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**STATE OF MARYLAND**  
**PUBLIC INFORMATION ACT COMPLIANCE BOARD**

**PIACB 24-50**

**April 2, 2024**

**Board of Professional Counselors and Therapists, Custodian**  
**William Hernandez, Complainant**

The complainant, William Hernandez, alleges that the Board of Professional Counselors and Therapists (“BPCT”) violated the Public Information Act (“PIA”) by failing to respond to a request for public records within the time limits in the PIA. After review of the submissions, we find that the BPCT did not respond within the prescribed time limitations and thus violated the PIA.

**Background**

On December 3, 2023, the complainant sent a PIA request to the BPCT seeking “all emails in addition to all documents, and records the [Maryland Department of Health] and the BOPCT received” from three specified email addresses related to “any matter pertaining to Louis Leibowitz, from the period of April 2022 until December 2023.”

In early January, after the complainant did not receive a response to the PIA request, the complainant contacted the Public Access Ombudsman. On January 10, 2024, the Ombudsman issued a statement in which she indicated that she was unable to mediate the matter due to a conflict.<sup>1</sup> The statement indicated that the PIA dispute presented was the BPCT’s failure to respond to the complainant’s PIA request. Thus, that dispute was not resolved through the Ombudsman and the complainant filed this complaint with our Board.

We received the complaint on January 22, 2024, and forwarded it to the BPCT the next day with a request that the BPCT provide a written response by February 22, 2024. *See* § 4-1A-06(b)<sup>2</sup> (“The custodian or applicant shall file a written response to the complaint within 30 calendar days after receiving the complaint.”). When we did not receive the BPCT’s response by that date, we contacted the BPCT and instructed that a

<sup>1</sup> *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”).

<sup>2</sup> Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise specified.

response be sent no later than February 28, 2024. The BPCT ultimately provided a written response on March 4, 2024, explaining that it has been “severely understaffed” and that “due to the voluminous complaints that [it had] received, there was some confusion about which responses had been investigated and which had not.”

The BPCT’s late response notwithstanding, we provided the complainant an opportunity to submit a reply. *See* COMAR 14.02.02.04. The complainant declined to do so, stating that “it is very clear that the BPCT’s response should not even be considered.”

### **Analysis**

We are authorized to review and resolve complaints that allege certain violations of the PIA, including that a custodian failed to respond to a PIA request within prescribed time limits.<sup>3</sup> § 4-1A-04(a)(1)(iii). If, after review of the complaint and the parties’ submissions, we conclude that the alleged violation occurred, we must issue a written decision and order a statutory remedy—e.g., that the custodian “promptly respond.” § 4-1A-04(a)(2) and (3).

After receiving a PIA request, a custodian must “grant or deny the [request] promptly, but not more than 30 days after receiving the [request].” § 4-203(a)(1). The PIA provides a specific procedure for the denial of a PIA request. A custodian must provide the requester with a “written statement” that states the reason and legal authority for the denial, notice of remedies, and “without disclosing the protected information, a brief description of the undisclosed record that will enable the [requester] to assess the applicability of the legal authority for the denial.”<sup>4</sup> § 4-203(c)(1)(i). This written statement must issue within ten working days of the denial. § 4-203(c)(1)(i).

Based on the complaint and submissions alone, we find that the BPCT violated § 4-203(a)(1). The complainant sent the PIA request on December 3, 2023, and the BPCT’s response did not issue until March 4, 2024. Thus, the BPCT failed to “grant or deny the [request] promptly, but not more than 30 days after receiving the [request].” § 4-203(a)(1). And, although the BPCT submitted its response to the complaint outside the statutory time limits, we note that the BPCT does not deny that its response to the complainant’s PIA request was untimely. Indeed, the BPCT indicates that its response to the complaint “also functions . . . as the [BPCT’s] official response to Mr. Hernandez’s PIA request.”

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<sup>3</sup> A complainant must first attempt to resolve the dispute through the Public Access Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a).

<sup>4</sup> For discretionary denials, a custodian must also explain why the denial is necessary and why “redacting information would not address the reasons for the denial.” § 4-203(c)(1)(i)(2).

When we determine that a custodian violated § 4-203(a), we must order the custodian to “promptly respond,” and have discretion to waive any associated fees if our decision explains why. § 4-1A-04(a)(3)(iii). Here, the BPCT has issued a response denying the PIA request under § 4-333 and has not charged any fees.<sup>5</sup> We therefore order no further relief.

### **Conclusion**

After consideration of the parties’ submissions we find that the BPCT violated § 4-203(a)(1) by failing to issue its response to the complainant’s PIA request “promptly, but not more than 30 days” after it received the request. However, because the BPCT has responded at this point and has not charged any fees, we order no further relief.

### **Public Information Act Compliance Board\***

*Michele L. Cohen, Esq.*

*Samuel G. Encarnacion*

*Debra Lynn Gardner*

*Nivek M. Johnson*

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

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<sup>5</sup> Though the BPCT’s response conforms to the requirements of § 4-203(c), we generally encourage custodians to issue standalone responses to PIA requests. We make no determinations regarding the merits of the BPCT’s response here because the complainant does not allege a violation with respect to the BPCT’s substantive response, which had not issued at the time the complaint was filed.