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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-30
February 8, 2024
City of New Carrollton, Custodian
Cynthia Johnson, Complainant

Complainant Cynthia Johnson alleges that the City of New Carrollton (“City”) violated Maryland’s Public Information Act (“PIA”) by failing to timely grant or deny her request for certain records related to an Internal Affairs Division (“IAD”) investigation. As discussed below, we agree that the City has violated the PIA. We direct the City to provide copies of all non-exempt records that the complainant asked for, and to waive any fees associated with responding to her PIA request.

Background

In November of 2022, an incident occurred that led the complainant to file an IAD complaint against the City’s Chief of Police. In June of 2023, the Prince George’s County Police Department (“PGPD”) sent the complainant a letter providing general information about the outcome of the investigation. Then, in August, the complainant sent a PIA request to the City for “a copy of all documents” related to the IAD investigation, including “all emails, correspondence, memoranda, and any notes” between the Chief of Police and the City’s Mayor.

After the complainant sent an email to check on the status of the City’s response, the City sent the complainant a letter explaining that the responsive records were “under review” by the City’s attorney and that the file “may be provided after the completion of his review.” That letter was sent on September 26, 2023, thirty-three days after the complainant sent her PIA request.

On October 2, 2023, the complainant contacted the Public Access Ombudsman for assistance with her PIA dispute—i.e., the fact that the City had not issued a final response to her PIA request. On December 13, 2023, the Ombudsman issued a final determination stating that the dispute was not resolved. The complainant then filed a timely complaint with our Board. We forwarded that complaint to the City on December 20, 2023, and requested a response by January 19, 2024. *See* § 4-1A-06(b)(1)¹ (requiring a custodian to

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

“file a written response to the complaint within 30 calendar days after receiving the complaint”).

In its response, which we received on January 19, the City states that “[a]rrangements can be made for [the complainant] to stop by the New Carrollton Municipal Center as soon as Monday, January 22, 2024, to inspect the binder, file No: OA2022-005,” by emailing the Community Engagement / Constituent Services Officer. The City further states that the emails that the complainant requested are “being produced by [the City’s] IT Department,” and that “[o]nce the issue is resolved by IT, and the emails are reviewed by counsel, emails responsive to the request will be provided as expeditiously as possible.”

In reply, the complainant contends that the City is “attempt[ing] to evade compliance” with the PIA, pointing out that the City’s response to her complaint is essentially the same as the one provided in its September 26, 2023, letter regarding her PIA request. In addition, the complainant stresses that she requested copies of the records, and not just the opportunity to inspect the records. She suggests that the delay—which amounts to “at least four months”—is really an attempt to “hide and/or cover up the guilty decision and reasons therein resolved by the PG Police Department IAD against its Chief of Police.”

Analysis

The PIA authorizes us to review and resolve complaints that allege certain violations of its provisions, including that a custodian “failed to respond to a request for a public record within the time limits established under § 4-203(a) or (d) of [the PIA].” § 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). After a complaint is filed, if we determine that a custodian has failed to respond to a PIA request, we must order the custodian to “promptly respond” and may, in our discretion, order the custodian to waive any fees associated with responding. § 4-1A-04(a)(3)(iii).

The PIA provides rights to both inspect and receive copies of public records. *See* §§ 4-201(a), 4-205(b). 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.² § 4-203(a)(1). If a requester “who is authorized to inspect a public record” requests a copy of that record, the custodian must provide one. § 4-205(b). When there is reason to believe that the production of responsive records will take longer than ten working days, a

² Section 4-203(d) governs extensions of time to respond and allows an extension of “not more than 30 days” with “the consent of the applicant,” and provides that “if the applicant or custodian seeks resolution of a dispute under Subtitle 1A or 1B of [the PIA],” the time limits “shall be extended pending resolution of that dispute.”

custodian must state so in writing within ten working days of receiving the request, and provide certain information to the requester.³ § 4-203(b)(2). A custodian who denies inspection of public records must, within ten working days of the denial, provide a written statement giving the reason for the denial, the legal authority for the denial, notice of remedies for review of the denial, and “a brief description of the undisclosed record[s]” that, without disclosing protected information, allows the requester to “assess the applicability of the legal authority for the denial.” § 4-203(c)(1)(i). For discretionary denials, a custodian must also explain why redaction “would not address the reasons for the denial.” § 4-203(c)(1)(i)(2). In all cases, a custodian must “allow inspection of any part of the record that is subject to inspection.” § 4-203(c)(1)(ii).

The City has violated § 4-203(a)(1). The complainant, using the City’s “Maryland Public Information Act Request Form,” asked the City to provide copies of the IAD-related records on August 24, 2023. Notably, on the form, the complainant checked “copies of the records below,” and not “examination” alone. The City did not produce records, nor did it deny inspection of any records, with its September 26 letter, which was sent thirty-three days after the complainant sent her request—i.e., the City failed to “grant or deny” the request “promptly, but not more than 30 days after receiving the application.” § 4-203(a)(1). Instead, the City advised that “IAD Case No: OA2022-005, is under review by our city attorney and the file ‘may’ be provided after the completion of his review.”

By the time the complainant contacted the Ombudsman, on October 2, 2023, thirty-nine days had elapsed since she sent her PIA request. Apparently, nothing changed during the time the matter was in mediation. In fact, not much has changed as of the date the City filed its response to this complaint—148 days after the complainant sent her PIA request. While the City states that the complainant can “arrange” to “stop by the New Carrollton Municipal Center” to “inspect the binder” for the IAD file, the City has not provided her with the copies she requested. Further, it appears that some of the responsive email records are still under review by counsel, and thus not even ready for inspection. While we recognize that the PIA effectively tolls the clock while dispute resolution is pending with the Ombudsman or our Board, § 4-203(d)(2), we do not think it was the General Assembly’s intent that so little progress be made toward resolving a dispute during the time the clock is tolled—especially not when the dispute is a custodian’s failure to timely respond. Thus, in addition to directing the City to produce *copies* of the responsive records as soon as possible, we also order that any fees associated with producing those records be waived in light of the length of the delay and the fact that the City has offered no explanation for that delay, other than a vague reference to an “issue” to be “resolved by IT.” See § 4-1A-04(a)(3)(iii) (providing the Board discretion to order a fee waiver “if the written decision includes the Board’s reasons” for doing so).

³ The custodian must explain the reason for the delay, provide an estimate as to the amount of time it will take to produce the response and, if applicable, provide an estimate of the range of fees that may be charged. § 4-203(b)(2).

Conclusion

Based on the information before us, we find that the City has violated § 4-203(a)(1) of the PIA. The City failed to grant or deny the complainant's PIA request within the time limits prescribed by that section. The City must produce copies of all non-exempt responsive records within three business days of receipt of this decision and order. Due to the length of the delay—which amounts to nearly four months past the statutory deadline at this point—and the lack of an explanation by the City, we order that any fees associated with responding to the PIA request be waived.

Public Information Act Compliance Board

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