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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-45
February 26, 2024
Department of Public Safety and Correctional Services, Custodian
Ronald Kirchner, Complainant

Ronald Kirchner, the complainant, alleges that the Department of Public Safety and Correctional Services (“DPSCS”) violated the PIA by failing to respond to two Public Information Act (“PIA”) requests sent in June and July of last year. While our decision was pending, DPSCS issued a response to one of the complainant’s PIA requests. As explained below, we find that DPSCS has violated the PIA, and order that DPSCS respond promptly to the PIA request that it still has not answered.

Background

On June 19, 2023, the complainant sent a PIA request to DPSCS seeking the full names of all employees working in traffic at the Baltimore City Correctional Center (“BCCC”), including the full names of the Warden and Major Wright. DPSCS did not issue a response.

Less than a month later, on July 7, 2023, the complainant sent a second PIA request asking for: (1) the “inf. Form” used when an incident is reported under the Prison Rape Elimination Act (“PREA”), and the “step by step of rules and proceeds”; and (2) the rules and procedures related to providing an inmate with “a safe[,] healthy and humane environment.” DPSCS did not issue a response.

Given the lack of response to his PIA requests, the complainant contacted the Public Access Ombudsman¹ on October 9, 2023. The Ombudsman ultimately issued a final determination stating that the disputes were not resolved. The complainant then filed this complaint with our Board alleging that DPSCS has violated the PIA by not producing the records he requested.

¹ See Md. Code Ann., Gen. Provisions § 4-1B-04(a), which charges the Ombudsman with making “reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records under [the PIA].” Complainants must attempt to resolve their disputes through the Ombudsman before filing a complaint. *Id.* § 4-1A-05(a).

We sent the complaint to DPSCS on January 16, 2024, and requested that DPSCS respond to the complaint no later than February 15, 2024. *See* § 4-1A-06(a) and (b).² DPSCS did respond within that timeframe, and indicates that the “request was fulfilled and signed by Mr. Kirchner on 2/12/2024.” DPSCS attaches a letter to the complainant, dated January 31, 2024, in which it provides the first and last names of BCCC traffic officers, as well as the first and last names of the Warden and Major Wright. The letter also indicates that DPSCS’s database does not contain the employees’ middle names.³

In reply, the complainant points out that, while DPSCS did provide the names he asked for in his first PIA request, it did not produce the “procedures, rules/regulations” that DPSCS is “supposed to follow when an incident is reported,” and the rules and procedures of “providing an inmate a safe, healthy humane environment.” The complainant asks that DPSCS “[p]lease provide this information.”

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). 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 within the prescribed time limits, 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).

A custodian must grant or deny a PIA 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, and provide certain information to the requester.⁴ § 4-203(b)(2). If a PIA request is denied, the custodian must, within ten working days of the denial, provide a written statement giving the reason and legal authority for the denial, notice of remedies for review, and a brief description of the

² Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise stated.

³ While we were awaiting DPSCS’s response to the complaint, the complainant sent a letter, which we received on February 6, 2024, in which he explains the events that led him to request these records. The complainant also provided copies of his PIA requests. The letter, which we forwarded to DPSCS, did not contain any new PIA-related allegations or requests for different records.

⁴ 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).

undisclosed records 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)(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).

In this case, DPSCS has violated § 4-203(a). The complainant sent his first PIA request on June 19, 2023, and DPSCS did not respond until February 12, 2024, when it delivered the response letter to the complainant. And, DPSCS still has not issued a response to the complainant’s second PIA request, sent on July 7, 2023. For both PIA requests, then, DPSCS failed to respond “promptly, but no more than 30 days after receiving [the requests].” *See* § 4-203(a)(1). The complainant waited nearly eight months for a response to his first PIA request, and he is still waiting, more than seven months later, for a response to his second. While we recognize that § 4-203(d) effectively tolls the clock for § 4-203’s time limitations,⁵ these delays are simply unacceptable, especially for what would appear to be relatively straightforward responses. Notably, the responses were already well overdue by the time the complainant sought dispute resolution assistance from the Ombudsman. We thus order DPSCS to respond to the complainant’s second PIA request “promptly,” but in no more than three business days of receipt of this decision and order. In light of the length of DPSCS’s delay, we exercise our discretion to order that DPSCS waive any fees it might otherwise be entitled to charge for responding to the complainant’s second PIA request. *See* § 4-1A-04(a)(3)(iii)(2).

Conclusion

DPSCS violated § 4-203(a) by failing to respond to the complainant’s PIA requests “promptly, but not more than 30 days after receiving” his request. Consistent with § 4-1A-04(a)(3)(iii), we order DPSCS to respond to the complainant’s second PIA request within three business days of receipt of this decision and order. Given the length of the delay—which had already exceeded three months by the time the complainant contacted the Ombudsman—we also exercise our discretion to order that DPSCS waive any fees associated with responding to the second PIA request.

Public Information Act Compliance Board

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⁵ “Any time limit imposed under this section . . . if the applicant or custodian seeks resolution of a dispute under Subtitle 1A or 1B of [the PIA], shall be extended pending resolution of that dispute.” § 4-203(d)(2).

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