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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-82

May 22, 2024

Baltimore Police Department, Custodian
William Hernandez, Complainant

The complainant, William Hernandez, alleges that the Baltimore Police Department (“BPD”) violated the timing provisions in the Public Information Act (“PIA”). After review of the submissions, we conclude that the BPD violated § 4-203(a)¹ of the PIA.

Background

The complainant sent a PIA request to the BPD on February 11, 2024. The BPD acknowledged the request on February 28, 2024. After the BPD failed to produce records within thirty days, the complainant contacted the Public Access Ombudsman.² On April 2, 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 BPD’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 BPD to immediately respond, conduct a search for the records, and produce them free of charge.” In response to the complaint, the BPD contends that it justifiably did not respond to the PIA request within thirty days, and that the complainant seeks records that are “foreclosed by the Board’s recent decision in PIACB 24-29.” The BPD asks either that we find no violation of the PIA and order that the BPD is not obligated to respond to the PIA request, or that we order the BPD to respond in a manner outlined in its response.

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”).

In its response, the BPD concedes that it did not meet the thirty-day response deadline in the PIA. The BPD explains that it “receives a significant volume of public information requests” and “makes every effort to comply with the PIA’s deadlines and communicate with requestors.” However, the BPD states, “the massive volume of requests BPD receives simply overburdens [the Document Compliance Unit, or “DCU”].” The BPD also states that this PIA request in particular presented certain challenges. According to the BPD, the DCU employee tasked with preparing the response contacted the Baltimore City Law Department on March 5, 2024, for assistance. Eventually, the BPD explains, it was able to identify four BPD officers potentially associated with responsive records, and has also identified “reasonable keywords and date ranges” based on the PIA request. The BPD acknowledges that it should have “communicated the status of the request” in a “timelier manner.”⁴

The BPD explains that it intends to respond by providing cost estimates to the complainant for searches and responses that either use the email custodians, keywords, and date range that the BPD has fashioned, or that use email custodians, keywords, and date ranges provided by the complainant. The BPD provides the specific officers, keywords, and date range it identified. The BPD asks that we not order it to waive any fees.

The complainant sent at least six emails in reply.⁵ Ultimately, the complainant asks that we order the BPD to “conduct a comprehensive search and be ordered to produce the

⁴ The BPD also refers to our decision in PIACB 24-29, where we found that a PIA applicant (James Alford) was responsible for sending or encouraging the sending of numerous PIA requests from multiple different email accounts—including that of this complainant—for the same universe of records related to Mr. Alford and matters he had in district court. *See* PIACB 24-29 (Mar. 29, 2024). We concluded that those PIA requests were vexatious and in bad faith. *Id.* at 22-25. The custodian/complainant in that case was the Office of the State’s Attorney for Baltimore City (“BCSAO”). The BPD states that it has “received a series of Alford-related requests from various requestors with different names and email addresses,” and has, like the BCSAO, “endeavored to work with and respond to each requestor.” Thus, the BPD urges us to grant relief similar to the relief granted in PIACB 24-29—i.e., an order that the BPD may ignore this request and any pending or future PIA requests for these same types of records. The BPD argues that doing otherwise “would allow requestors to circumvent the Board’s ruling by sidestepping the SAO and making their requests straight to BPD.” While there is a certain logic to this argument, we cannot grant the BPD the relief it seeks here. Although the complainant’s PIA request appears to fall within that same universe of records related to James Alford and his district court matters, § 4-1A-04(b)(3)(i) permits us to issue an order that a custodian may “ignore the request *that is the subject of the custodian’s complaint*.” (emphasis added). The BPD has not filed a complaint under § 4-1A-04(b) of the PIA. Our order in PIACB 24-29 applies only to PIA requests directed to the BCSAO.

⁵ The complainant’s reply contains other serious, unsupported allegations—including that our Board has “already compromised the BPD cases by engaging in revenge porn and posting the documents on the internet out of retaliation” and has “compromised a related California case by

documents free of charge.” The complainant argues that the BPD never engaged in “good faith dialogue to narrow the request, to add more precisions, or to request a time extension.”

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.⁶ § 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 BPD’s acknowledgement that it has failed to respond in a timely manner, we find that the BPD violated § 4-203(a). The BPD did not respond to the complainant’s PIA request “promptly, but not more than 30 days after receiving the [request].” § 4-203(a)(1). We therefore order the BPD to “promptly respond.” § 4-1A-04(a)(3)(iii)(1). Given the broader context articulated in the BPD’s response, the breadth of the complainant’s PIA request, and the fact that the BPD has outlined a specific manner of responding, we decline to exercise discretion to waive any fees. *See* § 4-1A-04(a)(3)(iii)(2).

posting the documents on the internet.” As we have stated on repeated occasions, including in a decision for a complaint filed by this complainant, we lack jurisdiction to entertain such allegations. *See* PIACB 24-69, at 3 n.3 (Apr. 26, 2024).

⁶ 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 BPD violated § 4-203(a) of the PIA. We direct the BPD to promptly respond to the complainant's PIA request.

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.