

August 14, 2023

Maryland State Board of Education Statement Regarding Fox45 Inquiry

On April 10, 2023, Chris Papst, a reporter with Fox45, filed a request for records under the Maryland Public Information Act (“PIA”). In his request, Mr. Papst sought emails and text messages containing the search terms MCAP, Proficient, Proficiency, FERPA, Asterisk, and Level, for MSDE employees Mohammed Choudhury, Sylvia Lawson, Deann Collins, Krishnanda Tallur, and Chandra Haislet, from January 22, 2023 to March 22, 2023.

On May 11, 2023, after good faith discussions with MSDE about narrowing the scope of the request due to the volume of records that the original request would produce, Mr. Papst agreed to limit his request to emails and text messages for Mr. Choudhury that contained the six search terms and were sent or received during the two-month period covered by the original request. On July 28, 2023, MSDE delivered all responsive records it could produce to Mr. Papst.

When searching for text messages, MSDE first contacted Verizon, the cell phone carrier, to inquire if the text messages could be produced for inspection. MSDE learned that Verizon did not keep text messages for more than a few days because of storage limitations. Verizon could, however, provide a list of text messages sent or received from the cell phone during the period. MSDE requested that record and provided it to Mr. Papst as the only record available.

MSDE advised Mr. Papst that it could not determine what, if any, of the text messages contained the terms he had requested. The list showed a total of 98 text messages that were sent or received by Mr. Choudhury’s state-issued cell phone between January 22, 2023 and March 22, 2023. An analysis of those 98 text messages showed the following:

- There were 79 incoming texts and 19 outgoing texts.
- The texts involved eleven unique phone numbers.
- Two (2) texts were with an administrative employee of MSDE.
- Three (3) texts were from a personal number.
- Four (4) texts were with the Director of the Center for School Safety.
- Twenty-four (24) texts were with another public official’s personal number.
- Sixty-two (62) texts were from five phone numbers ending in 0000. These numbers are typically associated with robocalls or spam calls. Mr. Choudhury called each of the five numbers to determine their identity and all went to “call cannot be completed.”
- Three (3) texts were from phone numbers Mr. Choudhury did not recognize. Although they did not end in 0000, they similarly went to “call cannot be completed” when Mr. Choudhury attempted to call them.
- None of the texts were with local school system personnel or MSDE leadership.

No text messages could be retrieved directly from the cell phone because text messages are automatically deleted after 30 days. This is a standard option on the phone. No text messages were deleted outside of the automatic deletion process in response to the PIA request. A search of the device also produced no text messages from the last 30 days that contained the search terms.

Under MSDE's record retention policy for the Office of the Superintendent, text messages are "miscellaneous records." These are records "whose retention is temporary but necessary for the conduct of business" and include telephone messages. MSDE's policy does not address text messages as a separate category of record. Miscellaneous records are retained until they are no longer needed by the office.

The State Board recognizes that text messages cannot be deliberately deleted after they are requested as part of a PIA request. Based on the analysis, it is unlikely that any of the text messages from this period included the search terms Mr. Papst requested. The State Board will review its current record retention policy with Maryland State Archives, which approves record retention policies, to determine how best to address text messages moving forward.