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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-68

April 2, 2024

Board of Professional Counselors and Therapists, Custodian
Steven Brown, Complainant

The complainant, Steven Brown, 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 20, 2023, the complainant sent a PIA request to the BPCT seeking “all emails the BPCT has that mention, reference, or relate to ‘Louis Leibowitz’ from the period of May 2022 to December 2023.” The complainant sent follow-up emails on January 4, 24, and 31, 2024.

In February, after the complainant did not receive a response to the PIA request, the complainant contacted the Public Access Ombudsman. On February 23, 2024, the Ombudsman issued a statement in which she indicated that she was unable to mediate the matter due to a conflict.¹ 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.

The complainant alleges that the BPCT failed to acknowledge the PIA request and constructively denied access to records. In its response to the complaint, the BPCT states that it has experienced high staff turnover during the last two years, particularly the Executive Director position, which is the position responsible for responding to PIA requests. Additionally, the BPCT explains that, “[s]ince August of 2023, the [BPCT] has received multiple, repetitive PIA inquiries for the same, if not similar information from multiple individuals,” and that the requests “were often combative, inflammatory, and

¹ 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”).

repetitive, and occasionally made by individuals who refused to identify themselves.”² Despite these circumstances, the BPCT states that it has “attempted to respond to each of these requests,” although it acknowledges that it did not respond to the complainant’s PIA request. The BPCT also indicates that its response to this complaint “functions . . . as the [BPCT’s] official response” and advises that the complainant’s PIA request is denied under § 4-333(a)(1),³ the PIA’s exemption for “information about the licensing of an individual in an occupation or profession.”

The complainant replies that the BPCT has not complied with PIA laws and procedures. The complainant also disputes that § 4-333(a)(1) requires denial of the PIA request.⁴

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.⁵ § 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

² We note that we have reviewed two other complaints that involved PIA requests to the BPCT, sent during December 2023, for email records related Louis Leibowitz. *See* PIACB 24-43 (Mar. 21, 2024); PIACB 24-50 (Apr. 1, 2024).

³ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise specified.

⁴ The complainant’s reply contains additional allegations against various members of the BPCT staff that do not directly relate to the PIA as well as allegations related to the PIA requests of others, about which the complainant apparently has specific knowledge as well as access to correspondence related to those requests. Because all of these allegations are irrelevant to the narrow question before us—i.e., whether the BPCT complied with § 4-203(a) regarding this PIA request—we do not consider them.

⁵ 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).

applicability of the legal authority for the denial.”⁶ § 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 submissions, we find that the BPCT violated § 4-203(a)(1). The complainant sent the PIA request on December 20, 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). 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.⁷ 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*

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

⁶ 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).

⁷ 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 complaint does not allege a violation with respect to the BPCT’s substantive response, which had not issued at the time the complaint was filed.