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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 25-41

April 4, 2025

Maryland Department of Health, Custodian
Steven Brown, Complainant

The complainant, Steven Brown, alleges that the Maryland Department of Health (“MDH”) violated the Public Information Act (“PIA”) by failing to respond to a PIA request, therefore constructively denying the request. As explained below, we find no violation of a provision of the PIA within our jurisdiction to conclusively address.

Background

On September 20, 2024, the complainant sent the following by email to MDH:

Pursuant to the PIA I’d like to obtain **all documents and records your agency has directly or indirectly related to Louis Richard Leibowitz.**

He has been identified as forging subpoenas in both California and Maryland by using expired 2015 Maryland forms. A MDH employee named Shelly Ann Barnes has been identified as facilitating the fraud.

A PIA request was previously made with the BOPCT, but despite being ordered by the PIACB to comply, the BOPCT has refused.

A copy of the order is attached.

Please contact me in writing if you have any questions or concerns.

It does not appear that MDH responded directly to the complainant.

On October 22, 2024, the complainant contacted the Public Access Ombudsman.¹ On October 28, 2024, the Ombudsman issued a statement in which she indicated that she

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

was unable to mediate the matter due to a conflict.² 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 MDH “refused to produce the documents, constructively denying [the] PIA request,” and asks that we order MDH to “produce all the documents immediately with a waiver of all fees.”

In response to the complaint, MDH states that it forwarded the complainant’s PIA request to the Executive Director of the Board of Professional Counselors and Therapists (“BPCT”).³ MDH provides a copy of the BPCT’s ten-day letter, which was sent to the complainant by email on October 4, 2024. The letter stated that the BPCT “received a forwarded request under the Public Information Act.” The letter further stated that the BPCT expected the search and review process to take between ten and twenty hours to complete, and that the fee associated with production would range from \$440 to \$880. MDH also provides email correspondence between the BPCT and the complainant that indicates that the BPCT sent a response to the complainant’s PIA request by email on October 21, 2024. The complainant apparently responded that same day stating, “[o]kay cool,” and asking “[a]ny information on the responsive records so as to narrow them down?” The complainant asked the BPCT to “let [him] know about the docs,” and indicated that he could “drop off the payment probably by Friday.”

According to the correspondence MDH provides, the complainant sent an email to the BPCT on October 25, 2024, stating that he had not heard back and asking again that the BPCT “let [him] know about the docs” so he could “drop off the payment.” The BPCT responded that the “search for documents was done per [the complainant’s] stated parameters,” and asked the complainant to advise whether his “preferred method of receipt” was “paper or digital.” The complainant then indicated that email was “fine” and that he did not “want to pay for a thumb drive,” to which the BPCT responded, on October 29, 2024, that the files were too large for email. That same day the complainant sent an email stating that he had “sent the payment yesterday.” In its response to this complaint, MDH indicates that “[u]pon follow-up, [MDH] was informed that the [BPCT] had not yet received payment.”

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

³ We find it reasonable that MDH forwarded the request rather than search its own records, as the complainant’s request itself makes clear that it was limited to BPCT records he had previously requested and not received.

In reply, the complainant states that the BPCT has been found in violation of the PIA “not once, but twice,” and that he asked for “all documents and records related to Leibowitz that were in the MDH’s possession, since the BOPCT would not provide them.” The complainant asserts that MDH “cannot decide who is the custodian of its records, the MDH or the BOPCT.” The complainant claims that he sent payment of \$1,000 to the BPCT’s Executive Director, and that this is a “clear example of a bad faith constructive denial of no one wanted to take accountability and blame shifting the responsibility from one agency to another,” which, the complainant contends, is a constructive denial.

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).⁴ 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.⁵ § 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).

After review of the submissions, we cannot find that MDH violated § 4-203(a). The complainant sent the PIA request by email on September 20, 2024. Shortly after receipt, MDH forwarded the email to the BPCT’s executive director, presumably because the BPCT was the correct custodian of records involving BPCT licensees. *See* § 4-101(d)

⁴ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise specified.

⁵ 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)).

(defining custodian to mean “the official custodian” or “any other authorized individual who has physical custody and control of a public record”); *see also* PIACB 24-87, at 4 n.5 (Aug. 24, 2024) (noting that “the Department of Health’s records are not necessarily the BPCT’s records, and vice versa”). The BPCT sent the complainant a ten-day letter on October 4, 2024, within the ten working days afforded by § 4-203(b). The BPCT sent its final response letter on October 21, 2024, in which it advised that there were 3,904 pages of records and that the fee associated with production was \$585. That letter was sent within the time limitations provided in § 4-203(a).⁶ Although MDH may have failed to comply with § 4-202(c), which requires a “noncustodian” to notify a PIA requester that “the individual to whom the [request was] submitted is not the custodian of the public record,” we see no violation of § 4-203(a) here.

Conclusion

Based on the information before us, we find no failure on MDH’s part of comply with the time limitations in § 4-203(a).

Public Information Act Compliance Board

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

⁶ As discussed above, § 4-203(a) requires the response to issue no later than thirty days after receipt of a PIA request. Here, the thirtieth day after September 20, 2024, was Sunday, October 20, 2024. Section 1-302 provides that “[t]he last day of the period of time computed . . . shall be included unless . . . it is a Sunday or a legal holiday, in which case the period runs until the end of the next day that is not a Sunday or legal holiday.”