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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-96
August 27, 2024
Board of Professional Counselors and Therapists, Custodian
Rachel Garcia, Complainant

The complainant, Rachel Garcia, 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 find that the BPCT violated § 4-203(a)¹ by failing to grant or deny the PIA request “promptly, but not more than 30 days after receiving the [request].” However, because the BPCT has now responded without charging a fee, we order no further relief.

Background

On February 21, 2024, the complainant sent the following via email to the BPCT:

I would like to make a Public Information Act request for documents and records.

Please provide all emails, correspondences, phone records, and documents of any kind pertaining to any communication between the BPCT and “Louis Leibowitz” or any of his representatives that occurred between the period of April 2022 until March 2024.

Additionally, please provide all emails, correspondences documents or records of any kind on the email selector shelly-ann.barnes@maryland.gov that mention the keyword “Leibowitz” between the period of April 2022 until March 2024.

Please contact me in writing if you need any clarifications about this requests. To clarify: this request does not seek Mr. Leibowitz’s personnel file itself, but rather all other documents and records the BPCT [has] pertaining to this individual.

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

Thank you and have a wonderful day!

The BPCT did not respond. On March 5, 2024, the complainant sent the BPCT an email to “follow-up” and make sure the PIA request was sent to “the appropriate person.” After receiving no response from the BPCT, the complainant filed this complaint alleging that the BPCT failed to comply with the timing provisions in the PIA.²

In response to the complaint, the BPCT first explains that its “overall mission is to protect the citizens of Maryland and to promote high quality health care in the fields of professional counseling, alcohol and drug counseling, marriage and family therapy, art therapy and behavioral analysis.” The BPCT states that it is “currently understaffed and is undergoing a transition to a new executive director.” The BPCT also explains that over the last two years it has “received numerous complaints and requests for information related to the same case albeit from different requestors.”³ The BPCT “fully acknowledges” that it did not respond to the complainant’s PIA request when it was received. However, the BPCT states that on June 6, 2024, the day it responded to this complaint, the BPCT “cured the defect by providing [the complainant] with responsive emails and a redacted application for license renewal that Mr. Leibowitz submitted in November 2022.” The BPCT attaches these emails—nine of them—and the redacted application to its response to this complaint. The BPCT asks that we find that its failure to respond was due to “untenable and extenuating circumstances,” including the “receipt of multiple requests related to the same individuals/case” and “multiple changes in the executive director and custodian of records position.”

The complainant replies that the BPCT has violated the PIA and suggests that BPCT staff were “not busy, they were on vacation and simply do not care about public records requests.” Noting that she sent the BPCT “a copy of the exact documents and records responsive to [her] request,”⁴ the complainant takes issue with the records provided, describing the license renewal application in particular as an “antiquated 2022 form that

² The PIA requires a complainant to first attempt to resolve a dispute through the Public Access Ombudsman before a complaint may be filed. See § 4-1A-05. The complainant provides a document titled “Statement of Ombudsman Conflict Precluding Mediation” which indicates that the complainant requested mediation on April 8, 2024. 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”).

³ We note that we have received seven other complaints against the BPCT involving requests for records related to Mr. Leibowitz.

⁴ Those forms, which the complainant appears to have found on the Department of Health website, are: (1) a reinstatement form; (2) a criminal history records check form; (3) a change of information form; (4) an application for inactive licensure status form; and (5) a verification request form.

lists a business address and information [that] is not current.” The complainant maintains that Mr. Leibowitz was “required to provide a change of address that would have his new business address and contact information, in addition to his new home address.” The complainant contends that “[i]n the event that [Mr. Leibowitz] does not have a current business address, the BPCT is required to allow inspection of the LBA’s home address, say in the event [the complainant] wanted to personally sue Leibowitz for medical malpractice and counterfeiting subpoenas.”

Analysis

We are authorized to review and resolve complaints that allege certain violations of the PIA, including that a custodian failed to respond to a PIA request within the time limitations prescribed under § 4-203(a) or (d). § 4-1A-04(a)(1)(iii). If, after review of the complaint and the parties’ submissions, we conclude that the alleged violation occurred, we must issue a written decision and order a statutory remedy—e.g., that the custodian “promptly respond.” § 4-1A-04(a)(2) and (3).

After receiving a PIA request, a custodian must “grant or deny the [request] promptly, but not more than 30 days after receiving the [request].” § 4-203(a)(1). The PIA provides a specific procedure for the denial of a PIA request. A custodian must provide the requester with a “written statement” that states the reason and legal authority for the denial, notice of remedies, and “without disclosing the protected information, a brief description of the undisclosed record that will enable the [requester] to assess the applicability of the legal authority for the denial.”⁵ § 4-203(c)(1)(i). This written statement must issue within ten working days of the denial. § 4-203(c)(1)(i). When a PIA is granted or approved, the custodian must “produce the public record immediately or within a reasonable period that is needed to retrieve the public record, but not more than 30 days after receipt of the application.” § 4-203(b)(1).

Based on the submissions, we find that the BPCT violated § 4-203(a)(1). The complainant sent the PIA request on February 21, 2024, and the BPCT’s response did not issue until June 6, 2024, when it responded to this complaint. Thus, the BPCT failed to “grant or deny the [request] promptly, but not more than 30 days after receiving the [request].” § 4-203(a)(1). When we determine that a custodian violated § 4-203(a), we must order the custodian to “promptly respond,” and have discretion to waive any associated fees if our decision explains why. § 4-1A-04(a)(3)(iii). Here, the BPCT has issued a response providing responsive email and other records and has not charged any fees.⁶ We therefore order no further relief.

⁵ For discretionary denials, a custodian must also explain why the denial is necessary and why “redacting information would not address the reasons for the denial.” § 4-203(c)(1)(i)(2).

⁶ Though the BPCT’s response conforms to the requirements of § 4-203(c), we generally encourage custodians to issue standalone responses to PIA requests. We make no determinations

Conclusion

After consideration of the parties' submissions we find that the BPCT violated § 4-203(a)(1) by failing to issue its response to the complainant's PIA request "promptly, but not more than 30 days" after it received the request. However, because the BPCT has responded at this point and has not charged any fees, we order no further relief.

Public Information Act Compliance Board

Sareesh Rawat, Chair
Samuel G. Encarnacion
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Nivek M. Johnson

regarding the merits of the BPCT's response here because the complaint relates only to the BPCT's failure to respond and the BPCT has not had an opportunity to respond to the allegations the complainant makes in her reply. If the complainant is dissatisfied with the BPCT's response, she may attempt to mediate the dispute through the Ombudsman and file a new complaint. See §§ 4-1A-04(a), 4-1A-05(a).