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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-97

August 13, 2024

Department of Public Safety and Correctional Services, Custodian
Steven Szekely, Complainant

Complainant Steven Szekely sent a Public Information Act (“PIA”) request to the Department of Public Safety and Correctional Services (“DPSCS”) seeking a broad range of records related to drug testing at various correctional facilities. The complainant alleges that DPSCS violated the PIA by failing to respond to his PIA request. After review of the submissions, we find that DPSCS violated § 4-203(a)¹ of the PIA. We order DPSCS to respond and to waive any associated fees.

Background

On July 1 of last year, the complainant sent a PIA request to DPSCS asking for numerous records related to drug testing programs at certain State correctional facilities. The complainant divided his request into ten categories of records, e.g., “[t]he date Pharmatec Lab provided training to DPSCS, DOC, RCI’s staff, between 2011 and 2018,” the “[d]irective [that] authorized RCI staff on 12-27-2013 to use DTX testing on-site,” and “[t]he number of prisoners in (1) DPSCS (2) DOC (3) RCI custody [that] tested positive for DTX tests in between 2011 through 2018.”

After he did not receive a response, the complainant contacted the Public Access Ombudsman.² In April of this year, the Ombudsman issued a final determination stating that the disputes were partially resolved, with DPSCS having failed to issue a final response to the July 1 request as of the closure of the Ombudsman’s file.³ The complainant then

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

² The PIA charges the Ombudsman with making “reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records.” § 4-1B-04(b). Before filing a complaint, a PIA requester or custodian must attempt to resolve the dispute through the Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a).

³ The complainant sought the Ombudsman’s assistance with respect to four PIA requests that he sent to DPSCS between July 1 and August 10, 2023. Through mediation, DPSCS issued final or supplemental responses to the other three PIA requests.

filed this complaint with our Board in which he alleges that, as of April 19, 2024, DPSCS has not responded to his July 1 PIA request.⁴

In response to the complaint, DPSCS asserts that it “still [has] no record, original or otherwise, of [the complainant’s] 10 point claim tracking as #1.”⁵ DPSCS states that it would “certainly fulfill the request” if it had “discovered it in house (which [it has] not) or were provided with a copy.”⁶

Analysis

We are authorized to review and resolve complaints that allege certain violations of the PIA’s provisions, including that a custodian failed to respond to a PIA request within certain time limitations in the PIA. § 4-1A-04(a)(1)(iii). If, after review of the submissions, we find that the alleged violation occurred, we must issue a written decision and order a remedy as provided in the PIA. § 4-1A-04(a)(2) and (3). When we determine that a custodian failed to respond to a PIA request within the established time limits, we must order the custodian to “promptly respond,” and have discretion to order that the custodian waive any associated fees if our decision explains the reasons why. § 4-1A-04(a)(3)(iii).

The PIA requires a custodian to “grant or deny” a PIA request “promptly, but not more than 30 days after receiving the [request].” § 4-203(a)(1). When a PIA request is granted, a custodian must “produce the public record immediately or within a reasonable

⁴ The complaint also contains allegations related to the other three PIA requests addressed in mediation, specifically that DPSCS’s production of records was incomplete. We cannot review those allegations, as the Ombudsman’s final determination indicates that the dispute presented for mediation—i.e., DPSCS’s lack of a final response to the PIA request—was resolved. See § 4-1A-05(a) (complainant may file a complaint after attempting to resolve the dispute through the Ombudsman and receiving “a final determination stating that the dispute was not resolved”). To the extent that the complainant is dissatisfied with DPSCS’s responses to those other three PIA requests, the complainant must first attempt to resolve his disputes through the Ombudsman. *Id.* If those disputes remain unresolved after mediation, the complainant may file a complaint as provided in § 4-1A-05.

⁵ The complainant’s July 1 PIA request was identified as “PIA Request #1” in the Ombudsman’s final determination.

⁶ To support its claim that it has not received the complainant’s PIA request, DPSCS provides an email sent to the Ombudsman dated April 2, 2024. We have not reviewed or considered this email because it is a confidential mediation communication. See Md. Code Ann., Cts. & Jud. Proc. § 3-1803(b)(1) (a party to a mediation “may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding”); see also *id.* § 3-1801(c) (defining mediation communication); COMAR 14.37.03 (Ombudsman regulations governing confidentiality).

period that is needed to retrieve the public record, but not more than 30 days after receipt of the [request].” § 4-203(b)(1). If a custodian determines that it will take longer than ten working days to produce responsive records, the PIA requires the custodian to indicate so in writing within ten working days of receipt of the request.⁷ § 4-203(b)(2). The time limitations in § 4-203 may be extended for up to thirty days with the requester’s consent. § 4-203(d)(1). The time limitations are also extended when a requester or custodian “seeks resolution of a dispute” through the Ombudsman or our Board, pending resolution of the dispute. § 4-203(d)(2).

After review of the submissions here, we conclude that DPSCS failed to grant or deny the complainant’s PIA request “promptly, but not more than 30 days after receiving [the request],” and therefore violated § 4-203(a). The complainant included a copy of his PIA request with his complaint to our Board. The request is dated July 1, 2023—more than a year ago now. Though DPSCS states that it has not received that PIA request, we find such assertion troubling. The complainant is in the custody of DPSCS, and he has provided at least some evidence that his PIA request was sent when he claims it was. We note that the complainant sent other PIA requests around the same time, which DPSCS apparently received (or, at the very least, responded to through the mediation process). While it may be the case that DPSCS—for whatever reason—did not receive this PIA request when it was sent by the complainant last summer, it surely became aware of the request when the complainant sought the assistance of the Ombudsman, in October of last year.⁸ Moreover, we sent the complainant’s Board complaint to DPSCS on May 8, 2024. See § 4-1A-06(a)(1). As noted above, that complaint contained a copy of the PIA request at issue here. Thus, at the very least, DPSCS was in receipt of the PIA request as of May 8, 2024.

We are mindful that, under § 4-203(d), the time for responding is tolled while a matter is pending with the Ombudsman or our Board. But, when the matter pending is a custodian’s failure to respond to a PIA request at all, we do not think that the Legislature intended this provision to permit a custodian to do so little to meet its obligations under § 4-203 during that time.⁹ See PIACB 24-30, at 3 (Feb. 8, 2024) (recognizing that § 4-

⁷ The custodian must provide certain information at that time, including the reason for the delay, the amount of time that the custodian believes will be needed to produce the records, and an estimate of any fees that may be charged. § 4-203(b)(2). This notice is often referred to as a “ten-day letter.” We are not empowered to review allegations that a custodian has violated the timing provisions in § 4-203(b). See § 4-1A-04(a)(1)(iii) (providing for Board review of alleged violations of the time limitations in § 4-203(a) or (d)).

⁸ The Ombudsman’s final determination indicates that the complainant contacted the Ombudsman’s office on October 31, 2023, but that a file was not opened until January 5, 2024.

⁹ Section 4-203(d)(2) certainly does not *prevent* a custodian from responding to a PIA request while a complaint is pending with our Board. To this end, we note matters—including matters

203(d)(2) “effectively tolls the clock while dispute resolution is pending” but finding that it was not the General Assembly’s intent that “so little progress be made toward resolving a dispute during this time the clock is tolled—especially not when the dispute is a custodian’s failure to timely respond”). The PIA directs that its provisions “be construed in favor of allowing inspection of a public record, with the least cost and least delay.” § 4-103(b). To interpret § 4-203(d)(2) in a manner that allows a custodian to continue to ignore a PIA request simply because the requester has resorted to the alternative dispute resolution provisions in the PIA, in an effort to get a response, would run afoul of § 4-103(b).

Conclusion

After review of the submissions, we conclude that DPSCS violated § 4-203(a)(1) of the PIA because it failed to respond to the complainant’s PIA request “promptly,” and in no longer than thirty days after receipt of the request. We therefore direct DPSCS to respond within three business days of receipt of our decision and order. Given that DPSCS did not respond even after the complainant engaged the Ombudsman’s mediation services, we exercise our discretion to order that DPSCS waive any fees associated with preparing the response.

Public Information Act Compliance Board

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involving DPSCS—in which a custodian has provided a response after a complaint was filed. See PIACB 24-45 (Feb. 26, 2024); PIACB 23-10 (Jan. 17, 2023); PIACB 23-09 (Dec. 28, 2022).