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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 25-04
December 4, 2024
Maryland Department of Health, Custodian
Eric Rodriguez, Complainant

The complainant, Eric Rodriguez, alleges that the Maryland Department of Health (“MDH”) violated the Public Information Act (“PIA”) by failing to respond to a PIA request. As explained below, we find that MDH violated § 4-203(a).¹

Background

On May 24, 2024, the complainant sent a PIA request by email to MDH asking for “[a]ll documents and records your agency has related to Louis Richard Leibowitz, LBA 580.”² The complainant attached six forms to the PIA request and stated that they would be responsive to the request.³ The complainant stated that he would “like to inspect the parts I’m allowed to inspect per 4-333 immediately.” According to the complainant, he thereafter “spoke to a PIA office[r] who said she would get back to [him], but never did.” On July 9, 2024, the complainant contacted the Public Access Ombudsman.⁴ On August 7, 2024, the Ombudsman issued a statement in which she indicated that she was unable to

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

² The complainant also emailed the PIA request to the Board of Professional Counselors and Therapists (“BPCT”). That PIA request is the subject of the complaint PIACB 25-05, also filed by Eric Rodriguez.

³ The attachments were labeled: (1) Reinstatement Form; (2) Change of Information Request Form; (3) Verification Request Form; (4) Application for Inactive Licensure Status; (5) Notice of CHRC-FBI Privacy & Applicant Rights Statement; and (6) Behavioral Analyst Application. Most of these forms are available on the BPCT website. See Maryland Dep’t Health, Bd. of Pro. Counselors & Therapists, Miscellaneous Forms, <https://health.maryland.gov/bopc/Pages/forms.aspx> (last visited Dec. 3, 2024).

⁴ See § 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. § 4-1A-05(a).

mediate the matter due to a conflict.⁵ The statement indicated that the PIA dispute presented was a failure to respond. Thus, that dispute was not resolved through the Ombudsman and the complainant filed this complaint with our Board.

The complaint alleges that he was “denied access to public records these agencies are required to allow me to inspect, the agencies refused to engage in good faith dialogue and abide by the PIA timelines and procedures for responding to PIA requests.” In response, MDH initially states that it was “not in possession of any documents or records relating to ‘Louis Leibowitz, LBA 580,’” because the BOPCT was “solely responsible for the regulation, licensing, discipline and enforcement of LBA licenses in Maryland,” and “MDH is not the custodian of records for the BOPCT.” MDH states that it “flagged the request for the BOPCT.” After MDH received an email from the complainant that was also directed to the BPCT and stated “[t]hanks for taking my call last week,” MDH closed the PIA request because it believed that “the BOPCT was in contact with the requestor.” MDH states that, on September 9, 2024—the same day that it submitted its initial response to this complaint—MDH sent the complainant an email “stating that the MDH is not in possession of documents or records that are responsive to the request.”

In reply, the complainant states that after he submitted his PIA request on May 24, 2024, he “promptly called up the MDH and spoke to their PIA people and Communications people to explain my request.” The complainant claims that he “made it explicitly clear that [he] wanted all documents and records the MDH had in any form directly or indirectly related to Leibowitz.” Disputing MDH’s representation that it has no responsive records, the complainant attaches a letter on MDH letterhead dated November 30, 2023, related to a different PIA request for records related to Louis Leibowitz.⁶ According to that letter, MDH located “[a] total of 800 documents” that were “potentially responsive to [the] request.”

The complainant’s reply prompted MDH to submit a supplemental response. MDH states that it “now understands that [the complainant’s] PIA request was for an email search of [MDH] records.” MDH explains that the 2023 letter the complainant attaches with his

⁵ 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”).

⁶ That request asked for “a copy of all records, documents, and in particular emails, the Maryland Department of Health and the Maryland Board of Professional Counselors and Therapists (each agency) has between the period of June 2022 up until present, November 2023, with, to, from, or relating to the following individuals and email accounts: ‘Louis Leibowitz’ ‘Erica Reed’ ‘Arnold Abraham.’” In PIACB 24-107, at 2 (Sept. 13, 2024), we considered a complaint from Seb Fialon about this very same PIA request but sent to the BPCT. See also PIACB 24-87 (Aug. 27, 2024) (addressing a substantially similar PIA request to the BPCT from William Hernandez).

reply “was provided in response to a separate PIA request in 2023 and utilized specific request parameters,” and that “different parameters would require a different search and may result in a different number of potentially responsive documents, which would need to be reviewed.” MDH asks for a sixty-day extension to allow it to try to resolve the issues with the complainant. MDH states that it has asked the complainant to “provide his requested email search parameters, including both the search terms and the timeframe to the Department in writing.” Once it has the information, MDH states that it will “run a communications search and will provide estimates regarding the potential number of responsive documents and costs.” MDH attaches an email it sent on September 13, 2024, in which it requested this information from the complainant.

In a supplemental reply, the complainant accuses MDH of telling a “bold face lie.” The complainant states that MDH “was already aware of all known selectors pertaining to [his] request of ‘all documents and records the MDH has related to Leibowitz.’ This means all of them (disclosable), not just emails.” Calling MDH “governmental fraudsters,” the complainant rejects MDH’s request for an extension, stating that it is “double what is allowed for a PIA request.” Suggesting that our Board is also “involved in this fraud,” the complainant closes his reply by stating: “You all are disgusting.”

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.⁷ § 4-203(b). A custodian who 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

⁷ 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)).

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 MDH violated § 4-203(a). The complainant sent the PIA request on May 24, 2024, and MDH did not provide any response until September 9, 2024, when it sent, after this complaint was filed, the email stating that it was not the custodian of the records the complainant sought. Thus, MDH sent its response long after the thirty days the PIA normally affords custodians for granting or denying a PIA request, even accounting for the time that was tolled while the dispute was pending with the Ombudsman and our Board. See § 4-203(d)(2). While the complainant suggests that MDH’s email was disingenuous because his PIA request was “clear,” we do not take MDH’s response as evidence of bad faith on its part. Although the complainant’s PIA request for “*all* documents and records,” when read broadly, covers email records, it was not unreasonable for MDH to interpret it otherwise given that the complainant attached a series of BPCT-specific forms and suggested that they would “be responsive to [his] request.” See PIACB 24-27, at 11 (Mar. 6, 2024) (finding that it was not unreasonable for a custodian to interpret a PIA request as not covering email communications when the request included a list of specific court documents). In any event, we direct MDH, now armed with more information about what records the complainant is seeking, to promptly respond to the complainant’s PIA request. To the extent that the complainant wishes to provide MDH with specific parameters, he should do so. Based on the information before us, we decline to order a waiver of any fees.

Conclusion

Based on the information before us, we conclude that MDH violated § 4-203(a) of the PIA by failing to grant or deny the complainant’s PIA request “promptly, but not more than 30 days after receiving the [request].” We therefore order MDH to “promptly respond.” § 4-1A-04(a)(3)(iii).

Public Information Act Compliance Board

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