

WES MOORE
GOVERNOR

ARUNA MILLER
LT. GOVERNOR



MICHELE L. COHEN, ESQ.
CHRISTOPHER EDDINGS
SAMUEL G. ENCARNACION
NIVEK M. JOHNSON
DEBORAH MOORE-CARTER

STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 23-28
June 30, 2023

Department of Public Safety and Correctional Services, Custodian
Christopher Hutchinson, Complainant

The complainant, Christopher Hutchinson, alleges that the Department of Public Safety and Correctional Services (“DPSCS”) violated the Public Information Act (“PIA”) by failing to respond to his request for public records. We agree, and order DPSCS to respond and to waive any fees associated with that response.

Background

In November 2022, the complainant sent a PIA request to the Maryland Commission on Correctional Standards (“MCCS”), which is part of DPSCS,¹ asking for “a copy of the Correctional standards in Maryland, especially with regard to Medical and Food Services.” He received no response from DPSCS. In March 2023, the complainant contacted the Office of the Public Access Ombudsman for assistance with his PIA dispute—i.e., DPSCS’s failure to respond to his request. After DPSCS did not respond to the Ombudsman’s attempts to resolve the dispute, the Ombudsman issued a final determination stating that the dispute was not resolved. The complainant then filed this complaint.

¹ See Md. Code Ann., Corr. Servs. § 8-106 (establishing the MCCS as part of DPSCS). Among other things, the MCCS is charged with adopting regulations that “establish minimum mandatory standards applicable to security and inmate control, inmate safety, inmate food services, inmate housing and sanitation, inmate rights, classification hearings, victim notification, restitution, and administrative record keeping.” *Id.* § 8-103(a). The complainant sent his PIA request to the same street address listed for DPSCS’s PIA representative in the Public Information Act Manual; only the suite number was different. See *Maryland Public Information Act Manual* (17th ed. 2022), at Appendix J-4, https://www.marylandattorneygeneral.gov/OpenGov%20Documents/Appendix_J.pdf; see also *Ireland v. Shearin*, 417 Md. 401, 404 (2010) (holding that the decision to “direct an applicant requesting public records to make a second request to a department within his agency constitutes an improper denial under the provisions of the PIA”). Notably, the PIA Manual does not list a separate or different PIA representative for the MCCS.

We forwarded the complaint by email to DPSCS on May 24, 2023, and asked that DPSCS respond by June 23, 2023. *See* § 4-1A-06(b)(1)² (“The custodian . . . shall file a written response to the complaint within 30 calendar days after receiving the complaint.”). DPSCS did not respond. Thus, we must “decide the case on the facts before the Board.” § 4-1A-06(c).

Analysis

The PIA authorizes us to resolve complaints that allege certain violations of its provisions, 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 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) and (3).

After receiving a PIA request, a custodian must grant or deny that request “promptly,” but no longer than thirty days from 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 10 working days of receiving the request, and provide certain information to the requester.³ § 4-203(b)(2). 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)(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).

DPSCS has clearly violated § 4-203(a). The complainant sent his request in early November 2022. Even allowing for any delays in the mail,⁴ or for the time it may have taken for the MCCS to forward the request to DPSCS’s PIA representative, DPSCS far exceeded the thirty days that the PIA provides for either granting or denying a request. *See* § 4-203(a)(1). Because of the length of the delay, as well as the fact that DPSCS apparently

² Statutory citations are the General Provisions Article of Maryland’s Annotated Code, unless otherwise stated.

³ The custodian must 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. § 4-203(b)(2).

⁴ The complainant is an inmate in the custody of the Division of Correction, and thus he sent his PIA request by regular mail.

ignored the Ombudsman's attempt to resolve this dispute through mediation and failed to respond to the Board complaint, 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 request. *See* § 4-1A-04(a)(3)(iii)(2).

Conclusion

DPSCS violated § 4-203(a) by failing to respond to the complainant's PIA request "promptly, but not more than 30 days after receiving" his request. We order DPSCS to respond to that request within three days of receipt of this decision and order. Given both the length of delay in responding and DPSCS's apparent unwillingness to respond even after intervention by the Ombudsman, we also exercise our discretion to order that DPSCS waive any fees associated with responding to the PIA request.

Public Information Act Compliance Board

Michele L. Cohen, Esq.

Christopher Eddings

Samuel G. Encarnacion

Nivek M. Johnson