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**STATE OF MARYLAND**  
**PUBLIC INFORMATION ACT COMPLIANCE BOARD**

**PIACB 23-10**  
**January 17, 2023**  
**Baltimore Police Department, Custodian**  
**Taya Graham (The Real News Network), Complainant**

The complainant, Taya Graham, alleges that the Baltimore Police Department (“BPD”) violated the Public Information Act (“PIA”) by failing to respond to her request for public records within the statutory timelines. As explained below, we conclude that the BPD violated the PIA as alleged. But, because the BPD has since issued a response to the complainant’s PIA request, and has not charged any fees for that response, we order no further relief.

**Background**

On March 7, 2022, the complainant sent a PIA request to the Baltimore Police Department seeking body-worn camera footage from a specific police officer taken on certain dates, as well as “any pertinent statistics, reports, recommendations, or other records,” including disciplinary records, related to the police officer and the events depicted in the camera footage. The BPD acknowledged receipt of the request the following day and indicated that the response may take longer than ten working days, but that the BPD would respond within 30 days.

After several months passed without the BPD producing any records, the complainant contacted the Office of the Public Access Ombudsman on July 19, 2022, and asked for assistance in resolving the issue. During the course of mediation, the parties agreed to a 14-day extension of the 90-day deadline for resolving disputes through the Ombudsman. *See* § 4-1B-04(b).<sup>1</sup> Despite that extension, the Ombudsman issued a final determination on November 7, 2022, stating that the dispute was not resolved—i.e., that the BPD had not issued a final response to the PIA request.

On November 21, 2022, the complainant filed her complaint with this Board. Noting the failure of the BPD to respond to her PIA request as of November 7, 2022, the complainant suggests that “the BPD not meeting deadlines may be indicative of a violation

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<sup>1</sup> Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise indicated.

of Anton’s Law,” and requests help from this Board in obtaining the records she seeks. In response to the complaint, the BPD explains that the BPD employees tasked with responding to the complainant’s PIA request had not been aware that there was an open, pending criminal case against the police officer who was the subject of the request, and thus “inadvertently began reviewing the documents for production.” Ultimately, the BPD provided a final response to the complainant’s PIA request on November 9, 2022, in which it denied inspection of the records, citing § 4-351, and explained that the records relate to the officer’s pending criminal case. While the BPD acknowledges that it did not provide a response by the “agreed-upon deadline,” it argues that the “minor delay” did not cause prejudice and asks that we dismiss 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 request for public records. *See* § 4-1A-04(a)(1)(iii). Before filing a complaint, a complainant must attempt to resolve a dispute through the Public Access Ombudsman. § 4-1A-05(a)(1). If, after a complaint is filed, we conclude that a violation of the PIA has occurred, we must issue a written decision and order an appropriate remedy, as provided by the statute. § 4-1A-04(a)(2), (3). For example, if we determine that a custodian “failed to respond to a request for a public record within the time limits established under § 4-203(a) or (d),” we must order the custodian to “promptly respond.”<sup>2</sup> § 4-1A-04(a)(3)(iii)(1).

A custodian in receipt of a PIA request must grant or deny that request “promptly, but not more than 30 days after receiving the [request].” § 4-203(a)(1). If a 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 10 working days of receiving the request. § 4-203(b)(2). The custodian must also explain the reason for the delay, provide an estimate as to the amount of time it will take to produce the response and, if applicable, provide an estimate of the range of fees that may be charged. *Id.* A custodian who denies access to public records must, within ten working days of the denial, provide a written statement giving the reason for the denial, the legal authority for the denial, notice of remedies for review of the denial, and a brief description of the undisclosed records that, without disclosing protected information, allows the requester to assess “the applicability of the legal authority for the denial.” § 4-203(c)(1)(i). For discretionary denials, a custodian must also explain why redaction “would not address the reasons for the denial.” § 4-203(c)(1)(i)(2). In all cases, a custodian must “allow inspection of any part of the record that is subject to inspection.” § 4-203(c)(1)(ii).

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<sup>2</sup> The statute also provides us with discretion to order that a custodian waive all or part of the fee the custodian may be entitled to charge, but “only if the written decision includes the Board’s reasons for ordering the waiver.” § 4-1A-04(a)(3)(iii)(2).

The submissions here demonstrate a clear violation of at least one of the PIA provisions described above—namely, § 4-203(a)(1). While the BPD’s March 8, 2022, letter—commonly referred to as a “10-day letter”—adhered to the requirements of § 4-203(b)(2), we have no indication as to what steps, if any, the BPD was taking to respond to the request between that date and July 19, 2022, when the complainant contacted the Ombudsman. The BPD includes, as an exhibit in its response, an email dated August 1, 2022, from an employee in BPD’s Document Compliance Unit (“DCU”) that indicates that the DCU had received the body-worn camera footage and that the footage was “being reviewed for redactions and approved to be released.” The footage was ultimately *not* released at all, however, because, as the BPD explains in its response, the DCU employee was not aware that the footage related to an open prosecution. In fact, the submissions suggest that the BPD did not become aware of the open prosecution until November 4, 2022, when it received an email from an Assistant State’s Attorney advising that the requested camera footage was part of the prosecution’s investigative file, and that, had the PIA request come to the State’s Attorney’s Office (“SAO”), it would have been denied on grounds that the records related to an “active prosecution set for trial.” Five days later, on November 9, 2022, the BPD denied the complainant’s PIA request on those same grounds.<sup>3</sup>

Notwithstanding the BPD’s eventual response, we find the violation of § 4-203(a) concerning. It appears that the charges against the subject police officer have been pending since 2019, thus the basis for the BPD’s denial was clear and available on March 7, 2022, when the request was made. BPD was obligated to respond “promptly,” § 4-203(a), and should have had the information to do so; it should not have needed to wait even the 30 days the PIA permits for issuing a denial. *See Maryland Public Information Act Manual* (17th ed., July 2022) at 4-3 (“A custodian should not, however, wait the full 30 days to allow or deny access to a record if that amount of time is not needed to respond.”). That the response issued eight months after the request here is troubling, and does not constitute a “minor delay.” Also troubling is the fact that the submissions tend to establish that the BPD was doing little to process the request between March 8, 2022, when it issued the 10-day letter advising that it would respond within 30 days, and August 1, 2022—after the complainant contacted the Ombudsman—when the DCU employee indicated that the footage had been received. The BPD might consider integrating better communication

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<sup>3</sup> Though the complainant requests our help to obtain the records she seeks, the complaint does not appear to challenge the BPD’s ultimate denial of inspection. Even if it did, we lack authority to review that denial at this time. *See* § 4-1A-05(a) (complaint may be filed if the complainant has attempted to resolve “the dispute” through the Ombudsman, and the Ombudsman has issued a final determination stating that “the dispute” was not resolved). The failure of a custodian to respond to a PIA request and a custodian’s denial of access to public records are two distinct disputes. *Compare* § 4-1A-04(a)(1)(i) (permitting Board review of complaints that a custodian denied inspection of a record in violation of the PIA), *with* § 4-1A-04(a)(iii) (permitting Board review of complaints that a custodian failed to respond to a PIA request). The only dispute addressed in mediation through the Ombudsman was the BPD’s failure to respond.

with the SAO into its procedures for responding to requests such as this one, or at the very least instructing those responsible for handling PIA requests to check the publicly-available database to determine if requested records relate to an open criminal prosecution.<sup>4</sup>

### **Conclusion**

We find that the BPD violated the PIA by failing to respond to the complainant's PIA request "promptly, but not more than 30 days," § 4-203(a)(1), after it received the request. But, given that the BPD has issued a PIA-conforming response and has not charged the complainant any fees, we are unable to order any further relief.

### **Public Information Act Compliance Board**

*John H. West, III, Esq., Chair*

*Michele L. Cohen, Esq.*

*Christopher Eddings*

*Deborah Moore-Carter*

*Darren S. Wigfield*

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<sup>4</sup> See <https://casesearch.courts.state.md.us/casesearch/>.