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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-76

May 22, 2024

Board of Professional Counselors and Therapists, Custodian
Seb Fialon, Complainant

The complainant, Seb Fialon, alleges that the Board of Professional Counselors and Therapists (“BPCT”) violated the timing provisions in the Public Information Act (“PIA”). After review of the submissions, we conclude that the BPCT violated § 4-203(a)¹ of the PIA.

Background

The complainant sent a PIA request to the BPCT on November 12, 2023. After the BPCT failed to respond to the request, the complainant contacted the Public Access Ombudsman.² On March 18, 2024, the Ombudsman issued a statement in which she indicated that she was unable to mediate the matter due to a conflict.³ The statement indicated that the PIA dispute presented was the BPCT’s failure to respond. Thus, that dispute was not resolved through the Ombudsman and the complainant filed this complaint with our Board.

The complaint asks us to “order the BPCT to produce [the] documents with a waiver of all fees and find that they have violated the act.” In its response to the complaint, the BPCT acknowledges that its response to the complainant’s PIA request—which it provides with its response to this complaint—is untimely. The BPCT explains that, when the PIA request came in in November of last year, it was experiencing turnover in the executive director position as well as managing a high volume of phone calls and emails related to continuing education and license renewals, as that time period is also when licenses are renewed. The BPCT also advises that it had received “numerous requests for information

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

² See § 4-1B-04(a), which charges the Ombudsman with making “reasonable attempts to resolve disputes between [PIA] applicants and custodians.”

³ 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”).

related to the same case filed by different people,” and that it “may have reasonably believed that it had already responded.”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 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 Ombudsman or our Board, “shall be extended pending resolution of that dispute.” § 4-203(d).

Based on the submissions, which include the BPCT’s acknowledgement that its response was untimely, we find that the BPCT violated § 4-203(a) by failing to respond to the complainant’s PIA request “promptly, but not more than 30 days after receiving the [request].” § 4-203(a)(1). Because the BPCT has now responded and has not charged any fees for the response, we do not order any further relief.

⁴ The complainant, in reply, “fully contest[s] the BPCT’s response” to the PIA request and “want[s] this settled right now.” We decline to review the BPCT’s substantive response to the complainant’s PIA request. The issue identified in the complaint was the BPCT’s failure to respond according to the timing provisions in the PIA. In addition, the BPCT has not been provided with an opportunity to respond to any allegations that its response is improper.

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)).

Conclusion

The BPCT violated § 4-203(a) of the PIA. Given that it has now responded without charging 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.