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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-69

April 26, 2024

Office of the State's Attorney for Anne Arundel County, Custodian
William Hernandez, Complainant

The complainant, William Hernandez, alleges that the Office of the State's Attorney for Anne Arundel County ("AACSAO") violated the Public Information Act ("PIA") by failing to respond to a PIA request within the time limitations in the PIA. The AACSAO responds that it has complied with the PIA. As explained below, we find that the AACSAO violated the time limitations in § 4-203(d) of the PIA.¹

Background

On November 25, 2023, the complainant sent the following to the AACSAO:

Pursuant to the Maryland Public Information Act, I'd like to be afforded the opportunity to inspect and obtain a copy of all public releasable documents related to case D-07-CR-23- 016511, the State of Maryland vs Louis Leibowitz.

Namely, I'd like to obtain a copy of the following:

- 1) all releasable documents related to discovery
- 2) all internal emails and correspondences related to this case
- 3) all documents related to why this case was dismissed and the SAO failed to prosecute this crime
- 4) all emails and correspondences with the defendant and the defendant's counsel related to this case

Please provide a legal justification of any portion of this request you intend to deny and cite the authority.

Please contact me at your earliest convenience for any clarifications [sic] about this request.

¹ Statutory citations are to the General Provisions Article of Maryland's Annotated Code unless otherwise stated.

On November 27, 2023, the AACSAO acknowledged receipt of the PIA request and advised that it needed an additional thirty days to respond and produce records. The AACSAO also provided the complainant with the possible fees associated with the response to the request. The complainant responded to this letter by stating “Okay, thanks for the heads up! Let me know if you need anymore information, clarifications, or precisions from me.” In January, the complainant sent an email to the AACSAO asking about the status of the response. The AACSAO responded the next day, January 19, 2024, with a letter that advised that there were “approximately 295 pages and 2 media files” potentially responsive to the PIA request, but that it did not yet know whether all of the records were disclosable. The AACSAO estimated that the response would cost \$109.75 and asked the complainant to prepay the fee.

After the complainant and the AACSAO exchanged several emails regarding the cost and possible ways to narrow the request, the AACSAO sent, on February 5, 2024, another letter regarding records responsive to the second, third, and fourth parts of the complainant’s PIA request—i.e., the request for “all releasable documents related to discovery” was dropped. That letter indicated that there were “approximately 78 pages” potentially responsive to the request and asked the complainant to prepay an estimated fee of \$109.50.

On February 5, 2024, the complainant sent an email indicating that the payment had been mailed. As of February 12, 2024, the AACSAO apparently had not yet received that check. On February 20, 2024, the complainant sent another email asking for an update, stating “[y]our agency is in receipt of the payment sent via the USPS.” On March 4, 2024, the AACSAO responded that it had not received the check. On March 6, 2024, the complainant advised, via an email, that “payment was left at the front desk with [a] nice little old lady with a grandma cut.” Thus, on March 8, 2024, the AACSAO sent the complainant a response letter and provided a link to access the responsive records. The letter indicated that there were “56 pages of documents that are responsive, non-duplicative, and able to be released.” The AACSAO advised that the complainant was due a \$6.00 refund and asked the complainant to contact the AACSAO to so the refund could be arranged.

During this process, 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.² The statement indicated that the PIA dispute presented was the AACSAO’s failure to respond. Thus, that dispute was not resolved through the Ombudsman and the complainant filed this complaint with our Board.

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”).

The complainant alleges that the AACSAO “did not respond within the allotted time,” and that “they still have not produced the records, despite taking my money.”³ The complainant asks our Board to “enforce the Anne Arundel County SAO to comply with PIA laws and produce the records.”

In response to the complaint, the AACSAO maintains that it complied with the PIA throughout the process of responding to the complainant’s PIA request. The AACSAO notes that the initial response letter was sent within ten days of receipt of the PIA request. And, the AACSAO points out, when the complainant sent an email inquiring about the status of the response, the complainant received a prompt reply. The AACSAO also stresses that it continued to be responsive to the complainant’s emails about modifying the request. The AACSAO states that, once payment was received, it produced the records within two business days.

The complainant replies that the “original issue was about the timeliness of the AACSAO’s response, their use of car salesman tactics to make it seem like I consented to a time extension, and the use of ‘Girl Math’ in calculating that by cutting out 75% of the documents, the AACSAO would essentially be arriving at the same \$109 fee and would be needing an additional month and a half to produce 75% less documents.” The complainant laments that “[t]his is unfortunate because once the AACSAO got their gears into motion, they ultimately performed and met the standards.”⁴

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

³ The complaint contains other allegations, including allegations against the Office of the State’s Attorney for Baltimore City (“BCSAO”) and private individuals. We lack jurisdiction to review them and therefore do not recount them here.

⁴ Most of the complainant’s reply is dedicated to allegations and accusations related to the matter underlying the complainant’s PIA request, the BCSAO, and about counsel representing the AACSAO here. We do not have authority to entertain these, so we do not recount them.

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 Public Access Ombudsman⁶ or our Board, “shall be extended pending resolution of that dispute.” § 4-203(d).

Based on the submissions, we find that the AACSAO violated § 4-203(d) by failing to provide the final response within the sixty-day time limitation provided. The complainant’s PIA request was sent on Saturday, November 25, 2023, at 11:39 a.m. The AACSAO responded with a ten-day letter two days later, on Monday, November 27, 2023. That letter advised that it would take longer than ten days to produce the records and that the AACSAO “estimate[d] approximately 30 additional days (and possibly more) are needed to retrieve, redact, and provide the records requested. The AACSAO therefore requested a “30 day extension of the deadline estimate pursuant to MPIA § 4-203(d).” Though the complainant maintains that the AACSAO did not receive consent to the extension, we disagree. “Consent” means “[a] voluntary yielding to what another proposes or desires; agreement, approval, or permission regarding some act or purpose.” *Black’s Law Dictionary* (19th ed. 2019). While the complainant may not have expressly stated agreement with the AACSAO’s statement that it would need thirty additional days to produce the records, the complainant’s response to the letter explicitly indicating that the extension was needed—“Okay thanks for the heads up! Let me know if you need any more information, clarifications, or precisions from me.”—acknowledged its contents and at no point indicated disagreement with what that letter contained. At minimum, the complainant gave implied consent to that additional thirty days. *See Black’s Law Dictionary* (19th ed. 2019) (defining “implied consent” as “[c]onsent inferred from one’s conduct rather from one’s direct expression”). Thus, under § 4-203(d)(1), the AACSAO’s final response and records production was due by January 24, 2024.

As noted above, the complainant sent an email to check on the status of the response on January 18, 2024. While the AACSAO responded the next day with a letter that provided a precise fee estimate, we have no information about what work was occurring in time between when the November 27 letter was sent and when the complainant sent the email asking for an update. Although we commend that the AACSAO and the complainant

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 *See* § 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]”).

exchanged correspondence regarding modifications to the complainant's PIA request, that exchange should have started earlier in the process and the onus was ultimately on the AACSAO to begin it. *See Glass v. Anne Arundel County*, 453 Md. 201, 232-33 (2017) ("In practice, a productive response to a PIA request is often an iterative process in which the agency reports on the type and scope of the files it holds . . . and the requestor refines the request to reduce the labor (and expense) of searching those records.").

Once the scope of and fee for the response had been settled, the AACSAO waited until payment was received to provide the records. This practice does not seem inconsistent with what the caselaw provides. *Cf. Glass*, 453 Md. at 234-35 (finding "no *denial* of access to the emails—as opposed to a dispute over the conditions of access—that amounted to a violation of the County's obligations under [the PIA]" where a custodian provided "an estimate of the fees for alternative approaches to reviewing those emails and sought further direction from [the requester]," (emphasis original)). The AACSAO produced the records promptly after receiving payment but still more than six weeks after the sixty-day deadline. As discussed above, had the iterative process started earlier, it is likely that production would have occurred closer to that deadline.

Section 4-1A-04(a)(3)(iii)(2) permits us to "waive all or part of the fee the custodian is otherwise entitled to charge," if our decision states the reasons for doing so. We decline to exercise the discretion to do so in this matter. The broader record shows that, generally, the AACSAO was responsive to the complainant's inquiries and made efforts to comply with the PIA's provisions. The complainant appears to agree, stating that "once the AACSAO got their gears into motion, they ultimately performed and met the standards."

Conclusion

Based on the information before us, we find that the AACSAO violated § 4-203(d) by failing to produce responsive records within the sixty days afforded. The AACSAO has now responded and produced records. 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.