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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-05
November 1, 2023
Anne Arundel County Public Schools, Custodian
Kurt Svendsen, Complainant

Kurt Svendsen, the complainant, alleges that Anne Arundel County Public Schools violated the Public Information Act (“PIA”) when it denied his request for records reflecting certain information about student absences due to lack of transportation, including the race or ethnicity of the absent student and the school that the student attends. AACPS responds that the complainant’s PIA request both asks AACPS to create new records, which the PIA does not require, and that, in any event, production of the granular student information requested would violate laws regarding the confidentiality of student records. As detailed below, we conclude that the complainant’s PIA request asks AACPS to create new records, which AACPS is not required to do. However, to the extent that AACPS can provide responsive data without creating new records and in a manner that complies with the laws and regulations regarding the privacy of student records and information, AACPS must provide that data.

Background

The issues raised in both the PIA request and the complaint in this matter are somewhat technical in nature. Thus, a careful examination of the chronology of events and relevant facts is necessary. The dispute began on December 1, 2022, when the complainant sent a “follow-up” PIA request¹ to AACPS asking for a “report (or set of reports) that most closely matche[d]” certain specific “data elements,” namely:

For each School, a distinct row of aggregated data containing:

- (1) Transportation Assignment (e.g., Bus # 230)
- (2) Race/Ethnicity grouping (e.g., White, Black or African American, etc.)
- (3) a COUNT of the instances where the Reason for Absence indicates it was due to lack of bus service for the range of Dates included in the respective data set (please identify the start and end dates)

¹ On November 22, 2022, the complainant sent a PIA request seeking “the most up-to-date listing,” by school name, of “the number of times students have been marked ‘absent due to lack of transportation.’” We understand that AACPS provided records in response to that request, and that the complainant does not challenge that response.

The complainant attached a “sketch” of a “simple 3-step process” that he hoped would “illustrate how easy it is to aggregate existing data maintained in the normal course of business” without providing “personal identifying information.”

AACPS responded that it had no records responsive to the complainant’s follow-up request because AACPS “does not aggregate data in the manner [the complainant] described” and the PIA does not require a custodian to create records responsive to a PIA request. AACPS also provided additional information that explained how to interpret the data in the records produced in response to the complainant’s initial PIA request, *see supra*, note 1.

On December 26, 2022, the complainant sent a “follow-up letter” in which he acknowledged that the PIA did not require AACPS to create records in response to his PIA request, but stressed that his request sought existing reports or sets of reports. The complainant indicated that he was “capable of and willing to do the work . . . to join and aggregate” certain data elements from three separate reports, which he identified as:

1. A list including a single record for every Student enrolled during the school year 2022-23 with the following data elements (i.e., columns):

- Student ID (or other unique key value)
- School ID (to which each student is assigned)
- Race/Ethnicity (to which each student is assigned)

* * *

2. A list of the daily attendance records for the school year 2022-23 where the reason for absence is “Lack of Transportation” with the following data elements:

- Student ID (or other unique key value, consistent with list 1)
- Date
- Absence Reason

* * *

3. A list of the Bus assignment records for the school year 2022-23 with the following data elements:

- Student ID (or other unique key value, consistent with list 1)
- Bus #

When AACPS did not produce the responsive records, the complainant contacted the Public Access Ombudsman and asked for assistance with his dispute regarding AACPS’s

response. Ultimately, the Ombudsman issued a final determination stating that the dispute was not resolved and the complainant filed this complaint with our Board.

The complaint asserts that AACPS gave three different reasons for denying the complainant's PIA request: (1) that the PIA does not require a custodian to create a record in response to a PIA request; (2) that "aligning" the records by a "unique key value"—e.g., a value that replaces the Student ID—identifies students; and (3) that, because the complainant is not a person in interest regarding all of the students, he is not entitled to the information about all of the students. The complainant alleges that AACPS was wrong to deny his PIA request on these grounds.

Before proceeding to the reasons the complainant gives for why he believes AACPS was wrong, we address a preliminary factual issue raised by the complaint. The complainant asks us to review AACPS's grounds for denial "in the context of [his] modified request"—i.e., a version of the PIA request different from the ones sent on December 1 and 26, 2022, that were subsequently the subject of mediation through the Ombudsman.² Before we may review and resolve a complaint, a complainant must first "attempt[] to resolve *the dispute*" through the Ombudsman and receive the Ombudsman's "final determination stating that *the dispute* was not resolved." § 4-1A-05(a)³ (emphases added). Arguably, then, the complainant has not complied with § 4-1A-05(a), given that his "modified request"—which is now at the heart of the allegations against AACPS in this complaint—was not the subject of mediation. AACPS, for its part, recognizes this potential problem but nevertheless indicates that, given that "the essential arguments made by [the complainant] remain the same," AACPS "wishes to have a resolution on this matter notwithstanding [the complainant's] lack of following the outlined process." In light of AACPS's position, and in this narrow context where the "modified" PIA request is substantially similar to the original and the arguments for and against disclosure are essentially the same, we will construe "the dispute" broadly to encompass the allegations raised in this complaint.

The modifications the complainant made to his PIA request are indicated below, with the changes shown in italics. For purposes of this decision, this is the PIA request at issue:

² Correspondence between the complainant and AACPS, which was provided by the complainant, indicates that the modified request was sent on June 22, 2023, before the Ombudsman's final determination issued. However, AACPS did not respond until July 8, 2023—i.e., after the final determination issued—which suggests that the modified request and AACPS's response to it were not part of the Ombudsman's mediation efforts.

³ Statutory citations are to the General Provisions Article of Maryland's Annotated Code unless otherwise specified.

1. A list including a single record for every Student enrolled during the school year 2022-23 with the following data elements (i.e., columns):

- Student ID (or other unique key value)
- School ID (to which each student is assigned)
- *White or Non-White (derived from Race/Ethnicity data to which each student is assigned)*

* * *

2. A list of the daily attendance records for the school year 2022-23 where the reason for absence is “Lack of Transportation” with the following data elements:

- Student ID (or other unique key value, consistent with list 1)
- Absence Reason (*limited to the single “Lack of Transportation” reason*)
- School ID (*associated with the specific absence report, if available*)

In addition, the complainant narrowed the scope of data and records responsive to the second part of the request—i.e., the request for the list of daily attendance records—to records from three specific high schools and seven specific middle schools, instead of asking for district-wide data. The complainant also indicated that he had “dropped” his request for a list of bus assignment records for the school year 2022-23 “in its entirety.”

The complainant contends that AACPS need not create new records to provide records responsive to this modified PIA request. Stressing guidance from the Public Information Act Manual⁴ that “generally speaking, an agency is obligated to extract data from an existing database if it has the capacity to do so within its existing functionality and in the normal course,” the complainant argues that AACPS takes “far too narrow a view” of the terms “existing database” and “searchable and analyzable electronic format.”⁵ As the complainant sees it, the fact that AACPS “uniquely identifies” records related to a student’s race or ethnicity and attendance “through the use of a common field” means that the data is available in an existing database that is maintained in a searchable and analyzable format. That the data may be stored in different or separate systems does not change the state of things, in the complainant’s view.

⁴ See Maryland Attorney General, Maryland Public Information Act Manual, <https://www.marylandattorneygeneral.gov/Pages/OpenGov/piamanual.aspx> (last visited Nov. 1, 2023).

⁵ The latter term comes from § 4-205(c), which governs public records that are in an electronic format.

Moreover, the complainant argues, even if AACPS's narrow view is correct, AACPS could still produce records responsive to, e.g., the first part of his modified request. AACPS could do this, the complainant maintains, by conducting "two straightforward data extractions," i.e., one where the "Race/Ethnicity value is equal to 'White'" and another where that value is "not equal to 'White.'" In addition, the complainant contends that AACPS could exclude the "Student ID" column from its data extraction. Though the data would be of more "limited value" to the complainant, the complainant notes that such a production would at least be partially responsive to his modified PIA request.

As to AACPS's position that providing data about Student ID numbers via a "unique key value" would still disclose personally identifiable information, the complainant emphasizes that the value would be both temporary and random and thus presents no danger that personal identifying information would be disclosed. This is particularly true, the complainant argues, if the unique key value assigned to the Student ID numbers responsive to the second part of his modified PIA request is "not aligned" with the value used to replace the Student ID numbers in the first part of the request. Noting that alignment of the unique key values between the first and second parts of his modified request would produce information about that unique value's (i.e., student's) race (whether White or Non-White), school, and absences due to lack of transportation, the complainant acknowledges that the "combination of characteristics . . . presents a risk of disclosure of [personal identifying information]." However, the complainant suggests that AACPS can "quantify" that risk by counting the number of records present for each unique key value. The complainant contends that it is unlikely that any of the "counts" is less than ten—which the complainant understands as presenting an unacceptable risk that personal identifying information would be disclosed. The complainant asks that we review eight specific "model dataset" listings and "indicate for each if they conform to or violate acceptable [personal identifying information] disclosure standards."

Finally, the complainant argues that he does not need to be a person in interest to obtain information about the attendance of students if those students are not personally identified. He stresses again that once the data responsive to his modified PIA request is extracted, AACPS will be able to calculate the risk of disclosure of personal identifying information, thus allowing "problematic data" to be removed.⁶

⁶ The complainant also asks us to "review the fact that AACPS has an historical practice of 'creating documents,'" which, the complainant asserts, "raises the question of whether or not a fee is justified and supported." He also expresses "hope" that we will "agree that [his] modified PIA request can be responded to with less than 2 hours of work effort on the part of AACPS staff." We decline to review these issues, as they were not part of the Ombudsman's mediation efforts. See § 4-1A-05(a) (permitting a Board complaint if "the complainant has attempted to resolve *the dispute* through the Office of the Public Access Ombudsman," and if the Ombudsman has "issued a final determination stating that *the dispute* was not resolved," (emphases added)). According to the final determination, the dispute at issue was AACPS's "denial of the [complainant's] request for certain correlated data for individual AACPS students" and,

In response to the complaint, AACPS first emphasizes that there is “no dispute” that “disclosure of a Student ID is improper.” AACPS contends that replacing the Student ID numbers with different values would be the same as creating a new document, which is not something that the PIA requires AACPS to do. Similarly, because AACPS does not categorize students as “White” or “Non-White,” AACPS contends that the “formulation of this column in a report/record” also constitutes creating a new record. AACPS maintains that the modified PIA request “goes far beyond asking for the extraction of data,” and asks for “the extraction of data and the replacement of the extracted Student IDs which would then be replaced by unique other identifiers.” And, AACPS notes that the complainant “wishes for the unique identifiers in Report 1 [responsive to the first part of the modified PIA request] to be aligned with those created in subsequent reports.” AACPS argues that the PIA does not require it to take such action.

As to the issue of disclosing students’ personal identifying information, AACPS maintains that “the more granular provided information becomes, the more a student can be identified.” To illustrate, AACPS provides two examples (1) “Student 123 attends ABC Elementary School and is Non-White”; (2) “Student 123 attends ABC Elementary School, is Non-White, was absent from school on January 3, 2023; January 6, 2023; February 7, 2023; March 3, 2023; and April 1, 2023 because of a lack of transportation.” AACPS notes that the “identification issue becomes far easier and is particularly impactful if ABC Elementary School has a very small number of Non-White students.” AACPS suggests that the second scenario allows for the opportunity to identify individual students and disclose confidential information, and, in turn, a violation of the Family Educational Rights and Privacy Act (“FERPA”) would result. Disclosure of this kind of information is, AACPS stresses, intended only for parents, guardians, and certain school officials in accordance with FERPA.⁷

specifically, AACPS’s position that production of the records would “entail the creation of a new record” and “violate federal and state laws that prohibit the release of individual student information and records.” AACPS’s “historical practices” and the issue of fees were not addressed.

⁷ AACPS also urges us to dismiss the complaint as not timely filed. To support that argument, AACPS attaches as an exhibit an email from the Ombudsman to the complainant dated June 22, 2023, and suggests that the email provided the “decision” reflected in the final determination dated June 28, 2023. We cannot and do not consider the Ombudsman’s June 22, 2023, email because it constitutes a protected mediation communication. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-1801(c) (defining a mediation communication as, among other things, a “communication . . . made as part of a mediation”) and § 3-1803(b)(1) (“A party to a mediation . . . may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.”); *see also* § 4-1B-04(d)(3) (allowing the transfer of certain “basic information about a dispute” to the Board, if “appropriate steps have been taken to protect the confidentiality of communications made or received in the course of attempting to resolve [a] dispute”). In determining whether a complaint is timely filed, we are governed by the date on

The complainant, in reply, disputes AACPS’s contention that replacing the Student ID numbers with a “unique key value” is the creation of a new record. Rather, he argues, it is “akin to ‘redacting’ the Student ID values,” and can be done easily using “basic software and knowledge.” The complainant also continues to press a broader understanding of the term “database,” suggesting that joining the data sets responsive to the two parts of his PIA requests together using the “Student Name/ID” as the “key” field is working within one database, and therefore not the creation of a new record. The complainant makes the same essential arguments regarding his request for race/ethnicity data—i.e., that performing two extractions, one for data related to White students, and one for data related to non-White students, would not require AACPS to create a new record.

The complainant’s reply also asserts that his modified PIA request “will conform to acceptable PII disclosure standards,” given that it was modified expressly to “reduce the ‘granularity’ of data extracted by removing schools with smaller numbers of students and excluding the specific date of absence.” Because, in the complainant’s view, no individual student will be personally identified (or identifiable) in the records responsive to his modified PIA request, the complainant argues that he need not be a person in interest to obtain the information from student demographic and attendance records that he seeks.

Analysis

We are authorized to resolve complaints that allege certain violations of the PIA, including that a custodian wrongfully denied inspection of public records. *See* § 4-1A-04(a)(1)(i). As noted above, a complainant must attempt to resolve a dispute through the Public Access Ombudsman and receive a final determination stating that the dispute was not resolved before filing a complaint. § 4-1A-05(a). Once we receive a complaint, we forward it to the appropriate custodian for a response. § 4-1A-06(a). If we are unable to resolve a complaint based on the information in the submissions, we may request additional information, § 4-1A-06(b)(2), or in some circumstances, hold an informal conference, § 4-1A-07(b). If we ultimately conclude that a violation of the PIA has 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 denied inspection of public records in violation of the PIA, we must order the custodian to “produce the public record[s] for inspection.” § 4-1A-04(a)(3)(i).

Section 4-205(c) of the PIA governs public records that are kept in an electronic format. The section generally requires custodians to provide copies of public records “in a searchable and analyzable electronic format” if the record exists in that form and a requester asks for the record in that form. § 4-205(c)(1). Though subsection (c) “may not be construed to . . . require a custodian to create, compile, or program a new public record,”

the final determination. Here, that date is June 28, 2023, rendering the July 27, 2023, complaint timely filed under § 4-1A-05(b)(5).

if the record “exists in a searchable and analyzable electronic format,” then “the act of a custodian providing a portion of the public record in a searchable and analyzable electronic format does not constitute creating a new public record.” § 4-205(c)(4) and (5). Interpreting this provision, the Appellate Court of Maryland has explained that “the mere act of extracting, sorting, or formatting data” that an agency “collects and maintains in a database” does not constitute creating a new record. *Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 272 (2014), *aff’d*, 449 Md. 76 (2016).

Immanuel involved a request for certain information drawn from a database concerning abandoned property in the custody of the Comptroller. The court broadly described the contents and functionality of that database as follows: “As the Comptroller receives each piece of abandoned property, his staff logs data about the property, its value, and the likely owner into the Comptroller’s database,” and “[f]rom there, the IT staff can extract and sort data from the database.” *Id.* at 263, 265. Looking at the key terms in § 4-205(c)(4)—i.e., “create, compile, [and] program”—the court first concluded that the PIA request did not ask the Comptroller to “create or compile anything” because it did not require the Comptroller to “generate new data, perform any analysis on existing data, or even to gather disparate pieces of information stored elsewhere into one new place.” *Id.* at 270-71. And, because the database allowed staff to “perform the data extraction and sorting . . . within their existing functionality and in the normal course,” *Immanuel* also concluded that the request did not call for programming a new record. *Id.* at 271. However, the court cautioned that the result might have been different had the requester “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.” *Id.* at 272.

Questions about whether and when a public records request for electronically stored data calls for the creation of a new record are not unique to Maryland. *See* John Kreienkamp, *The Meaning of Creation: Electronic Databases and Creating a Record to Fulfill a Public Records Request*, 47 Rutgers Comput. & Tech. L.J. 197, 207-15 (2021) (noting that “there is unanimous agreement that public bodies are not obligated, at least in general, to create new records to satisfy public records requests”). Because the answers to those questions in each case “depend on the unique factual circumstances,” including “the type of record or information being sought” and “the particular structure and functionalities of the database at issue,” *id.* at 238, we held an informal conference with the parties to gather additional information about what the complainant is seeking and AACPS’s capabilities, *see* § 4-1A-07(b).

In addition to the complainant and AACPS’s Public Information Officer, representatives of AACPS’s Instructional Data and Technology Divisions and Legal Department participated in the informal conference. Through that conference, we learned that AACPS is able and willing to provide the complainant with reports containing

aggregate data (as opposed to student-level data) about students' race and ethnicity and absences due to lack of transportation with a suppression level of ten.⁸ The data regarding race and ethnicity would be broken down in the way that the State and AACPS currently collect and store it—e.g., indicating White students, Black or African American students, Native Hawaiian or Pacific Islander students, etc.—and not by White and non-White, as the complainant has requested. Throughout the conference AACPS maintained its position that the complainant's requests that AACPS (1) substitute "unique key values" for Student ID numbers, (2) produce data about students' race and ethnicity broken down by White and non-White students, and (3) align the reports regarding students' race and ethnicity and absences due to lack of transportation through the Student ID numbers⁹ all ask AACPS to create new records, which it is not required to do under the PIA. In addition, AACPS indicated that it uses one database—PowerSchool—to collect and maintain both demographic and attendance information about students.

During the conference, we had additional questions about the amount of time and resources necessary for AACPS to design a query and produce a report in the form that the complainant seeks—i.e., a report with data aligned by Student ID number (with that number ultimately removed) showing students' race by White or non-White and any absences due to lack of transportation. AACPS was unable to answer those questions with

⁸ Data suppression is "used to protect the identities, privacy, and personal information of individuals." See Maryland State Dep't of Educ., Data Suppression Requirements for Public Reporting 1 (2023), https://reportcard.msde.maryland.gov/HelpGuides/Data-Suppression-Requirements-2023_A.pdf (last visited Nov. 1, 2023). States must assess the risk of disclosure of such information using FERPA's confidentiality standard, which "prohibits the release of information that would permit 'a reasonable person in the school community . . . to identify [an individual] with reasonable certainty.'" *Id.* (quoting 34 C.F.R. § 99.3). The Maryland State Department of Education "applies suppression rules to any aggregated student data that is connected to student education data and outcomes," including "any student group disaggregation such as race/ethnicity." *Id.* Maryland applies a "minimum N size of 10," which means that data must have a minimum count of ten students to be reported, otherwise, that data will be suppressed. *Id.* at 2; see also Inst. of Educ. Sciences, Best Practices for Determining Subgroup Size in Accountability Systems While Protecting Personally Identifiable Student Information 25-28 (Jan. 12, 2017), <https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2017147> (discussing "data protection techniques to minimize inadvertent disclosures in public reporting")

⁹ AACPS would redact or remove the Student ID numbers from the final merged report produced to the complainant because, as AACPS pointed out during the informal conference, FERPA prohibits the release of Student ID numbers. See 20 U.S.C.A. § 1232g(b)(1) (denying funding to "any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein . . .) of students without the written consent of their parents"); 34 C.F.R. § 99.3 (defining "personally identifiable information" to include "[a] personal identifier, such as the student's social security number, student number, or biometric record"); 34 C.F.R. § 99.30 (generally precluding disclosure of personally identifiable information from a student's education records without written consent).

precision during the conference, so we sent them to AACPS via email after the conference with a request for a written response. *See* § 4-1A-06(b)(3)(ii) (allowing the Board to “request information about the public record from the custodian”). In response, AACPS advised that it would take thirty minutes to design a query to produce student demographic data by White and non-White. Following the creation of that query, it would take about fifteen minutes per school to generate two reports for each school—i.e., one for enrollment and one for transportation-related absence listing students as White or non-White. All told, AACPS explained that the steps necessary to create the two separate reports for each of the ten schools include: accessing databases; creating two Excel files from the databases based on the request parameters; using personnel with [Structured Query Language] coding skills to create the necessary queries; running the queries to create the non-White category; vetting the data for accuracy; checking for suppression requirements; and formatting the files for distribution. AACPS also reiterated its position that merging the two reports into a single report aligned by Student ID number constitutes creating a new record.

Turning now to the questions before us, we start with one that presents less difficulty as compared to the others—the complainant’s request that AACPS replace the Student ID numbers with “unique key values,” and his argument that such substitution is essentially the same as redaction. In short, we disagree. In our view, asking AACPS to insert new values for the existing ones is asking it to “generate new data,” which amounts to creating a new record. *See Immanuel*, 216 Md. App. at 270 (observing that the PIA request—which the court determined did *not* require the creation of a new record—did not “require the Comptroller to generate new data”); *accord Ctr. for Pub. Integrity v. Fed. Comm’n Comm’n*, 505 F. Supp.2d 106, 114 (D.D.C. 2007) (finding that asking the FCC to “replace [FCC] filers’ numerical responses with either ranges (the precise contours of which could be determined by the FCC) or an indication of whether the deleted responses were ‘zero or greater than zero’” would “amount to requiring the creation of new records”). To respond to that portion of the complainant’s PIA request, AACPS would need to input new data into the responsive reports. While this might not necessarily be a monumental task, it is not something that the PIA requires. *See* § 4-205(c)(4)(iii) (the section of the PIA governing records in an electronic format may not be construed to “require a custodian to create, compile, or program a new public record”).

The portion of the complainant’s request that asks AACPS to provide him with demographic data broken down by White and non-White students—as opposed to the more specific way that AACPS maintains non-White students’ demographic data—is a tougher call. Ultimately, however, we think that this portion of the request too requires AACPS to create a new record in order to respond as the complainant wishes. Information that a student is “non-White” is not information that AACPS “collects and maintains . . . in the normal course.” *Immanuel*, 216 Md. App. at 270. It is not “data” that AACPS “already keeps within one database.” *Id.* at 271. Rather, AACPS keeps more specific data about non-White students’ race and ethnicity—data that AACPS is apparently willing to produce in aggregate form, subject to its data suppression requirements. *See supra*, note 8. As we

see it, though the complainant’s proposals here are generally less complex than those proposed in a California case concerning a request for bar admission data, this PIA request asks for a “recoding” of race and ethnicity information similar to the one at issue there. *See Sander v. State Bar of Cal.*, 237 Cal. Rptr.3d 276, 289 (Cal. Ct. App. 2018) (explaining that the proposed “protocols also involve recoding race/ethnicity values to reflect four categories (Asian, Hispanic, Black, or White) instead of the State Bar’s original eight race categories”). There the court concluded that “[r]equiring the Bar to recode its existing data . . . would thus require it to create new records.” *Id.* at 290. We conclude the same here.

Finally, the complainant’s request that AACPS align the reports regarding students’ race and ethnicity and absence due to lack of transportation by Student ID and merge those reports together (ultimately removing the Student ID information) requires AACPS to “compile . . . a new public record.” § 4-205(c)(4)(iii). The word “compile” means “to compose out of materials from other documents” or “to collect and edit into a volume.” *Compile*, *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/compile> (last visited Nov. 1, 2023). The complainant’s modified PIA requests asks AACPS to “compose” a new document “from other documents”—i.e., the individual reports generated by extracting the existing demographic and attendance data according to Student ID number. The database is not, on its own, capable of generating such a report. In this way, the complainant seeks to have AACPS “gather disparate pieces of information stored elsewhere into one new place.” *Immanuel*, 216 Md. App. at 270-71. Even if this sort of aligning and merging is a relatively simple task—and AACPS indicates that it is not—the PIA does not require AACPS to do it.

Conclusion

After considering the extensive amount of information and argument before us, including the information provided during the informal conference and in response to our subsequent questions, we conclude that certain aspects of the complainant’s modified PIA request would require AACPS to create new records in response. Specifically, AACPS would have to create new records to: (1) substitute “unique key values” for Student ID numbers; (2) produce demographic data sorted by White and non-White students; and (3) align and merge the demographic and attendance reports by Student ID numbers. Because the PIA does not require a custodian to “create, compile, or program” a new record, § 4-205(c)(4)(iii), we find that AACPS’s refusal to provide the responsive data in these ways did not violate the PIA. At the same time, AACPS has indicated that it is willing to provide aggregate responsive data in a certain format that AACPS believes conforms with both the PIA and requirements regarding the privacy of student data. AACPS should provide those records as soon as it reasonably can.

Public Information Act Compliance Board*

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* For the reasons outlined briefly below, Board member Debra Lynn Gardner does not join in this decision.

I do not join in the Board’s decision because, in my view, the complainant’s PIA request does not ask for more than the “mere act of extracting, sorting, or formatting data” that AACPS already “collects and maintains in a database.” *Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 272 (2014). In particular, I believe that sorting data through a single field for the value equals X (in this case White) and the value is not equal to X is just that—merely sorting as required by *Immanuel*. And with simple software applications that are now readily available and in common use and that automate, replacing unique identifiers (Student IDs) with a different set of unique identifiers is functionally no different from redaction and no more time-consuming. Lastly, providing the two spreadsheets described above in the manner I have suggested in electronic form would allow the complainant to integrate the two data sets himself by the anonymizing unique identifiers and obtain the public information he seeks without the custodian having created any new record.

At the informal conference and in its answers to our subsequent questions, AACPS confirmed that it has the ability to generate the responsive data in the form the complainant requests in-house through the use of its own IT staff—and in not that much time at that. Thus, it would seem that AACPS can “perform the data extraction and sorting” that the complainant has requested “within their existing functionality and in the normal course.” *Id.* at 271. Further, given the PIA’s command that its provisions be construed in favor of disclosure, § 4-103(b), and our appellate courts’ instruction that the statute “be liberally construed . . . in order to effectuate the Public Information Act’s broad remedial purpose,” *see Kirwan v. Diamondback*, 352 Md. 74, 80 (1998) (citing cases), I interpret § 4-205(c)(1) broadly to cover requests of the sort at issue here. Because I do not believe that responding to the complainant’s modified PIA request requires the creation of new records, I would conclude that the PIA requires AACPS to provide the records “in [the] searchable and analyzable electronic format,” § 4-205(c), that the complainant has asked for.

I do, however, agree that AACPS should produce the responsive aggregate demographic and attendance data that it is willing to produce as soon as possible—ironically, since that would seem to involve “add[ing] up the number[s] of records” in a way that *Immanuel* suggested it might not be required to do. *Id.* at 272.

Debra Lynn Gardner