the child resides and the lead poisoning occurred), and the date that the notice was sent. MDE argues that it cannot disclose the information in the spreadsheets because it constitutes a medical record for purposes of the CMRA, and is thus protected by § 4-301(a). In addition, MDE claims that § 4-343 permits withholding because disclosure of the information in the spreadsheets would be contrary to the public interest.[7]

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[5] A "willful" violation is a misdemeanor and carries a fine up to $1,000 for the first offense and $5,000 for each subsequent conviction. Md. Code Ann., Health-Gen. § 4-309(d).

[6] While the submissions contain some detail about the records, we nevertheless asked MDE to provide the records to us for review so that we have a complete picture of the information that they contain. *See* § 4-1A-06(b)(2)(ii)(1) ("On request of the Board, the custodian shall provide . . . a copy of the public record."). As required by both the PIA and our regulations, we will maintain the confidentiality of those records, our ultimate conclusion notwithstanding. *See* § 4-1A-06(b)(5); COMAR 14.02.06 (regulations governing confidentiality of records provided to the Board). During the course of reviewing the records, we had questions for MDE. In light of the strict confidentiality requirements, those questions—and MDE's answers—were not shared with the complainant. We note the complainant's objection to our exchange with MDE.

[7] The complaint also alleges that, during a telephone conversation, MDE's counsel advised that MDE would deny the complainant's second PIA request because it sought "personal

We address MDE's arguments in reverse order. As with "personal information," *see supra*, note 7, there is no standalone exemption for the "public interest." The Supreme Court of Maryland has explained that "there are no discrete 'public interest,' 'personal information,' or 'unwarranted invasion of privacy' exceptions to the MPIA." *Police Patrol Sec. Sys., Inc. v. Prince George's County*, 378 Md. 702, 716-17 (2003). Rather, "for a record to be exempt from disclosure because of the 'public interest,' it must fall within one of the specific categories set forth in" Part IV of Subtitle 3 of the PIA. *Id.* at 717. For example, if a custodian determines that disclosure of academic test questions would be "contrary to the public interest," then they may deny inspection of those test questions pursuant to §§ 4-343 and 4-345, which provides a discretionary exemption for examination information. *See also, e.g.*, § 4-351(a)(3) (discretionary exemption for "records that contain intelligence information or security procedures" of certain law enforcement or correctional agencies). To qualify for withholding under § 4-343, then, the spreadsheets here must also qualify as one of the records or information described in the provisions of Subtitle 3, Part IV of the PIA. Upon review, we do not see how any of those provisions would apply.[8]

MDE also argues that the spreadsheets are medical records for purposes of the CMRA, and that they are therefore exempt from disclosure under § 4-301(a)'s mandatory

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information." The complainant thus argues that an address is not "personal information" for purposes of the PIA. He is incorrect. *See* § 4-101(h) ("'Personal information' means information that identifies an individual," and "includes an individual's . . . address."). To support his argument, the complainant cites to § 10-1301(c)(1) of the State Government Article, which provides the definition of "personal information" for purposes of Title 10, Subtitle 13 of that Article, and not the PIA. Notably, at one point the State Government Article contained the PIA's provisions, until they were repealed and recodified in the General Provisions Article in 2014. *See* 2014 Md. Laws, ch. 94. We also note that there is no standalone exemption for "personal information" in the PIA. *See Police Patrol Sec. Sys., Inc. v. Prince George's County*, 378 Md. 702, 716-17 (2003) (explaining that there is no "discrete" "personal information" exemption in the PIA). Rather, that term is referenced in certain exemptions. *E.g.*, § 4-317(a) (providing, with certain exceptions, that "a custodian may not knowingly disclose a public record of the Department of Natural Resources containing personal information about the owner of a registered vessel"). So, while a person's address is considered "personal information" for purposes of the PIA, that fact alone does not exempt an address from disclosure.

[8] Section 4-358 provides an exemption for circumstances in which the PIA "authorizes inspection of a public record but the official custodian believes that inspection would cause substantial injury to the public interest." § 4-358(a). That exemption allows the official custodian to "deny inspection temporarily," but requires the official custodian to "petition a court to order authorization for the continued denial of inspection" within ten working days after the temporary denial is issued. § 4-358(a) and (b). If, after a hearing, a court "finds that inspection of the public record would cause substantial injury to the public interest, the court may issue an appropriate order authorizing the continued denial of inspection." § 4-358(d); *see, e.g.*, *Glenn*, 446 Md. at 395.

exemption for records that are privileged or confidential by law or protected by a State statute.[9] The CMRA's definition of "medical record" is broad:

> (1)"Medical record" means any oral, written, or other transmission in any form or medium of information that:
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> (i) Is entered in the record of a patient or recipient;
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> (ii) Identifies or can readily be associated with the identity of a patient or recipient; and
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> (iii) Relates to the health care of the patient or recipient.
>
> (2) "Medical record" includes any:
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> (i) Documentation of disclosures of a medical record to any person who is not an employee, agent, or consultant of the health care provider;
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> (ii) File or record maintained under § 12-403(c)(13) of the Health Occupations Article by a pharmacy of a prescription order for drugs, medicines, or devices that identifies or may be readily associated with the identity of a patient;
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> (iii) Documentation of an examination of a patient regardless of who:
>
> 1. Requested the examination; or
>
> 2. Is making payment for the examination; and
>
> (iv) File or record received from another health care provider that:
>
> 1. Relates to the health care of a patient or recipient received from that health care provider; and
>
> 2. Identifies or can readily be associated with the identity of the patient or recipient.

Md. Code Ann., Health-Gen. ("HG") § 4-301(k); *see also* 92 Md. Op. Att'y Gen. 107, 111 (2007) ("[T]he definition's comprehensive phrasing ('any form or medium of information') means that the Act encompasses paper records themselves, the electronic embodiment of paper records after scanning or some other imaging process, and records initially created in electronic form."). Health care providers must keep medical records confidential and may disclose them only as provided by law. HG § 4-302(a). Absent

[9] We disagree with the complainant's contention that MDE objects only to the release of the "patient/guardian" address. In its response, MDE argues that "simply releasing the address of lead poisoned children *during a specific period of time*, falls within the category of protected medical records." The phrase "specific period of time" clearly refers back to the information about when the lead-level notices were sent.

certain circumstances, a "person to whom a medical record is disclosed may not redisclose the medical record to any other person." *Id.* § 4-302(d).

Despite the CMRA's broad definition, we have trouble concluding that MDEs spreadsheets of information are, themselves, "medical records" for purposes of that Act. Rather, they are records reflecting certain data drawn from letters MDE sent regarding children with elevated blood-lead levels—namely, when and to whom those letters were sent. While the spreadsheets arguably may convey medical information in a broad sense—i.e., that a child associated with those addresses at the point in time when the letters were sent had elevated blood-lead levels—the spreadsheets do not, themselves, seem to be medical records as HG § 4-301(k) defines the term. In our view, the spreadsheets are similar to the ambulance dispatch reports at issue in a 2005 Attorney General Opinion. Those dispatch reports "include basic information about the 911 call, identify the units that were dispatched in response to the call, and record the times of various events involved in the response." 90 Md. Op. Att'y Gen. 45, 46 (2005). Though the opinion observed that dispatch records "may contain medical information about an individual in need of assistance," *id.*, the Attorney General ultimately concluded that the reports were not "medical records" for purposes of the CMRA because they did not always "contain information relating to the health care of an individual," and were not "entered into 'the record of a patient.'" *Id.* at 51-52. Although the information in the spreadsheets here arguably relates to the health care of children with elevated blood-lead levels, it is not clear to us that the information is or was entered into the records of those child patients. We thus reject MDE's contention that the information in the spreadsheets constitute a "medical record" as defined by the CMRA and that § 4-301(a) therefore precludes its release.

We realize that our conclusion is at odds with a 2013 decision of an Administrative Law Judge ("ALJ") in the Office of Administrative Hearings ("OAH"), which the complainant attaches to his complaint. That case involved a PIA request by the Maryland Multi-Housing Association for the "reported" addresses of 452 children identified in MDE's 2011 Childhood Blood Lead Surveillance Annual Report as having blood levels above 10 µg/dL. *Maryland Multi-Housing Assoc., Inc. v. Maryland Dep't of Env't*, OAH Docket No. PIA-MDE-01-13-13663, at 2 (Aug. 2, 2013). The ALJ found that MDE properly denied inspection of the records (i.e., the addresses) because they constituted "medical records" for purposes of the CMRA. *Id.* at 11. In reaching that decision, the ALJ reasoned that, because Env't § 6-847's non-disclosure provisions reference HG § 4-309 regarding penalties for wrongful disclosure of blood lead test results, the "inference to be drawn is that the General Assembly considered blood lead level test results to be medical records," and, consequently, also "the fact that a particular child patient had been given a blood lead test at all." *Id.* at 6-7. We draw different meaning from Env't § 6-847(c)'s reference to HG § 4-309. We view that provision as recognizing that "blood lead test results," Env't 6-847(a), might not always qualify as medical records under the CMRA, but ensuring that such test results are always protected as though they are medical records. If the blood lead test results fit the definition of "medical record" in the CMRA, then there

would be no need for HG § 6-847(c)'s provision that a person who wrongfully discloses the results is "subject to the penalties provided in [HG] § 4-309."

Before arriving at our decision to direct MDE to disclose all of the information that the spreadsheets contain, we also considered—even though MDE did not argue it—whether § 4-329 precluded release of any or all of the information. That exemption to the PIA forbids disclosure of "medical or psychological information about an individual." § 4-329(b)(1); *see also* 90 Md. Op. Att'y Gen. at 53-54 (what is now § 4-329(b)(1) covers "specific information in [a] record concerning an individual's medical history or condition"). First, we stress again that the spreadsheets do *not* contain the names of the lead poisoned children or the actual blood test results. We also recognize that there is case law in another jurisdiction that reaches the opposite conclusion—i.e., that disclosure of the address where the lead poisoning occurred would ultimately reveal protected health information about the child. *See, e.g., Cuyahoga County Bd. of Health v. Lipson O'Shea Legal Group*, 50 N.E.3d 499, 501-502 (Ohio 2016). However, we think that disclosure of the names of the parents or guardians of the lead poisoned children and the addresses where the poisoning occurred does not "sharply narrow[] the class of individuals to whom the medical information might apply," 90 Md. Op. Att'y Gen. at 54, such that those children could be easily identified. At best, a person in possession of such information could contact the parents or guardians in an attempt to learn the identities of the lead poisoned children, an attempt that those parents or guardians can reject. This fact, combined with MDE's burden of proof and the PIA's broad mandate in favor of disclosure, *see* § 4-013(b), makes it so we cannot find that § 4-329 applies. Thus, we do not view the records as containing "medical information."

This was not an easy complaint to resolve and we realize that there are non-frivolous arguments for withholding at least some of the information contained in MDE's spreadsheets. We simply conclude that the balance of factors weighs in favor of disclosure. However, we note that the PIA provides that "an applicant, a complainant, or a custodian may appeal to the circuit court a decision issued by [our Board] as provided under § 4-1A-10 of [the PIA]." § 4-362(a)(2).

## Conclusion

We conclude that MDE has not justified withholding the records responsive to the complainant's PIA requests and has thus violated the PIA by doing so. The records are not medical records as defined by the CMRA, nor are they protected by § 4-329 of the PIA. We order MDE to disclose the spreadsheets responsive to the complainant's second PIA request in full without any redaction. In addition, we order that MDE allow the complainant to retain and use the spreadsheets already disclosed in response to his first PIA request.

**Public Information Act Compliance Board**

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