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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-92

June 28, 2024

Office of the Attorney General of Maryland, Custodian
Seb Fialon, Complainant

The complainant, Seb Fialon, alleges that the Office of the Attorney General of Maryland (“OAG”) violated the Public Information Act (“PIA”) by failing to respond to a request for public records. As explained below, we find no violation.

Background

On April 6, 2024, the complainant sent a PIA request by email to OAG asking for “all emails, phone records, communications, or documents of any kind on any account” controlled by two specific OAG employees “related to any PIACB matter directly or indirectly related to the BCSAO.” On April 16, 2024, the OAG sent the complainant an email explaining that the OAG was not the authorized custodian of the records related to one of the employees. The OAG did not address the request for records related to the second employee, so the complainant sent an email in response the same day asking about that employee. The next day, April 17, the complainant sent an email asking for an update. On April 27, 2024, the complainant sent an email stating “please follow up with my request and either grant or deny it and cite the legal provision.”

On April 29, 2024, the complainant contacted the Public Access Ombudsman.¹ That same day, 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 a failure to respond to the PIA request. Thus, that dispute was not resolved through the Ombudsman and the complainant filed this complaint with our Board.

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”).

The complaint alleges that the OAG has failed to respond to the PIA request and therefore violated the PIA. The complainant points out that “a PIA request cannot be ignored on the grounds that it was intended for harassment.” The OAG responds that it has not violated the PIA. The OAG states that, on April 12, 2024, it requested mediation through the Ombudsman regarding this PIA request and others that it alleges are “frivolous, vexatious, and/or made in bad faith.” The OAG explains that the Ombudsman issued a statement that she could not mediate the OAG’s dispute on April 29, 2024, and the OAG filed a complaint with our Board on May 29, 2024.³ Thus, because a dispute regarding this PIA request has been pending with either the Ombudsman or our Board since April 12, the OAG contends that, under § 4-203(d)(2),⁴ it was not required to issue a response.

In reply, the complainant reiterates that the OAG “did not grant or deny” the request, stating that the OAG “continued to be evasive.” The complainant also suggests that “the OAG may have attempted to fabricate a mediation endeavor or fabricate mediation documents,” presumably referring to the vexatious request complaint filed by the OAG. The complainant asks that the OAG “be ordered to respond and allow for inspection of the public records immediately.”

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

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.

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)).

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

After review of the submissions, we find that the OAG has not violated the time limitations imposed by § 4-203(a) or (d). The complainant sent the PIA request on April 6, 2024. Six days later, on April 12, 2024, the OAG sought assistance from the Ombudsman in an effort to resolve a dispute, i.e., the OAG’s contention that this request and others were frivolous, vexatious, and in bad faith.⁶ The time for responding to the complainant’s PIA request was therefore “extended pending resolution of that dispute.”⁷ § 4-203(d)(2). Resolution of that dispute is still pending. Accordingly, the OAG has not violated § 4-203(a) or (d).

Conclusion

Based on the information before us, we conclude that the OAG has not violated the timing provisions of the PIA.

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 In light of the complainant’s suggestion that the OAG “potentially falsified mediation documents in an attempt to file a fraudulent complaint,” we take notice that the OAG submitted the Ombudsman’s Statement of Conflict Precluding Mediation with its complaint in PIACB 24-106. That statement, which is dated April 29, 2024, indicates that the OAG sought mediation beginning April 12. The statement also reflects that this requester was one of many alleged to have sent frivolous, vexatious, and bad faith PIA requests.

⁷ The time for responding was also tolled when the complainant sought dispute resolution assistance on April 29, 2024, as noted above.