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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-40

April 15, 2024

Office of the State's Attorney for Baltimore City, Custodian
John Davis, Complainant

The complainant, John Davis, alleges that the Office of the State's Attorney for Baltimore City ("BCSAO") violated the Public Information Act ("PIA") by failing to respond to a request for public records. As explained below, we find no violation.

Background

On October 14, 2023, the complainant sent the BCSAO a PIA request seeking "any information" related to an ASA "making an illegal arrangement with 'Louis Leibowitz' to deny another person's ability to file a statement of charges without . . . permission." The complainant also asked for "all documents, records, emails about this arrangement, communications between the BCSAO, Leibowitz and counsel, and the Maryland judiciary [sic] about this arrangement, and any document or manual that outlines any policy or law that would make this arrangement legal."

On November 3, 2023, the BCSAO sent the complainant an email explaining that the PIA request had been "identified as part of a larger group of requests that appear to be frivolous, vexatious, or made in bad faith," and thus the BCSAO had referred the request to the Public Access Ombudsman.¹

In the complaint, the complainant alleges, among other things, that the BCSAO never sent "an acknowledgment letter" or a "denial letter."² The complainant asserts that a specific Assistant State's Attorney ("ASA") "instructed" the BCSAO's PIA officer to

¹ See Md. Code Ann., Gen. Provisions § 4-1B-04(a) (requiring the Ombudsman to "make reasonable attempts to resolve disputes between applicants and custodians relating to request for records under [the PIA]").

² The complaint contains additional allegations that are beyond our jurisdiction, so we do not consider or discuss them. The complaint also contains myriad accusations against certain BCSAO employees that appear aimed at explaining why the "arrangement" referenced in the PIA request was "illegal." This material is irrelevant to our decision, so we neither consider nor address it.

“ignore [the] PIA request so that [the complainant] would not be able to access these public records that incriminate [the ASA].”

In response to the complaint, the BCSAO provides a copy of the November 3 email it sent to the complainant containing notice of the Ombudsman referral. The BCSAO also explains that the records the complainant seeks do not exist because the BCSAO “could find no evidence or record of a conspiracy . . . to deny another person’s ability to file a statement of charges.” The BCSAO also asserts that this request is one of many frivolous, vexatious, and bad faith requests that it received over the course of several months at the end of 2023.

In reply, the complainant contends that the BCSAO has “wrongfully denied [the] request for public records,” and that there is no “retroactive take backsies clause.” The complainant also suggests that the specific ASA referenced in his PIA requests “may in fact be . . . writing these responses while masquerading as [the PIA officer] and using his accounts.”³

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).⁴ 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

³ The complainant’s reply also contains additional accusations against certain ASAs that are beyond our jurisdiction, so we do not consider or address them. In addition, more than a week after providing the reply, the complainant sent our Board another email in which he alleges that certain ASAs have “falsified and backdated several nolle pros forms . . . for fictitious Baltimore City criminal cases that never existed and do not even conform to the Baltimore City District Court criminal case numbering conventions.” First, we note that the complainant had already submitted the reply permitted by our regulations. *See* COMAR14.02.02.04. Second, this allegation is beyond our jurisdiction and irrelevant to our decision here. We do not consider or address it.

⁴ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise stated.

associated with production, and the reason for the delay.⁵ § 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 Ombudsman or our Board, “shall be extended pending resolution of that dispute.” § 4-203(d).

After review of the submissions, we find that the BCSAO has not violated the time limitations imposed by § 4-203(a) or (d). The complainant sent the PIA request on October 14, 2023. Twenty days later, on November 3, 2023, the BCSAO sent the complainant a notice 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.⁶ 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 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.

⁵ 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)).

⁶ The time for responding was also tolled when the complainant sought dispute resolution assistance on November 15, 2023, as indicated in the Ombudsman’s final determination.