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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB-17-07
February 28, 2017

Montgomery County Police Department (Ronald W. Ely, Complainant)

Complainant Ronald W. Ely alleged that the Montgomery County Police Department (“County”) charged an unreasonable fee when its custodian requested a prepayment of \$19,310.94 for its production of the traffic-camera records that he had requested under the Public Information Act (“PIA”). The County’s custodian responded that the department had the information in the form of citations issued to violators, that 5,373 citations had been issued during the time period for which Complainant sought records, and that, in order to meet Complainant’s request, it would be necessary for staff to look up and print each citation and then redact personal information from each before providing it to him. Complainant replied that the PIA request had nothing to do with printed citations, and that he had specifically requested records from the database referenced by the public.cite-web.com website. Complainant further submitted evidence that the private vendor that provides this website likely maintained a database from which the information could be extracted with much less effort and cost than the method proposed by the County. Both parties stated grievances that did not relate to the reasonableness of the estimated fee.¹

On January 9, 2017, we conferred on the matter and heard from both parties. During that conference, we ascertained that the County’s contract with the vendor contemplated that, for a fee, the County could ask the vendor to generate reports in addition to those required by the contract. We asked the custodian to ask the vendor what the vendor would charge to run a report that would contain the requested information. The custodian did so. As relevant here, the vendor responded as follows:

¹ The submissions in this matter were extensive. We have included in this summary only the facts that are relevant to the task delegated to us – the determination of whether a custodian has charged a “reasonable fee,” as defined by the PIA. *See, e.g.*, Opinion 17-06 (addressing the authority that § 4-1A-04 of the General Provisions Article (“GP”) delegates to us).

We can produce a query which will provide this information requested in the amount of 18 hours X \$110 dollars per hour to total \$1,980.00 . . . Once the query is designed we should be able to provide this information . . . with much less time and effort to likely be a max of 3 or 4 hours.

Complainant now challenges this amount also. He questions whether he should have to pay a fee that might include the vendor's profit margin, asserts that the fee should be reduced by two hours under GP § 4-206(c), speculates that the vendor's quote might include features that the County might routinely need but he does not, and questions the quote of 18 hours for extracting the information. The County, for its part, questions whether custodians have a duty to ask "a vendor to produce a report that doesn't currently exist and is not needed by either party [to the contract] to conduct their normal business."

As a preliminary matter, we note, for two reasons, that the Ombudsman probably could have resolved this complaint much more quickly than we can. First, the problem here, we believe, was the custodian's reading of the Public Information Act not to require the County to engage the vendor to run a special report. Although we are not prepared to declare that the PIA requires such a measure in all circumstances, we *do* read the PIA to require good faith efforts by the custodian to make reasonable options available to the requester. The Ombudsman, as mediator, is best positioned to provide a neutral perspective on what good faith efforts might entail and to help the parties engage in a constructive give-and-take on what options might be both feasible and reasonable. Second, the submissions raise issues indicating mutual distrust that lie outside of our jurisdiction and that seem likely to persist between these parties. So, when cost is not the only issue, and particularly when distrust is present, we encourage both the requester and the custodian to seek the Ombudsman's services and to proceed in good faith.

Even now, we can only resolve the complaint conditionally. We conclude that, in light of the fee quoted to the County by the vendor, it is reasonable for the County to request the report from the vendor and to *estimate* a charge of \$1,980.00 for the production of the report. We stress, however, that we view that sum as only an estimate. We share Complainant's concerns that it might not take 18 hours to design the query and generate the report, that Complainant might not need features that the vendor usually includes in reports to the County, and, in fact, that the 18-hour figure might simply be an outside estimate, the likely maximum cost to prepare the report. We approach this vendor's flat-fee quote the same way we approached the flat rates that we addressed in Opinion No. 17-06. There, we concluded that the agency's flat rates for producing records were reasonable only because the agency could explain the actual costs that went into its calculation of the rates. *Id.* Here, too, the County may only charge Complainant for the County's actual costs – here, the billable hours spent by the vendor as needed to create and generate the report

with the information that Complainant seeks. We strongly encourage Complainant and the custodian to cooperate on the details of what is needed, and, if they cannot, to seek the Ombudsman's services.

We have not subtracted two hours from the vendor's estimate. Arguably, an outside contractor's charge is an actual cost, fully chargeable to the requester, as opposed to preparation time that must be reduced under GP § 4-206(c). By way of an analogy, when a custodian, with the requester's agreement, hires an outside copying service to take delivery of, and copy or scan, multiple boxes of documents, we would not necessarily expect the copying service's charge for its "preparation" of the documents to be reduced by two hours. Indeed, whether the GP § 4-206(c) discount applies to a contractor's charge in a given case might well depend on facts such as the government's contract with the contractor and the way in which the government treats such expenses in its budget. However, we do not need to answer that question here; by the time all is said and done, this custodian will clearly have spent more than two hours on working with the vendor on responding to this request. Further, we do not accept Complainant's proposition that the PIA requires outside contractors to forego their contracted-for profit when assisting in the production of records or government units to subsidize that cost. Here, we have assumed that this vendor's hourly rate reflects its contracted-for profit.

In conclusion, we have decided only that the quote that the vendor provided to the custodian is a reasonable starting point when viewed as an outside estimate of the actual effort that will be required to generate the report and that the final charge must reflect the actual costs to the County. In earlier cases, we have declined to address a complaint when the estimate is very preliminary and we have lacked solid numbers on which to base an order. *See, e.g.*, Opinion 17-04 (declining to address an early and explicitly preliminary request that merely alerted the requester to an estimated range of the possible fee). Although this estimate is not very solid yet, it has been reduced considerably, and we have addressed it so that the parties may move forward. We have also emphasized that we read the PIA to require good faith efforts by the custodian to make reasonable options available to the requester. As it has turned out, this case presents more issues for mutual cooperation by the parties, and, if necessary, mediation than for resolution by us.

Public Information Act Compliance Board

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