



STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 25-05
December 4, 2024
Board of Professional Counselors and Therapists, Custodian
Eric Rodriguez, Complainant

The complainant, Eric Rodriguez, alleges that the Board of Professional Counselors and Therapists (“BPCT”) violated the Public Information Act (“PIA”) by failing to respond to a PIA request and then constructively denying the PIA request. As explained below, we find that the BPCT violated § 4-203(a)¹ of the PIA, and that the response it ultimately issued also violated the PIA.

Background

On May 24, 2024, the complainant sent a PIA request by email to the BPCT 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 “attempted to call the BOPCT but no one would answer or respond to [his] voicemails.” On July 9, 2024, the complainant contacted the Public Access Ombudsman.⁴

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

² The complainant also emailed the PIA request to the Maryland Department of Health (“MDH”). That PIA request is the subject of the complaint PIACB 25-04, 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. 4, 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).

Thereafter, the complainant sent an email to the then-Executive Director of the BPCT stating that it had “illegally denied [him] access to public records,” and demanded that records be provided by the close of business that day or the complainant would “be filing a complaint in the Baltimore County Circuit Court to hold your agency liable.” The Executive Director responded the next day and apologized for the BPCT’s delay. The Executive Director stated that he would “be working on gathering what documents the Board may have in response to your request.” The BPCT issued a response with records attached on July 24, 2024. In the days that followed, the complainant sent a series of emails expressing dissatisfaction with the records produced, including one sent on July 30, 2024, in which the complainant referred to the Executive Director as “Mr. Magikarpus,”⁵ and took issue with the validity of the business address for Mr. Leibowitz that the BPCT provided, stating “you are required to provide his home address by law.” The complainant also maintained that “what you have provided me is not ‘all documents and records’ [the BPCT] has related to Leibowitz.” On July 31, 2024, the BPCT’s Executive Director responded that it had “provided a response to your inquiry as well as the Business Address that is in the Board’s records.”

On August 7, 2024, the Ombudsman issued a statement in which she indicated that she was unable to mediate the matter due to a conflict.⁶ 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 complainant 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.” Of the BPCT in particular, the complainant alleges that it provided “false and contradictory information” about Louis Leibowitz’s business address and that it “knowingly and willing [sic] concealed public records and provided [him] false information about the public records in it possession.”

In response, the BPCT states that it provided the complainant with copies of the following documents, which were redacted to provide only the information a custodian must disclose under § 4-333(b): (1) Louis Leibowitz’s licensure information; (2) Louis Leibowitz’s 2021 licensure renewal application; and (3) Louis Leibowitz’s 2023 licensure renewal information. The BPCT states that “[u]nder the PIA, licensing records of an individual are deemed confidential and are not subject to public inspection,” except as explicitly provided in § 4-333. The BPCT also contends that, because § 1-401(d)(1) of the Health Occupations Article (“HO”) provides that “the proceedings, records, and files of the Board, are confidential and not discoverable and not admissible in evidence in any civil

⁵ At the time, the BPCT’s Executive Director was Matthew Karpus.

⁶ 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”).

action,” § 4-301(a)—which exempts records that are confidential or privileged from disclosure—also applies here. The BPCT maintains that it was “required by law to partially deny [the complainant’s] request.”

In reply, the complainant accuses the BPCT of “knowingly and willingly” providing “false information,” and denying access to “the ‘parts’ of these public records the BOPCT is required by law to allow for inspection.” The complainant takes the position that “in the absence of a current, valid, business address, the BOPCT is required by law to allow for inspection of Leibowitz home address,” and that “Leibowitz is required by law to inform the BOPCT of a change of address within 60 days or face up to 1000 in fines.” According to the complainant, Mr. Leibowitz is not employed at the business listed in the records that the BPCT provided.

The complainant also provides a Baltimore City Circuit Court case number and states that the BPCT was “required by law to serve Leibowitz a notice of the appeal,”⁷ and that such notice “does not have licensing information” and “is an example of a public record that does not have any grounds for denial, yet the BOPCT lazily and unlawfully denied access to these type [sic] of records.” The complainant claims that the BPCT “has wrongfully applied a blanket denial, largely because the BOPCT is dysfunctional, ignorant to the PIA, and is operating out of bad faith.” The complainant demands that we find the BPCT in violation of the PIA and order it to “produce all documents and records it had related to Leibowitz, only denying the ‘parts’ explicitly related to Leibowitz’s licensing, immediately and free of charge.”

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 or that a custodian improperly denied inspection of public records. § 4-1A-04(a). If we determine that a custodian has failed to respond within the required 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). If we determine that a custodian has improperly denied inspection of a public record, we must order the custodian to “produce the public record for inspection.” § 4-1A-04(a)(3)(i).

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

⁷ The case number is for a civil matter initiated by Matthew Miller, not Eric Rodriguez.

associated with production, and the reason for the delay.⁸ § 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 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).

The PIA provides that, “[e]xcept as otherwise provided by law,” a custodian must “allow a person or governmental unit to inspect any public record at any reasonable time.” § 4-201(a). Maryland’s Supreme Court has said that the PIA “establishes a public policy and a general presumption in favor of disclosure of government or public documents.” *Kirwan v. Diamondback*, 352 Md. 74, 80 (1998). At the same time, the PIA contains exceptions to the general rule of disclosure. For example, § 4-333(a)(1), the exemption at issue here, requires a custodian to deny inspection of “the part of the public record that . . . contains information about the licensing of an individual in an occupation or a profession.” This exemption itself contains exceptions, however. Subsection (b) requires a custodian to allow inspection of, e.g., “the name of the licensee” or “the professional qualifications of the licensee.” Subsection (c) gives the custodian discretion to allow inspection of other information not listed in subsection (b) if there is a “compelling public purpose” and the official custodian’s rules or regulations allow it.⁹ Finally, subsection (d) requires a custodian to allow inspection by a “person in interest”—i.e., the licensee.

Before reviewing the merits of the complainant’s allegations, we address the threshold question of which allegations are properly before us. The Ombudsman’s final determination states that the dispute presented was BPCT’s failure to respond to the complainant’s PIA request. Thus, we clearly have jurisdiction to review and resolve that allegation. See § 4-1A-05(a) (requiring that a complainant first attempt to resolve “the dispute” through the Ombudsman before filing a complaint with our Board”). However, the complainant’s allegation that the BPCT, through its July response and records production, constructively denied the PIA request is potentially not properly before us, as it is unclear whether the complainant attempted to resolve that particular dispute through the Ombudsman. The final determination states that mediation was requested on July 9,

⁸ 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)).

⁹ The BPCT has adopted a regulation governing “disclosure for a compelling public purpose” of “information in a certification, licensing, or investigative file” under certain circumstances that are not present here. COMAR 10.58.10.10.

2024—before the BPCT’s response issued—although the final determination issued after the BPCT’s response, on August 7, 2024. In any event, based on the unique circumstances presented here, including that the BPCT has made arguments in response about why its partial denial was proper, we will review both of the complainant’s allegations. *See* PIACB 24-43, at 5-6 (Mar. 21, 2024) (citing *Rosales v. State*, 463, 552, 569-70 (2019)) (addressing a similar set of circumstances involving a complaint by Lionel Rodriguez against the BPCT).

After review of the submissions, we find that the BPCT violated § 4-203(a). The complainant sent the PIA request on May 24, 2024, and the BPCT did not provide any response until July 24, 2024. Thus, the BPCT sent its response after 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). However, given that the BPCT has since responded and produced records, we order no further relief as to that allegation.

We turn next to the complainant’s allegation that the BPCT has constructively denied his PIA request by failing to produce all responsive records. The BPCT states that it provided the complainant with three redacted forms—one containing Louis Leibowitz’s licensure information and two licensure renewal forms (one from 2021 and one from 2023). The complainant attaches twelve pages of records with his complaint, several with heavy redactions. The first page provides information such as Mr. Leibowitz’s license number and expiration date, and a mailing address, email address, and work phone number. The renewal forms also provide business addresses and telephone numbers.

The complainant first argues that, because Louis Leibowitz is no longer employed by the businesses listed on the forms,¹⁰ the BPCT is required to give him Mr. Leibowitz’s home address. We have addressed similar arguments made by other requesters in relation to the BPCT before and explained that this is not the case. *See, e.g.*, PIACB 24-87, at 5-6 (Aug. 27, 2024). While § 4-333(b)(2)(i) requires a custodian to allow inspection of “the business address of the licensee or, if the business address is not available, the home address of the licensee,” that subsection is “subject to item (ii),” which provides for required inspection of, “if the licensee is licensed by a health occupations board, the business address of the licensee.” § 4-333(b)(2)(ii). Because the BPCT is a health occupations board, Louis Leibowitz’s home address is not subject to inspection under that section. There was thus no improper denial there.

The complainant also alleges that these twelve pages of records are not all of the records that the BPCT has that are responsive to his PIA request and that the BPCT’s failure to produce those other records constitutes a constructive denial. Based on the record before

¹⁰ The complainant does not explain how he knows where Mr. Leibowitz is or is not employed.

us, we agree. The complainant's PIA request was for "all documents and records your agency has related to Louis Richard Leibowitz, LBA 580." While he attached several forms as exemplars of records that would be responsive to his request, as we see it, the act of attaching those forms did not relieve the BPCT of its obligation to search for "*all* documents and records" it had related to Mr. Leibowitz, including, e.g., email correspondence or other responsive records it may have. It was not for the BPCT to unilaterally narrow the complainant's broad request and limit its search to the forms the complainant attached, as it apparently did. Doing so was inconsistent with the PIA's purpose of providing "access to information about the affairs of government and the official acts of public officials and employees." § 4-103(a); *see also Kirwan*, 352 Md. at 80 (PIA to be liberally construed in favor of disclosure). By failing to search for additional records outside of the forms, the BPCT constructively denied the complainant's PIA request and thus violated the PIA. We therefore direct the BPCT to proceed with locating and disclosing any additional records related to Mr. Leibowitz that do not relate to licensure. For instance, assuming the court case that the complainant references—for which both the BPCT and Mr. Leibowitz are *respondents*—is not related to licensure, then the BPCT should disclose those records if no other exemptions apply.

Conclusion

Based on the information before us, we conclude that the BPCT 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 also find that the BPCT constructively denied the complainant's PIA request by failing to locate other responsive records. We order the BPCT to conduct a search for records responsive to the complainant's broad request for "all documents and records" that are "related to Louis Richard Leibowitz, LBA 580," and to disclose all non-exempt responsive records it finds.

Public Information Act Compliance Board*

Sareesh Rawat, Chair
Samuel G. Encarnacion
Debra Lynn Gardner

* For the reasons outlined below, Board members Quinton M. Herbert and Nivek M. Johnson do not join fully in the Board's decision.

We agree that the BPCT did not respond to the complainant's PIA request within the time limitations provided in § 4-203(a). We disagree, however, that the BPCT constructively denied the complainant's request and therefore violated the PIA. In our view, although the complainant's PIA request for "*all* documents and records," when read

broadly, covers other types of records, e.g. email records, it was not unreasonable for the BPCT 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” and asked, of those forms, to “inspect the parts I’m allowed to inspect per 4-333 immediately.” 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). While perhaps not the only available interpretation, it was reasonable for the BPCT to read this language in the PIA request, in conjunction with the attachments, as narrowing the extremely broad request for “all documents and records.” See *Glass v. Anne Arundel County*, 453 Md. 201, (2017) (explaining that an agency is not expected to “robotically examine every record in its possession,” and that “the search should be focused on where responsive records are likely to be found”). The complainant’s emphasis on the licensee’s business and home addresses, which are likely to be found on the forms he attached, also suggests that it was reasonable for the BPCT to focus its search on those forms.

In addition, the complainant now suggests that records related to a court case in which the BPCT and Louis Leibowitz are named as respondents are responsive to his PIA request and should have been disclosed. First, we note that that suit was filed on July 19, 2024, just five days before the BPCT produced records in response to the PIA request. Thus, it is not even clear that the BPCT had any records related to that court case at that point. Moreover, we do not know whether that suit relates to Mr. Leibowitz’s license—although it is not hard to imagine that it might. See PIACB 24-87, at 5 (Aug. 27, 2024) (explaining that the “scope of § 4-333(a)(1) is broad,” and that “[g]iven that the BPCT’s powers and duties related foremost to the licensing and regulation of professional counselors and therapists” it is not surprising that its communications with its licensees would be “about the licensing of an individual”). To the extent that any communications the BPCT has with Mr. Leibowitz about that court case relate to licensing issues, then those communications would likely fall within § 4-333(a)(1). We do not think the failure to produce those court-related records on July 24, 2024, when the BPCT provided its response, amounts to a constructive denial of the complainant’s PIA request.

Quinton M. Herbert
Nivek M. Johnson