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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-07

September 6, 2023

Department of Public Safety and Correctional Services, Custodian
Dwight Weingarten, Complainant

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

Background

On March 2, 2023, the complainant sent a PIA request to DPSCS asking for records reflecting where inmates are released upon finishing the incarcerable portions of their sentences. In particular, the complainant explained that he was “interested in learning where (what county) inmates are released after they are finished at a correctional institution. Specifically, I am interested in learning whether the jurisdiction where they are released is the same as the jurisdiction where the crime occurred.”

DPSCS acknowledged the request on March 10, 2023, and indicated that it would take longer than ten working days to respond due to DPSCS’s need to “determine, access, and compile all required responsive documents.” DPSCS advised that it would not take longer than thirty days to respond. The complainant asked whether there would be fees for responding to the PIA request. DPSCS stated that it did not anticipate charging fees.

In mid-April, the complainant sent an email asking about the status of the response. There is no indication that DPSCS responded. About a week later—and after the thirty-day deadline had passed—the complainant again asked DPSCS to provide an update about its response to his PIA request. Again, it appears that DPSCS did not respond.

Given DPSCS’s lack of a final response and failure to produce any records, the complainant sought the assistance of the Public Access Ombudsman. On July 26, 2023, the Ombudsman issued a final determination stating that the dispute was not resolved—i.e., that DPSCS still had not issued its final response to the complainant’s PIA request.

The complainant filed this complaint on July 31, 2023. We forwarded the complaint by email to DPSCS on August 2, 2023, and asked that DPSCS respond by September 1,

2023. *See* § 4-1A-06(b)(1)¹ (“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

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 we conclude that a violation of the PIA has occurred, we must issue a written decision and order a statutory remedy. § 4-1A-04(a)(2) and (3). When we determine that a custodian has failed to respond to a PIA request, we must order the custodian to “promptly respond” and may, in our discretion, order the custodian to waive any fees associated with responding. § 4-1A-04(a)(3)(iii).

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.² § 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 on March 2, 2023. Though DPSCS complied with § 4-203(b) by sending a “10-day letter,” it has now been more than six months since the request was sent—far longer than 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 did not issue its response through the mediation process and failed to respond to the Board complaint,³ we exercise our

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

² 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).

³ Notably, “if the applicant or custodian seeks resolution of a dispute under Subtitle 1A or 1B of [the PIA]”—i.e., the Board or the Ombudsman—“[a]ny time limit imposed under [§ 4-203] . . .

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, DPSCS's failure to respond and produce records through the Ombudsman's process, and failure to respond to this complaint, we also exercise our discretion to order that DPSCS waive any fees associated with responding to the PIA request.

Public Information Act Compliance Board

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shall be extended pending resolution of that dispute." § 4-203(d)(2). Despite this favorable provision, DPSCS did not issue its response to the PIA request while the matter was pending with the Ombudsman or our Board.