

WES MOORE
GOVERNOR

ARUNA MILLER
LT. GOVERNOR



SAREESH RAWAT, CHAIR
SAMUEL G. ENCARNACION
DEBRA LYNN GARDNER
QUINTON M. HERBERT
NIVEK M. JOHNSON

STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 25-47

April 11, 2025

Maryland State Department of Education, Custodian
Levi Bradford, Complainant

In September 2024, complainant Levi Bradford sent a Public Information Act (“PIA”) request to the Maryland Department of Education (“MSDE”) seeking unduplicated data related to school suspensions disaggregated by race and disability status. MSDE took the position that producing the data in the manner requested by the complainant would require it to create new records and therefore declined to provide the records. In this complaint, the complainant challenges MSDE’s response. In response to the complaint, MSDE denies that it has violated the PIA and provides detailed information about what producing records responsive to the complainant’s PIA requests would entail. As explained below, we find no violation of the PIA.

Background

On September 10, 2024, the complainant sent the following PIA request to MSDE, asking for:

Unduplicated counts of out-of-school suspensions, including expulsions, disaggregated by race and disability status at the school level. This is intended to mirror the data presented in the report titled *Suspensions By School and Major Offense Category Out-of-School Suspensions and Expulsions Maryland Public Schools 2022-2023* published by the MSDE Division of Assessment, Accountability, and Performance Reporting. This report, however, only presents duplicated counts. I am looking for the unduplicated counts.

On September 24, 2024, MSDE sent the complainant a ten-day letter¹ stating that it would take longer than ten working days to produce the records and provided some information

¹ See Md. Code Ann., Gen. Provisions § 4-203(b)(2), which requires a custodian who “reasonably believes that it will take more than 10 working days to produce the public record” to notify the requester in writing of that fact and provide certain information, including the reason for the delay, the amount of time needed to produce the record, and an estimate of the range of any fees that may be charged.

about potential fees. Later, on October 8, 2024, MSDE sent the complainant a letter in which it denied his PIA request. MSDE took the position that “[p]roviding the data in the manner in which [the complainant] requested would require MSDE staff to create a new public record.” MSDE explained that, under § 4-205(c)(4)(iii)² of the PIA, it was not required to “create, compile, or program a new public record.”

The complainant disagreed with MSDE’s response to his PIA request, so he contacted the Public Access Ombudsman to request dispute resolution assistance.³ On October 29, 2024, the Ombudsman issued a final determination stating that the dispute was not resolved. Subsequently, the complainant filed this complaint with our Board in which he continues to dispute MSDE’s denial of his PIA request and its contention that MSDE would need to create a new record to respond.

In response to the complaint, MSDE maintains that it cannot produce records responsive to the complainant’s PIA request without creating a new record, which the PIA does not require a custodian to do. For context, MSDE explains that “each LEA^[4] uploads incident-level data (i.e., individual suspensions/expulsions) in a text file via a secure Web-Based Data Collection system for the prior school year during a specified collection window.” After this is done “MSDE downloads a state-level text file from the system,” which is then stored in an encrypted database as a “detail table” that has certain columns of information for “the student involved in each incident”—e.g., “columns for race, disability status, gender, and grade level.”⁵

MSDE states that, to respond to the complainant’s PIA requests—or, as MSDE describes it, “[t]o build a report that summarizes or analyzes the incident-level data”—

² Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise stated.

³ The PIA directs the Public Access Ombudsman to “make reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records.” § 4-1B-04(a). Before filing a complaint with our Board, a complainant must attempt to resolve a dispute through the Ombudsman and receive a final determination stating that the dispute was not resolved.” § 4-1A-05(a).

⁴ “LEA” stands for “local education agency.” See COMAR 13A.03.04.02 (“‘Local education agency’ means a public school system.”). There are twenty-four local school systems in Maryland. See Maryland Dep’t Educ., Local School Systems, <https://marylandpublicschools.org/about/Pages/School-Systems/index.aspx> (last visited Apr. 10, 2025).

⁵ MSDE further explains that some demographic information, such as race, is stored as a numeric code so that MSDE must “link any queried data from the detail table with a second data table, known as a dimension table, to interpret the qualitative descriptors assigned for each numeric code.”

MSDE must go through a fourteen-step process⁶ which, broadly speaking, includes “aggregat[ing] the records separately by the desired elements” and “remov[ing] the duplicates by student ID number, school ID number, and major offense category.”⁷ Following that, MSDE states, it would have to “generate disaggregated counts” for each LEA by race and disability status, as requested by the complainant, and then “attach each of the temporary datasets with [the] counts . . . to have a single table that reports the data by all of the student groups requested.” MSDE advises that it would also need to retrieve “enrolled student counts by school” to determine whether any of the data needs to be suppressed.⁸

MSDE recognizes that Maryland’s Appellate Court has said that the act of extracting and sorting data from a database generally does not amount to the creation of a new record under § 4-205(c)(4)(iii). MSDE cites *Comptroller v. Immanuel*, 216 Md. App. 259 (2014). But MSDE contends that “the complainant’s request is no simple extraction of a data subset from MSDE’s EDW,” but rather asks MSDE to “analyze, summarize, and perform calculations on the incident level [discipline] data.” MSDE states that “the records [as produced] in the manner requested by the complainant do not exist as a subset of a larger record,” noting that MSDE “collects the data from the LEAs and stores it in the EDW in order to generate its annual report.” According to MSDE, responding to the complainant’s PIA request would take two analysts “approximately two to three business days to create and validate the accuracy of all the requested records.” MSDE argues that the complainant “seeks far more than what the PIA requires of custodians responding to PIA requests.”

In reply, the complainant asks that we order MSDE to turn over the records he has requested. The complainant states that the data he has requested is “in fact, analyzed and reported in the manner requested,” noting that an MSDE guidance document⁹ “states that

⁶ These fourteen steps are detailed in an affidavit from a Senior Research and Data Specialist with MSDE, which MSDE includes with its response to the complaint.

⁷ The complainant’s PIA request asked for “unduplicated” counts. In its response to the complaint, MSDE explains that “[t]he term ‘unduplicated’ refers to data that ensures each student is only represented once in the analysis,” e.g., “if there was one white student who was suspended three (3) times, then the unduplicated count by race is one (1), whereas the duplicated count would be three (3).”

⁸ Data suppression is “used to protect the identities, privacy, and personal information of individuals.” MSDE advises that it would “suppress any cell counts less than ten (10) pursuant to MSDE policy.” See Data Suppression Requirements for Public Reporting, https://www.marylandpublicschools.org/about/Documents/DAAIT/Accountability/Data-Suppression-Requirements-2023_a.pdf (last visited Apr. 10, 2025).

⁹ The complainant cites a document titled Maryland State Dep’t Educ., *Reducing and Eliminating Disproportionality in School Discipline Guidance Document* (Oct. 2019),

it calculates the ‘Unduplicated count of students from the Student Group removed from the school,’” and that “Student Group” is defined in terms of race and disability status. The complainant stresses that the guidance document indicates that MSDE “reports this data to local school systems in the manner requested.” He argues that the fourteen steps outlined in MSDE’s affidavit are “either incorrect, superfluous, or so intrinsic to the disclosure of public records that declining to complete them would confound any and all [PIA] requests,” and that “[t]he fact that there is a process to prepare public records for examination does not exempt a custodian from its duty to disclose.” The complainant disagrees with MSDE’s reading of *Immanuel*, arguing that now, “the steps listed by [MSDE] required to extract data from its database are old hat, routine procedures completed every year by [MSDE] to collect, maintain, extract, analyze, and publish its student discipline data,” and suggests that “*Immanuel* should not be read in this day and age to exempt custodians from doing simple data aggregation when it can be done in a few clicks.” The complainant reiterates his request that we order MSDE to “perform the data extractions as requested and turn over the data to the complainant.”¹⁰

Analysis

The PIA authorizes us to review and resolve complaints that allege certain violations of its provisions, including that a custodian improperly denied inspection of a public record. § 4-1A-04(a)(1)(i). If we find that the alleged violation occurred, we must issue a written decision and order a remedy as provided in the PIA. §§ 4-1A-04(a)(2) and (3), 4-1A-07(a)(1). When we determine that a custodian has improperly denied inspection of a public record, the PIA directs us to “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(3)(i).

The PIA affords “access to information about the affairs of government and the official acts of public officials and employees,” § 4-103(a), by generally requiring records custodians to allow inspection and copying of public records, §§ 4-201(a), 4-205(b). Maryland’s Supreme Court has said that the PIA “establishes a public policy and a general presumption in favor of disclosure of government or public documents.” *Kirwan v. Diamondback*, 352 Md. 74, 80 (1998). At the same time, the PIA contains many exceptions to the general rule of disclosure. *See, e.g.*, § 4-313 (student records); § 4-329 (medical or psychological information). When a requester asks for it, a custodian must provide “a copy of the public record in a searchable and analyzable electronic format” if certain conditions are met. § 4-205(c)(1). Such conditions include that a custodian “is able to provide a copy

<https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/TA/DisproportionalityDataGuidance.pdf> (“2019 School Discipline Guidance Document”).

¹⁰ The complainant also advises that he would accept alternative methods of fulfilling his PIA request, i.e., that MSDE produce “[a]ll of [MSDE’s] data on student discipline as well as its dimension table” or “[t]he text files uploaded by LEAs which contain the unaltered incident level student discipline data reported to [MSDE] each year,” with redactions “as necessary.”

of the public record, in whole or in part . . . that does not disclose . . . confidential or protected information for which the custodian is required to deny inspection.” § 4-205(c)(1)(iii). The General Assembly has also directed that subsection § 4-205(c) “may not be construed to . . . require a custodian to create, compile, or program a new public record.” § 4-205(c)(4)(iii).

We recently considered a complaint involving the same parties and the same issue—i.e., whether MSDE improperly denied the complainant’s PIA request on grounds that it would be required to create new records to respond. *See* PIACB 25-16 (Dec. 20, 2024).¹¹ Finding no violation of the PIA, we concluded that the complainant sought a “complex and specific compilation of information about student discipline created from the data that MSDE collects” that was “on par with ‘performing calculations with the data or summarizing or analyzing the data.’” *Id.* at 8 (quoting *Immanuel*, 216 Md. App. at 272) (cleaned up). As here, the complainant emphasized that MSDE completed the steps it outlined in an affidavit in response to that complaint to generate the student discipline reports that it publishes annually. *Id.* We reasoned, however, that the fact that “MSDE does these things in-house does not mean that those [annual] reports are not themselves new public records created from the student discipline data that MSDE collects and stores.” *Id.* After consideration of the submissions, we found that the facts demonstrated that “more than the ‘mere act of extracting, sorting, and formatting data’ would be required to answer the complainant’s PIA requests.” *Id.* at 9 (cleaned up).

As we noted in PIACB 25-16 (Dec. 20, 2024), the leading Maryland appellate case on the issue was decided in 2014 by what is now the Appellate Court of Maryland. *See Comptroller v. Immanuel*, 216 Md. App. 259 (2014). That case centered on a PIA request to the Comptroller for “a list of the names and addresses of [owners of unclaimed property] entitled to the 5,000 most valuable property accounts, ‘formatted from largest account values to smallest account values,’ but excluding the precise value of each item.” *Id.* 262. The Appellate Court ultimately held that § 4-205(c)(4)(iii) was not implicated, in part because the evidence showed that “the Comptroller’s database and IT staff [could] perform the data extraction and sorting” that was requested “within their existing functionality and in the normal course.” *Id.* at 271. The Appellate Court remanded the case, directing that “Mr. Immanuel should emerge on remand with a list of claims that tracks the Comptroller’s disclosure obligations under the Abandoned Property Act, but that is not sorted by dollar value.”¹² *Id.* at 275. In coming to the conclusions it did, the Appellate Court suggested that:

¹¹ Our decision is currently pending appeal in the circuit court. *See In the Matter of Levi Bradford*, Case No. C-24-CV-25-000530 (Cir. Ct. Balt. City); *see also* § 4-1A-10(b)(1) (providing that “an applicant, a complainant, or a custodian may appeal the decision issued by the Board under this subtitle in accordance with § 4-362”).

¹² As noted above, Mr. Immanuel had requested that the list of unclaimed property account holders be sorted by value. *Immanuel*, 216 Md. App. at 262. While the Appellate Court found that the

Under different circumstances—for example, if Mr. Immanuel had asked the Comptroller to perform calculations with the data or summarize or analyze the data (for example, to add up the number of records or the overall value of the unclaimed property), or if the request would have required extraction or sorting beyond the existing capabilities of the Comptroller's database—we might have found that fulfilling such a request would require the Comptroller to create a new record.

Id. at 272.

Because the PIA request here is different in certain respects from the ones at issue in PIACB 25-16 (Dec. 20, 2024), and because the complainant suggested that we hold an informal conference to further explore certain topics, we asked the parties to participate in an informal conference. *See* § 4-1A-07(b) (permitting, “if the Board is unable to reach a determination based on the written submissions,” the Board to hold an informal conference “to hear from the complainant, the affected custodian or applicant, or any other person with relevant information about the subject of the complaint”). In particular, we noted the complainant’s allegation that MSDE “currently calculates and reports” the data he is seeking “to local school systems.” We held the informal conference on March 31, 2025, virtually. The complainant and several representatives from MSDE attended and provided additional information. In particular, MSDE provided clarity that, while it does provide unduplicated “disproportionality data” regarding student discipline to the local school systems, it has not done so since 2019.¹³ MSDE also explained that the data reported to the local school systems is not provided in a form that “mirrors” the report identified in the complainant’s PIA request.

After consideration of the parties’ submissions and the information supplied at the informal conference, we reach the same result we did in PIACB 25-16—i.e., we agree with MSDE that the complainant’s PIA request calls for the creation of a new record. As in the previous matter, the complainant essentially asks MSDE to analyze, summarize, and perform calculations with the student discipline data, and produce a very specific type of report that MSDE does not already produce. The PIA request itself suggests that this is the

act of producing such a list did not constitute creating a new record, it also found that the Comptroller did not need to sort the list as requested because doing so would reveal “the claims’ comparative value,” and thus disclose “incremental financial information” in contravention of what is now § 4-336, the PIA’s mandatory exemption for “information about the finances of an individual.” *Id.* at 274. On an appeal after remand, the Supreme Court of Maryland affirmed this ruling. *Immanuel v. Comptroller*, 449 Md. 76, 97 (2016).

¹³ MSDE explained that Covid affected certain aspects of the student discipline proportionality reporting. MSDE also indicated that it is in the process of preparing a new disproportionality report that will include unduplicated data regarding suspensions and expulsions, and that MSDE can provide that report to the complainant when it is available later this spring.

case, stating that the request is “intended to mirror the data” as presented in a certain report, but with the student counts unduplicated. Based on MSDE’s affidavit, the process of producing the data in an unduplicated manner alone requires significant manipulation of the data. This was confirmed at the informal conference, where MSDE stated that it does not report the unduplicated data to the local school systems in the specific manner the complainant seeks. In addition, we note that, when generating these various reports, MSDE’s data suppression policy pursuant to FERPA¹⁴ necessarily requires that it perform calculations with incident-level data to protect PII, even when those reports contain data reported in the aggregate. Thus, here too we find that the PIA request is “a far cry from the ordered ‘lists’ of three types of non-intersecting data at issue in *Immanuel*.” PIACB 25-16, at 8 (Dec. 20, 2024).

As noted above, we take the complainant’s point that, according to a 2019 guidance document, MSDE obtains “[r]emoval data” in the form of “unduplicated count[s] of students who received an out-of-school suspension or expulsion,” and that this data is collected from MSDE’s “Student Discipline and Health Related Exclusions Data Collection.” See 2019 School Discipline Guidance Document, at 5. MSDE does this in part because regulations direct it to “develop a method to analyze local school system discipline data.” *Id.* at 2; see also COMAR 13A.08.01.21. But, the fact that MSDE goes through the process of un-duplicating suspension data for purposes of reporting that data to LEAs does not mean that doing so to create the precise report the complainant requested (i.e., a report intended to mirror the data presented in the report the complainant cites in his request) is not also the creation of a new record under the PIA. Presumably, if the unduplicated data that MSDE apparently produces annually to the LEAs¹⁵ satisfied his request, he would have asked for that data. Instead, he asks MSDE to produce that data in a specific form—i.e., one that “mirrors” another report.¹⁶

¹⁴ FERPA refers to the federal Family Educational and Privacy Rights Act, found in 20 U.S.C.A. § 1232g.

¹⁵ As noted *supra*, note 13, we learned at the informal conference that MSDE has not produced this information to the LEAs since 2019, but that it is in the process of preparing new data to send and report this spring. In addition, although the complainant stated during the informal conference that he has not made such requests, he may be able to obtain at least some of the information he seeks through PIA requests to the LEAs.

¹⁶ We note that MSDE does publish a report that contains unduplicated counts of students who are suspended or expelled, disaggregated by race and gender. See Maryland State Dep’t Educ., *Suspensions, Expulsions, and Health Related Exclusions Maryland Public Schools 2023-2024* (Dec. 2024), <https://marylandpublicschools.org/about/Documents/DCAA/SSP/20232024Student/2024-Student-Suspension-Expulsion-Publication-A.pdf>. That report does not contain school-level data, however, as the report cited by the complainant in his PIA request does. See Maryland State Dep’t Educ., *Suspensions By School and Major Offense Category Out-of-School Suspensions and Expulsions 2022-2023* (Nov. 2023),

On the facts in the record before us, we find that the complainant's PIA request calls for MSDE to create or compile new records under § 4-205(c)(4)(iii) of the PIA. We therefore also find that MSDE did not violate the PIA when it declined to produce the specific report that the complainant requested.

Conclusion

Based on the submissions, including the affidavit submitted by MSDE and the information supplied at the informal conference, we find that MSDE did not improperly deny the complainant's PIA request. Because responding to that request would require MSDE to create or compile a new record under § 4-205(c)(4)(iii), MSDE did not violate the PIA by declining to provide the data in the precise manner requested.

Public Information Act Compliance Board*

Sareesh Rawat, Chair
Samuel G. Encarnacion
Quinton M. Herbert
Nivek M. Johnson

* Board Member Debra Lynn Gardner did not participate in the deliberation, preparation, or issuing of this decision.