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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-21

November 15, 2023

Department of Public Safety and Correctional Services, Custodian
Madeleine O'Neill (Daily Record), Complainant

Madeleine O'Neill, the complainant in this matter, alleges that the Department of Public Safety and Correctional Services ("DPSCS") has violated the Public Information Act ("PIA") by failing to respond to her requests for public records. Based on the information before us, we find that DPSCS failed to respond to the complainant's PIA requests in the required statutory timeframes and thus violated the PIA. We direct DPSCS to respond to the requests and waive any associated fees.

Background

Earlier this year, the complainant sent two PIA requests to DPSCS seeking certain records. The first request, sent on May 17, 2023, asked for the "IIU file pertaining to the suicide of inmate James C. Robinson on March 14, 2016 at [Eastern Correctional Institution]." The complainant sent her second PIA request on June 14, 2023. That request sought DPSCS's "'Completed Suicide Database' an excel spreadsheet that tracks completed inmate suicides going back to 2001." In her request, complainant noted that she agreed to the redaction of any personally identifying information.

On August 22, 2023, DPSCS sent an email acknowledging the complainant's first PIA request. DPSCS attached a letter with a fee estimate. The complainant then reminded DPSCS of her second PIA request and indicated that she wished to wait until DPSCS provided a fee estimate for that request before deciding whether to pay the fees. DPSCS agreed to that approach and the PIA Coordinator advised that he would check on the status of the complainant's second PIA request and provide an update.

Prior to DPSCS's August 22 email—sent more than two months after the date the complainant sent her second PIA request—the complainant had contacted the Public Access Ombudsman in an effort to obtain responses to her PIA requests. Despite the PIA Coordinator's promise to provide an update, DPSCS did not produce records or otherwise respond to the PIA requests. Thus, after the Ombudsman issued a final determination stating that the dispute was not resolved, the complainant filed her complaint with our Board.

We forwarded the complaint to DPSCS by email on October 6, 2023, and requested a response to the complaint by November 6, 2023. *See* § 4-1A-06(b)(1)¹ (“The custodian . . . shall file a written response to the complaint within 30 calendar days after receiving the complaint.”). DPSCS acknowledged receipt of the complaint that same day. When DPSCS failed to respond by the deadline, we sent a follow-up email advising that, if DPSCS did not respond to the complaint by November 9, 2023, we would “decide the case on the facts before the Board,” as required by statute.² § 4-1A-06(c). DPSCS did not respond to the complaint.³

Analysis

We are authorized to resolve complaints that allege certain violations of the PIA, including that a custodian failed to respond to a request for public records. *See* § 4-1A-04(a)(1)(iii). 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 we conclude that the alleged 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 failed to respond to a PIA request, we must order the custodian to “promptly respond” and may exercise discretion to order the custodian to waive any fees associated with responding. § 4-1A-04(a)(3)(iii).

After receiving a PIA request, a custodian must grant or deny that request “promptly,” but no longer than thirty days from receipt of the request. § 4-203(a)(1). If the custodian “reasonably believes that it will take more than 10 working days to produce the public record” he or she must state so in writing within ten working days of receiving the request. § 4-203(b)(2). The custodian must also provide certain information to the requester, including the reason for the delay and “an estimate of the range of fees that may be charged to comply with the request.” *Id.* Any of the time limits provided in § 4-203 may, with consent of the requester, “be extended for not more than 30 days.” § 4-302(d)(1).

DPSCS clearly violated § 4-203(a) as to both of the complainant’s PIA requests. To date, no final response has issued for either request. Based on the information we have, it appears that DPSCS did not even acknowledge the first PIA request, (sent on May 17) until August 22, 2023—97 days after the request was sent. And, nothing before us indicates that

¹ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise indicated.

² We note that the complainant, who was copied on our follow-up email to DPSCS, objected to any extension of time for DPSCS to respond to her complaint.

³ We understand that, on November 9, DPSCS sent a response to a different PIA request that the complainant sent to DPSCS in October 2023. DPSCS did not respond to the PIA requests at issue here, or to this complaint.

DPSCS formally acknowledged the second PIA request sent on June 14, 2023. Because of the length of the delay, as well as the fact that DPSCS did not issue responses through the mediation process and did not respond to this complaint (despite being provided extra time to do so), we exercise our discretion to order that DPSCS waive any fees it might otherwise be entitled to charge for responding to the complainant's PIA requests. See § 4-1A-04(a)(3)(iii)(2).

As further justification for our fee waiver order, we also feel compelled to point out that this is not the first time that DPSCS has failed to respond to a Board complaint. In fact, this is the fifth complaint this year that DPSCS has seemingly ignored. See PIACB 24-07 (Sept. 6, 2023) (failure to respond to PIA request); PIACB 23-28 (June 30, 2023) (failure to respond to PIA request); PIACB 23-22 (June 30, 2023) (denial of inspection); PIACB 23-21 (June 30, 2023) (denial of inspection).

Conclusion

DPSCS violated § 4-203(a) by failing to grant or deny the complainant's PIA requests "promptly, but not more than 30 days after receiving" the requests. We order DPSCS to respond to the requests within three days of receipt of this decision and order. Given both the length of delay in responding and DPSCS's failure to respond and produce records through the both the Ombudsman and Board process, we also exercise our discretion to order that DPSCS waive any fees associated with responding to the PIA request.

Public Information Act Compliance Board

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