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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 25-03

September 11, 2024

Department of Public Safety and Correctional Services, Custodian
Robert Burgoyne, Complainant

Complainant Robert Burgoyne alleges that the Department of Public Safety and Correctional Services (“DPSCS”) has violated the Public Information Act (“PIA”) by failing to respond to his request for public records. Based on the submissions, we find that DPSCS failed to grant or deny the complainant’s PIA request within the timeframes provided in § 4-203(a)¹ and thus violated the PIA. We direct DPSCS to respond to the request by producing non-exempt responsive records, and to waive any associated fees.

Background

Near the end of July 2023 the complainant sent a lengthy PIA request to DPSCS seeking records reflecting certain data about incarcerated individuals in various security classifications, e.g., prerelease, work release, and minimum security. The complainant asked for data such as (but not limited to) the number of incarcerated people in each classification, the cost to the State for housing those incarcerated people, and the employment statuses of those incarcerated people. In addition, the PIA request sought records related to DPSCS’s statutory mandates regarding the construction and operation of a prerelease unit for women.² On September 5, 2023, after receiving no response from DPSCS, the complainant sent an email to request a status update. DPSCS responded the same day and advised that the PIA request was in process as DPSCS “access[ed] and compile[d] all the documents available and responsive.” DPSCS also indicated that “the

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

² The complainant’s PIA request detailed thirty-four specific categories of records, many of which asked for a large volume of records—for example, “copies of records from January 1, 2020 to the present that are sufficient to show (a) the employment opportunities offered to men in prerelease status outside of any facility in which they were/are housed; (b) the actual employment engaged in by men in prerelease status outside of any facility in which they were/are housed; and (c) the number of men in prerelease status engaged in employment outside any facility in which they were/are housed,” or “all reports or memoranda prepared by or for the Department that discuss the benefits of operating prerelease units or facilities for incarcerated individuals.”

breadth of [the] 34-point Request will take considerably more time than an average PIA request to compile, review, redact, and assemble.”

On October 11, 2023, the complainant sent another follow-up email noting that DPSCS’s last communication had been “almost five weeks ago and no responsive documents [had] been provided up to date.” The complainant asked when he could anticipate receiving the records. DPSCS responded two days later and indicated that the PIA request was “extensive and required the help of several units within the department to respond.” Explaining that it had been the previous PIA coordinator’s intent to “gather all requested information in its entirety before responding,” DPSCS acknowledged the complainant’s “desire to receive the information” and therefore provided answers to five of the thirty-four items listed in the complainant’s PIA request. Those answers responded to the requests for information about the costs of housing incarcerated people in prerelease, work release, or minimum security status.

At the end of October 2023, the complainant contacted DPSCS again and asked if any additional records or information were available, stating “[i]deally, this would include everything we requested in July that has not been provided.” It does not appear that DPSCS responded to this email. On January 24, 2024, the complainant sent yet another email to DPSCS noting the length of time that had passed since the PIA request (six months) and asking DPSCS to provide a date by which it would produce the requested records and information. DPSCS does not appear to have responded to this email, either.

The complainant contacted the Public Access Ombudsman on February 8, 2024, for dispute resolution assistance.³ After extending the time for resolution by approximately five weeks, *see* § 4-1B-04(b), the Ombudsman issued a final determination stating that the dispute was not resolved and the complainant filed this complaint with our Board. Explaining that his request was for records or information about the “statutory requirement” that DPSCS construct and begin operating a prerelease unit for women by June 1, 2023, the complainant alleges that “no documents have been provided to date—only limited information by way of a single email.”

We forwarded the complaint to DPSCS by email on August 2, 2024, and requested a response to the complaint by September 2, 2024.⁴ *See* § 4-1A-06(b)(1) (“The custodian . . . shall file a written response to the complaint within 30 calendar days after receiving the complaint.”). When DPSCS failed to respond by the deadline, we sent a follow-up

³ The Public Access Ombudsman is charged with making “reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records.” § 4-1B-04(a). Before filing a complaint with our Board, a complainant must attempt to resolve the dispute through the Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a).

⁴ That email should have indicated a due date of September 3, 2024, as State offices were closed on September 2 for the Labor Day holiday.

email advising that, if DPSCS did not respond to the complaint by September 9, 2024, we would issue a decision based on the information submitted by the complainant. See § 4-1A-06(c) (requiring, if no written response to a complaint is received, that we “decide the case on the facts before the Board”). DPSCS did not respond to the complaint.

Analysis

We are authorized to resolve complaints that allege certain violations of the PIA, including that a custodian failed to respond to a PIA request within certain statutory timeframes. See § 4-1A-04(a)(1)(iii). If we conclude that the alleged violation of the PIA has occurred, we must issue a written decision and order a remedy as provided in the PIA. § 4-1A-04(a)(2) and (3). For example, when we determine that a custodian has failed to respond to a PIA request within the statutory time limitations, we must order the custodian to “promptly respond” and may exercise discretion to order the custodian to waive any fees associated with responding. § 4-1A-04(a)(3)(iii).

A custodian must grant or deny a PIA request “promptly,” but no longer than thirty days after receipt of 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” he or she must state so in writing within ten working days of receiving the request. § 4-203(b)(2). The custodian must also provide certain information to the requester, including the reason for the delay and “an estimate of the range of fees that may be charged to comply with the request.” *Id.* The time limitations provided in § 4-203 may, with the requester’s consent, “be extended for not more than 30 days.” § 4-203(d)(1).

Based on the complainant’s submissions, we find that DPSCS violated § 4-203(a). The complainant sent his PIA request to DPSCS by email on July 24, 2023. Under § 4-203(a)(1), DPSCS was required to grant or deny that request “promptly, but not more than 30 days after” receipt—i.e., by August 23, 2023. Though DPSCS did provide some information responsive to certain parts of the complainant’s PIA request, that response was provided on October 13, 2023, more than two months after receipt of the request. According to the submissions, no additional responsive records or information have been produced to date, well over a year after the complainant sent his PIA request.

In reaching our conclusion, we do not ignore the breadth of the complainant’s PIA request. Though all of the requested records related generally to the women’s prerelease unit, the complainant asked for a wide variety (and volume) of records, from records showing various costs to the State to records of DPSCS’s planning and implementation of its statutory mandates regarding the prerelease unit. Indeed, it would not be unfair to characterize the complainant’s request as thirty-four PIA requests rolled into one. It may have thus been entirely appropriate for DPSCS to ask for the complainant’s consent, under § 4-203(d)(1), to an extension of the deadline for responding. However, nothing in the

record demonstrates that such a request was made. DPSCS was therefore obligated to respond within the thirty-day timeframe.

Because of the length of the delay, as well as the fact that DPSCS did not issue responses through the mediation process and did not respond to this complaint (despite being provided extra time to do so), we exercise our discretion to order that DPSCS waive any fees it might otherwise be entitled to charge for responding to the complainant's PIA requests. See § 4-1A-04(a)(3)(iii)(2).

Conclusion

DPSCS violated § 4-203(a) by failing to grant or deny the complainant's PIA requests "promptly, but not more than 30 days after receiving" the request. We order DPSCS to respond to the requests and produce non-exempt records within ten business days of receipt of this decision and order.⁵ Given both the length of delay in responding and DPSCS's failure to respond and produce any records or information through the both the Ombudsman and Board process, we also exercise our discretion to order that DPSCS waive any fees associated with responding to the PIA request.

Public Information Act Compliance Board

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

⁵ In circumstances such as this one, where a custodian has delayed the response and production of records for such a long period of time, we ordinarily direct the custodian to produce records within three business days. However, here we recognize that the nature of the complainant's PIA request may require a bit more time. It is our sincere hope that DPSCS has made some silent progress responding to this request while the matter has been pending with the Ombudsman and our Board.