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PUBLIC INFORMATION ACT COMPLIANCE BOARD

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Prince George's County Dep't Permitting, Inspections & Enforcement, Custodian
Natarajan Gounder, Complainant

In 2022, the complainant, Natarajan Gounder, sent two Public Information Act (“PIA”) requests to the Prince George’s County Department of Permitting, Inspections and Enforcement (“DPIE”). The first request, sent in April, sought communications between certain DPIE staff and a design company regarding a roofing project. The second request, sent in October, asked for records related to a construction permit for that roofing project and certain DPIE procedures and policies. DPIE produced records in response to both requests. Believing that the responses to his PIA requests were incomplete, the complainant sought dispute resolution assistance through the Public Access Ombudsman. After the Ombudsman was unable to resolve the dispute, the complainant filed this complaint with our Board. The complainant states that he is “[h]oping to get records on policy, procedure, and communication from [DPIE] so that [he] can get answers” to certain questions, detailed more below. DPIE responds both that the complaint fails to state a claim and that it has fully responded to both of the complainant’s PIA requests. We conclude that DPIE has not violated the PIA as the complainant alleges and explain below.

Background

From what we glean from the submissions, the issue underlying the complainant’s PIA requests to DPIE involves a dispute about a roofing contract, and documents submitted to DPIE related to that contract. In April of 2022, the complainant sent a PIA request to DPIE seeking “the communication of the employees and/or contractors of the Xpress Exterior Design LLC with the DPIE staff and/or its contractors.” The complainant attached to his PIA request a document containing a series of questions—e.g., “[d]oes the Prince George’s County Inspector’s report in the Wheelerdamagereport.pdf require a professional to check the structural integrity of the tree damaged garage?” and “[d]oes the drawing in the construction_plan_1.pdf show contractor’s intent only to replace a portion of the roof?” In June and September of 2022, DPIE produced records of email communications in response to the complainant’s PIA request.

Then, in October 2022, the complainant sent a second PIA request similar in nature to his first request. The second request indicated that it was “related to the communication of the employees and/or contractors of the Xpress Exterior Design LLC with the DPIE staff

and/or its contractors,” and specified in an attachment that the complainant wanted records of communications between two specific DPIE staff and “the applicant,”¹ and “existing DPIE[] procedural and policy documents.” DPIE responded in February 2023 by producing a document entitled “Online Building Application Processing and Plans Review Workflow – Residential.” In its response, DPIE also stated that it had “no additional information related to [the complainant’s] requests.”

Believing that DPIE had not disclosed all records responsive to his requests, the complainant sought dispute resolution through the Ombudsman, who ultimately issued a final determination stating that the dispute was not resolved. In his complaint to this Board, the complainant provides background information about his contract dispute, and indicates that he would like to get records on “policy, procedure, and communication” from DPIE so that he can “get answers to the issues listed below.” Those “issues” listed in the complaint take the form of several questions—e.g., “[w]hy does the above permit application state, ‘I hereby certify that I have permission of the property owner to submit this application on his/her behalf and the information is complete and correct’ when the DPIE ignores to implement this requirement?”—as well as allegations aimed at the contractor in the underlying dispute. The complainant closes his complaint by explaining that he seeks specifically “copies of the public records on policies, procedures and communications” that would have prevented DPIE from taking a certain action regarding the contractor in the underlying dispute.

DPIE’s response to the complaint is twofold. First, DPIE argues that the complainant’s allegations are really a new PIA request in disguise. Because the issues raised in the complaint were not, as DPIE sees it, part of the complainant’s attempt to mediate his PIA dispute, our Board cannot now consider them. DPIE stresses that the complaint does not allege that DPIE’s responses to the April and October 2022 PIA requests were incomplete. Instead, DPIE characterizes the complaint as a “follow-up” to the responsive records that the complainant received—i.e., that the complaint requests “‘answers’ as to why DPIE acted the way it did on the permit” and seeks “an explanation” as to why DPIE did not take a particular action. Thus, DPIE asks that we dismiss the complaint.

Second, DPIE responds that, even if we determine that we may review the complaint, DPIE has fully responded to both of the complainant’s PIA requests. DPIE explains that, when it receives a PIA request, it “reaches out to the division involved in the matter for all responsive records in its possession.” Here, DPIE states, it asked the Building Plan Review Division to conduct an email search for “all communications with either the

¹ Though in the context of a PIA request, an “applicant” is the “person or governmental unit that asks to inspect a public record,” Md. Code Ann., Gen. Provisions § 4-101(b), we take the complainant’s use of the word here to mean the contractor or subcontractor who applied for the construction permit from DPIE, and not the complainant himself.

Complainant or Xpress Exterior Design LLC,” and produced all responsive emails. DPIE maintains that it made “the best good faith response possible” and produced all responsive records in its possession.

The complainant, in a reply filed under COMAR 14.02.02.04, provides some clarification of his allegations.² He states that, in response to his first PIA request, he received an “oversized file containing redundant, unrelated files, and image files.” Noting that “[g]etting records related to [the] structural engineering drawing was the focus this request,” the complainant contends that the response “did not include a single record related to the invalid drawing” uploaded by the contractor. The complainant also maintains that the workflow document produced in response to his second PIA request “did not address the requested specific information.” Maintaining that “there are several records that the DPIE has withheld,” the complainant asks us to “direct the DPIE to provide [him] with a letter” that includes a specific statement that ultimately concludes that “[i]t was wrong for the contractor to inform others that he was doing everything correctly and was eligible to get a permit soon.”

Analysis

The PIA authorizes us to review and resolve complaints alleging certain violations of its provisions. *See* § 4-1A-04(a) and (b).³ One of those allegations is that a custodian “denied inspection of a public record in violation of [the PIA],” § 4-1A-04(a)(1)(i), which we have interpreted to include “constructive denials”—e.g., instances where a requester contends that a custodian has failed to conduct a sufficient search and has therefore not produced all responsive records. *See, e.g.*, PIACB 23-05, at 3-4 (Nov. 23, 2022). 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). Our review is thus constrained to those disputes presented to the Ombudsman for mediation.⁴ *See* COMAR 14.02.02.01B(1) (requiring that a Board complaint “[p]ertain only to the dispute described in the [Ombudsman’s] Final Determination”). If, after

² The complainant’s reply alleges other violations of the PIA, including that DPIE failed to produce records according to the timelines in the PIA. As discussed below, to the extent that the complainant did not present these allegations for mediation, we cannot consider them.

³ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise stated.

⁴ We use the term “presented for mediation” rather than “mediated” in recognition of the fact that not all Board-eligible disputes are *actually* mediated through the Ombudsman. Because the Ombudsman’s process is voluntary, *see* COMAR 14.37.02.03, a custodian may decline to mediate a dispute. In such circumstances, we consider the request for dispute resolution assistance—i.e. the presentation of a dispute—tantamount to the statutorily required “attempt[] to resolve the dispute through the Office of the Public Access Ombudsman.” § 4-1A-05(a)(1).

review, we conclude that a violation of the PIA has occurred, we must issue a written decision and order an appropriate statutory remedy. § 4-1A-04(a)(2) and (3).

“All 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). Though it refers broadly to *information*, this animating principle of the PIA is given form through a specific mechanism: access to *public records*. Section 4-201(a)(1) provides that “[e]xcept as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any *public record* at any reasonable time.” (emphasis added); *see also Kirwan v. Diamondback*, 352 Md. 74, 80 (1998) (explaining that the PIA “establishes a public policy and a general presumption in favor of disclosure of government or public documents” (emphasis added)); *Glass v. Anne Arundel County*, 453 Md. 201, 211 (2017) (“A custodian of records has the responsibility for responding to a PIA request by either allowing inspection of the requested *records* or asserting the appropriate exceptions.” (emphasis added)). Thus, although the PIA is geared toward promoting an informed citizenry generally, it aims to achieve this goal by requiring governmental entities to disclose all non-exempt public records according to specific timelines and procedures—not by, e.g., requiring those entities to answer interrogatories served by a member of the public. *Cf.* § 4-205(c)(4)(iii) (subsection governing production of electronic records “may not be construed to . . . require a custodian to create, compile, or program a new public record”).

Upon receipt of a PIA request, a custodian must “conduct a search in good faith that is reasonably designed to capture all responsive records.” *Glass*, 453 Md. at 232. The Supreme Court of Maryland has explained that “[t]his does not mean that the agency must robotically examine every record in its possession, running up an extravagant fee and diverting public resources in furtherance of a futile effort; rather, the search should be focused on where responsive records are likely to be found.” *Id.* A search for public records “may be reasonable and adequate without being perfect.” *Id.* At the end of the day, the sufficiency of a custodian’s search is judged “not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003).

Turning to the PIA requests at issue here, we first address DPIE’s argument that we should dismiss the complaint because it fails to state a claim, and, more specifically, its contention that the dispute at the heart of the Board allegations is not the same dispute presented for mediation—i.e., DPIE’s responses to the complainant’s April and October 2022 PIA requests. Though DPIE is correct that the complaint narrative itself does not explicitly allege that DPIE failed to produce all public records responsive to those requests, we think that, taken as a whole, the complainant’s submissions raise that issue. The exhibits attached to the complaint narrative include both the April and October 2022 PIA requests, and the Ombudsman’s final determination. And, as with his October request for communications and “procedural and policy documents” related to the approval of what

the complainant clearly believes was a deficient permit application, the complaint narrative states a continued desire to receive “public records on policy, procedure, and communication” related to that allegedly faulty permitting process.⁵ The complainant’s reply also clarifies his position that the records DPIE produced were not responsive to his PIA requests, and that DPIE is withholding records. In any event, our review will be guided by the description of the dispute in the Ombudsman’s final determination. We will not consider any allegations that fall outside the scope of that description.

The Ombudsman’s final determination indicates that the dispute at issue was the complainant’s “concern that the DPIE’s responses to the April 4, 2022, and October 31, 2022, PIA requests were incomplete.” In his complaint, the complainant indicates that he seeks records on “policies, procedures and communications” that relate to his underlying contract dispute—specifically, as his PIA requests state, communications between certain DPIE employees and the contractor / subcontractor concerning documents that the contractor / subcontractor submitted to DPIE. DPIE produced records of email communications broadly responsive to those requests, as well as document detailing DPIE’s “workflow” for “online building application processing”—presumably in response to the request for policies or procedures. However, the complainant maintains that none of the records produced were in fact responsive to his PIA requests and contends that DPIE is withholding records.

We have no indication that DPIE located responsive records and withheld them pursuant to an exemption in the PIA. Thus, we construe the complainant’s allegation as challenging the sufficiency of DPIE’s search. To that end, DPIE must show that it “conduct[ed] a search in good faith that [was] reasonably designed to capture all responsive records.” *Glass*, 453 Md. at 232. We note further that reasonableness is “measured against the specificity of the request and the willingness of the requestor to focus a request to improve the efficiency of the search.” *Id.* at 233.

In response to the complaint, DPIE explains that, after receiving the complainant’s PIA requests, DPIE asked employees in the Building Plan Review Division to search their email accounts for communications with either the complainant or Xpress Exterior Design

⁵ That said, the PIA requests straddle the line between requests for DPIE’s public records and interrogations directed toward DPIE. To the extent that the complainant seeks answers to the many questions he poses in those PIA requests—and in the complaint itself, for that matter—DPIE’s only obligation under the PIA is to search for and provide any existing public records that may respond to those questions; it is not obligated to create new records that answer those questions to the complainant’s full satisfaction. Of course, nothing in the PIA prevents a custodian or other agency staff from answering questions from its interested public. Indeed, there may be very good policy reasons to do so. Our point is simply that the PIA only requires custodians to search for and produce *public records*.

LLC. Given that the background information and questions provided by the complainant concerned the permitting process, it seems that DPIE “focused on where responsive records [were] likely to be found.” *Id.* at 232. The complainant does not state with any specificity what responsive records he believes are missing, or how DPIE’s search was lacking. Based on his reply, it appears that the complainant wants DPIE to produce to him a record containing a very specific statement that, as far as we can tell, the complainant has drafted. We doubt that that precise record exists, and stress that DPIE is not required to create new records in response to a PIA request. § 4-205(c)(4)(iii). Again, the PIA is concerned with disclosure of existing public records; it is not designed to be a vehicle for forcing government agencies to manufacture admissions or factual statements that are not already contained in existing public records. *See, e.g., Maryland Public Information Act Manual* (17th ed. July 2022), at 2-3 (“[I]f a request is made for the report of a consultant and the consultant did not issue a written report, the PIA does not require that a written report be created in order to satisfy the request.”). In light of the above, we cannot find fault with DPIE’s search for responsive records.

Conclusion

Based on the broad and interrogative nature of the PIA requests and DPIE’s representations regarding where and how it searched for responsive records—representations that are supported by email communications from DPIE’s records custodian submitted by the complainant—we find that DPIE’s search was reasonable and adequate. We thus conclude that DPIE has not violated the PIA as the complainant has alleged.

Public Information Act Compliance Board

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