

WES MOORE
GOVERNOR

ARUNA MILLER
LT. GOVERNOR



MICHELE L. COHEN, ESQ.
SAMUEL G. ENCARNACION
DEBRA LYNN GARDNER
NIVEK M. JOHNSON
DEBORAH MOORE-CARTER

STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-85

June 28, 2024

Office of the Attorney General of Maryland, Custodian
Eric Rodriguez, Complainant

Complainant Eric Rodriguez alleges that the Office of the Attorney General of Maryland (“OAG”) violated the Public Information Act (“PIA”) by improperly denying inspection of public records. The OAG responds that it appropriately responded by advising that no responsive records exist. As explained below, we find no violation of the PIA.

Background

On March 21, 2024, the complainant sent a PIA request asking for “all documents and records” related to a specific Assistant Attorney General (“AAG”) “falsifying documents and records, actual or alleged for any matter from the period of 2023 to 2024.” The complainant stated that “[t]his would include falsified, backdated, or altered exhibits, correspondences, documents or records or [sic] any kind in relation to Marke Cross and the BCSAO.”

On April 2, 2024, the OAG responded that it did not have any records responsive to the request because the AAG “has not falsified documents.” The complainant replied with an email asking whether the AAG “[h]as used documents that were falsified by someone else, or that were alleged to be falsified? To include by Marke Cross?” Four days later, on April 6, 2024, the complainant contacted the Public Access Ombudsman.¹ On April 29, 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

¹ See Md. Code Ann., Gen. Provisions § 4-1B-04(a) (charging the Ombudsman with making “reasonable attempts resolve disputes between applicants and custodians relating to requests for public records under [the PIA]”). Before filing a complaint with our Board, an applicant or custodian must attempt to resolve the dispute through the Ombudsman and receive a final determination stating that the dispute was not resolved. *Id.* § 4-1A-05(a).

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”).

presented was the OAG's "constructive denial" of the PIA request. Thus, that dispute was not resolved through the Ombudsman and the complainant filed this complaint with our Board.

The complaint alleges that the OAG constructively denied access to public records by "refusing to engage in good faith dialogue to understand the records [the complainant] seek[s] and conduct an adequate search." The complainant asks that we find that the OAG violated the PIA and that the OAG "be ordered to engage in good faith dialogue to understand the records [the complainant] is looking for." The complainant asks that the OAG be ordered to "produce [the records] free of charge."

The OAG responds that it was "unable to produce any responsive documents because no responsive documents exist." The OAG further argues that even if responsive records did exist, the OAG is under no current obligation to produce them because, on April 12, 2024, the OAG requested mediation with the Ombudsman regarding this PIA request, which it alleges is "frivolous, vexatious, and/or made in bad faith."³ The OAG points to § 4-203(d)(2),⁴ which provides that any time limit imposed by § 4-203, "if the applicant or custodian seeks resolution of a dispute under Subtitle 1A or 1B of [the PIA], shall be extended pending resolution of that dispute."

In reply, the complainant contends that some of the responsive records "are a matter of public record." The complainant focuses on the words "actual or alleged" in the PIA request and suggests that "[f]or legal reasons, the OAG might flat out deny the existence of the responsive records denying that records were 'actually falsified.'" The complainant argues though that "there is little room for subjectivity in the meaning of 'alleged'" and suggests that "[i]n the Maryland Judiciary case search records, it is very clear that a plethora of these records exists, particularly when there are documents identified by the clerk of the court as 'Exhibit of fabricated BCSAO document for non-existent case.'" The complainant contends that, because there are two OAG employees "entered" in these cases, "they would without a doubt be in receipt of these documents."

Analysis

The PIA directs us to review and resolve complaints that allege certain violations of its provisions, including that a custodian wrongfully denied inspection of a public record. § 4-1A-04(a)(1)(i). We have interpreted this provision to include instances in which a custodian searches for records but then asserts that no responsive records exist. *See, e.g.,*

³ We note that a complaint by the OAG that numerous PIA requests, including this one, are frivolous, vexatious, and in bad faith is currently pending with our Board. *See* PIACB 24-106.

⁴ Statutory citations are to the General Provisions Article of Maryland's Annotated Code unless otherwise stated.

PIACB 24-28 (Jan. 5, 2024). We have explained that, if a custodian conducts an insufficient search that fails to locate all responsive records, this is “tantamount to a constructive denial of access to records.” PIACB 23-03, at 3-4 (Nov. 2, 2022). When we determine that the alleged violation of the PIA has occurred, we must issue a written decision and order the remedy provided by the statute. § 4-1A-04(a)(2) and (3). If we find that a custodian has improperly denied inspection of records, we must order the custodian to “produce the public record for inspection.” § 4-1A-04(a)(3)(i).

A custodian who receives a PIA request must “conduct a search in good faith that is reasonably designed to capture all responsive records,” and that uses “methods that can be reasonably expected to produce the information requested.” *Glass v. Anne Arundel County*, 453 Md. 201, 232 (2017) (citing *Oglesby v. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)) (internal quotation marks omitted). Importantly, however, this does not mean that the custodian “must robotically examine every record in its possession, running up an extravagant fee and diverting public resources in furtherance of a futile effort,” but rather that “the search should be focused on where responsive records are likely to be found.” *Id.* The adequacy of a search is “measured against the specificity of the request and the willingness of the requestor to focus a request to improve the efficiency of the search,” *id.* at 233, and “by how the agency designed the effort to find responsive records,” *id.* at 232.

Turning to the PIA request at issue here, we find no violation of the PIA for two reasons. First, as the OAG points out in its response, the time for responding under § 4-203(a) was tolled while the matter was pending with the Ombudsman and our Board. § 4-203(d). The complainant sent the PIA request on March 21, 2024. Thus, under § 4-203(a)(1), which requires a custodian to “grant or deny the application promptly, but not more than 30 days after receiving the application,” the OAG had until April 20, 2024, to issue a final response. The complainant contacted the Ombudsman on April 6, well before that deadline ran.

Second, the OAG’s assertion that it does not have responsive records appears reasonable in light of the language of the PIA request. The PIA request asked for records related to a specific AAG “falsifying documents and records, actual or alleged,” including “falsified, backdated, or altered exhibits, correspondences, documents or records of any kind in relation to Marke Cross and the BCSAO.” Thus, at its core, the PIA request accused the AAG of serious unethical and potentially criminal behavior without any foundation for those accusations. None of the exhibits in the court cases the complainant points to in reply support an accusation that this specific AAG actually or allegedly falsified any documents or records.⁵

⁵ The complainant contends in reply that “there are documents *identified by the clerk of the court* as ‘Exhibit of fabricated BCSAO document for non-existent case.’” This statement is misleading, whether intentionally or not. The docket entries attached to the reply are for cases in Baltimore

The complainant contends that the OAG “refus[ed] to engage in good faith dialogue to understand the documents [the complainant] requested and where to find them,” likely referring to two emails attached to the complaint. One email is dated April 2, 2024, and was sent hours after the OAG issued its response to the PIA request. That email asked whether the AAG “[h]as used documents that were falsified by someone else, or that were alleged to be falsified? To include by Marke Cross?” The second email was sent on April 9, after the complainant contacted the Ombudsman, and simply asked “[d]id you need help identifying the documents?” Good faith is a two-way street, however, and the language of the PIA request causes us to question the good faith of the complainant. Based on the complainant’s submissions, it seems to us that the complainant had specific, identifiable records in mind when making the PIA request. But the complainant did not ask for, e.g., the exhibits filed on May 28, 2024, in court case number C-03-CV-24-001448. Instead, the complainant framed the PIA request in a way that would essentially require the OAG to admit, by virtue of providing records, and without any foundation for the accusations, that an AAG “falsified” documents or “used documents that were falsified by someone else.” We find no error in the OAG’s response that it has no such records.

Conclusion

Based on the information before us, we conclude that the OAG has not violated the PIA. Rather, upon determining that it had no responsive records, the OAG properly responded according to § 4-202(d) of the PIA.

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.

and Anne Arundel Counties, counties that both use the Maryland Electronic Courts (“MDEC”) filing system. When a person submits a filing on MDEC, it is the filer—not the clerk of the court—who enters the description of the filing. See Tyler Technologies, Individual Filer User Guide 104 (Mar. 2021), https://odysseyfileandserve.zendesk.com/hc/en-us/article_attachments/13408292245645 (last visited June 27, 2024) (instructing the filer to “[t]ype a description of the filing in the Filing Description field”). Thus, for that particular case, it was Rachel Garcia who identified the exhibit as a “fabricated BCSAO document for non-existent case.”