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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-108
September 13, 2024
Maryland Office of the Attorney General, Custodian
William Hernandez, Complainant

The complainant, William Hernandez, 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 20, 2024, the complainant sent a PIA request by email to OAG asking for:

[A]ll documents and records the OAG has of Sara Klemm and Wendy Shiff disseminating documents and records related to an active rape case. Additionally I'd like to obtain all documents and records of Sara Klemm and Wendy Shiff requesting/demanding PIA applicants review exhibits containing hyperlinks leading to documents and records for an active rape case.

These documents are likely emails from the time period of September 2023 until April 2024.

The OAG did not respond.

On May 21, 2024, the complainant contacted the Public Access Ombudsman.¹ On May 30, 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

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.

The complaint alleges that the OAG's failure to respond to the PIA request violated the PIA. The OAG, in response, argues first that the complaint should be dismissed because it is not signed, as required by the PIA. The OAG also argues that it properly declined to respond to the PIA request because it requested mediation through the Public Access Ombudsman for the request on grounds that it is frivolous, vexatious, and/or in bad faith. Noting that the Ombudsman, on May 29, 2024, issued a statement indicating that she could not mediate the dispute, the OAG states that it filed a complaint under § 4-1A-04(b)³ with our Board on May 29, 2024, where it is still pending. Thus, the OAG contends, § 4-203(d)(2) automatically extended the time limits for responding.

In reply, the complainant states that "[t]he complaint had already been signed," and attaches a document labeled "Signed complaint." The complainant also alleges that the "Ombudsman 'mediation' was clearly retroactively fabricated," and that "if the Ombudsman allegedly indicated she declined to mediation, that means there is no mediation, she is not going to assist to resolve a dispute, and that there was no '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.⁴ § 4-203(b). A custodian who

mediation and issue a final determination "stating that the dispute was not resolved through the Ombudsman due to conflict").

³ Statutory citations are to the General Provisions Article of Maryland's Annotated Code unless otherwise stated.

⁴ 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

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).⁵ The complainant sent the PIA request on April 20, 2024. Beginning on April 12, 2024, and extending through April 29, 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 before this Board. See PIACB 24-106. 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 PIA.

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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)).

⁵ Regarding the OAG’s argument that the complaint must be dismissed because it was not signed as required by § 4-1A-05(b)(3), we note that on June 17, 2024—approximately two weeks after the complaint was sent, and still within the thirty-day filing limitation—the complainant sent an email with an electronic signature appended to the complaint. We realize now that the complainant did not copy the OAG on that email. This was an oversight on our part.

⁶ In light of the complainant’s assertion that the mediation was “clearly retroactively fabricated,” 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. We note further that the statement submitted by the OAG is identical in form to the statement submitted by this complainant for this complaint and all of the others he has filed to date. The complainant has offered no explanation why such a statement would be valid for his complaints, but not the OAG’s.

⁷ The time for responding was also tolled when the complainant sought dispute resolution assistance on May 21, 2024, as noted above, through the issuance of this decision.

Sareesh Rawat, Chair
Samuel G. Encarnacion
Debra Lynn Gardner
Quinton M. Herbert
Nivek M. Johnson