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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-37

April 15, 2024

Office of the State's Attorney for Baltimore City, Custodian
William Hernandez, Complainant

The complainant, William Hernandez, alleges that the Office of the State's Attorney for Baltimore City ("BCSAO") violated the Public Information Act ("PIA") by constructively denying inspection of certain email records related to a criminal case in the District Court of Maryland for Baltimore City. The BCSAO responds that it did not deny the PIA request, but instead sought dispute resolution assistance because it believed that the request was one of a pattern of frivolous, vexatious, and bad faith requests. As explained below, we find no violation of the PIA.

Background

On October 23, 2023, the complainant sent the following to the BCSAO:

To whom it may concern,

I am making a public information request for agency emails and public records.

I'd like to get a a copy of all internal emails the balitmore city states attorneys office has about matters either directly or indirectly related to an individual named "Louis Leibowitz" and his attorney "Arnold Abraham" using counterfeit subpoenas on a balitmore city district court form DC-004 (Rev. 7/01/2015) in the year 2022, from the period of approximately August 2022 until December 2022, years after the forms had been retired and decommissioned by the maryland judiciary.

The emails and internal communications I am seeking are to/from/communicated between baltimore city states attorney office staff and are from the time period of December 2022 until approximately October 2023. These would include any email referring to these two individuals and any matter related to them using counterfeit/ fake DC-004 (Rev. 7/01/2015) forms in the year 2022, be it explicitly or implicitly referenced.

If you need any additional information to locate these items, please contact me at your earliest convenience.

That same day, the BCSAO sent an email advising that the request had been “identified as a part of a larger group of requests that appear to be frivolous, vexatious, or made in bad faith,” and that the BCSAO had therefore referred the request to the Public Access Ombudsman for mediation.

Unhappy with the BCSAO’s position, the complainant contacted the Public Access Ombudsman.¹ On December 15, 2023, the Ombudsman issued a statement in which she indicated that she was unable to mediate the matter due to a conflict.² The statement indicated that the PIA dispute presented was the BCSAO’s denial of the complainant’s PIA request. Thus, that dispute was not resolved through the Ombudsman and the complainant filed this complaint with our Board.

The complainant alleges that the BCSAO “wrongfully denied access to records.” The complainant contends that the records are not Maryland Judiciary records, but rather “documents from the criminal case file 4B02470094.” The complainant notes that the records are “internal emails related to these matters, which would undoubtedly be BCSAO records.”

In response to the complaint, the BCSAO explains that it “neither actually nor constructively denied the request,” but rather referred the request for mediation, which was unsuccessful. The BCSAO refers to PIACB 24-29 (Mar. 29, 2024), in which it alleged—and we concluded—that this request was one of a pattern of vexatious and bad faith PIA requests. The BCSAO acknowledges that it sent the complainant an email on November 16, 2023, in which advised that “any outstanding requests you have submitted to [the BCSAO] are denied,” but states that the language was “included by mistake.” That language, the BCSAO explains, was intended for requests related to PIACB 24-29 “in which the requested records did not exist or were subject to lawful denial.” In this case, the BCSAO indicates, “it is within the realm of possibility that the emails requested by the complainant do in fact exist.”

The complainant replies that “[t]he BCSAO’s response makes absolutely no sense and highlights their intent to mislead, defraud, and harass.”

¹ The PIA charges the Ombudsman with making “reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records.” § 4-1B-04(a).

² See COMAR 14.37.02.07C(3) (providing that, “[i]f the Ombudsman is unable to proceed in a neutral, impartial, and independent manner,” then the Ombudsman must withdraw from the mediation and issue a final determination “stating that the dispute was not resolved through the Ombudsman due to conflict”).

Analysis

The PIA directs us to review and resolve complaints alleging certain violations of its provisions, including that a custodian failed to respond to a PIA request within certain time limitations. § 4-1A-04(a)(1)(iii). If we determine that a custodian has failed to respond within those time limitations, we must order the custodian to “promptly respond,” and have discretion to waive any associated fees if our written decision states the reasons why. § 4-1A-04(a)(3)(iii).

When custodians receive PIA requests, they must “grant or deny the [requests] promptly, but not more than 30 days after receiving 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,” the custodian must state so in writing and provide certain information, including how long it will take to produce the records, an estimate of any fees that may be associated with production, and the reason for the delay.³ § 4-203(b). A custodian who denies a PIA request must, within ten working days, provide a written statement that explains, among other things, “the reasons” and “legal authority” for the denial, a brief description of the undisclosed records, and a notice of remedies. § 4-203(c)(1). The time limits found in § 4-203 “may be extended for not more than 30 days” with the requester’s consent, and, if the requester or custodian “seeks resolution of a dispute” through the Public Access Ombudsman or our Board, “shall be extended pending resolution of that dispute.” § 4-203(d).

After reviewing the submissions, we find that the BCSAO has not violated the time limitations imposed by § 4-203(a) or (d), and has therefore not constructively denied the complainant’s PIA request. The complainant sent the PIA request on October 23, 2023. That same day, the BCSAO advised that it had referred this PIA request—along with many others—to the Ombudsman in an effort to resolve a dispute, i.e., the BCSAO’s contention that the requests were frivolous, vexatious, and in bad faith.⁴ The time for responding to the complainant’s PIA request was therefore “extended pending resolution of that dispute,” § 4-203(d)(2), which occurred when we issued our decision.

Conclusion

Based on the information before us, we conclude that the BCSAO has not violated the PIA. Given that the time for responding begins to run again with our resolution of this

³ Notably, we lack authority to review and resolve complaints about a custodian’s failure to comply with this provision. See § 4-1A-04(a)(1)(iii) (Board has authority to resolve complaints that a custodian “failed to respond to a request for a public record within the time limits established in § 4-203(a) or (d),” but not § 4-203(b)).

⁴ The time for responding was also tolled when the complainant sought dispute resolution assistance on November 17, 2023, as indicated in the Ombudsman’s final determination.

complaint, the BCSAO may take action consistent with our decision in PIACB 24-29 (Mar. 29, 2024).

Public Information Act Compliance Board*

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* Board Member Deborah Moore-Carter did not participate in the deliberation, preparation, or issuing of this decision.