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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB-19-04

November 27, 2018
Calvert County Public Schools
(John and Katherine Blevins, Complainants)

The complainants, John and Katherine Blevins (“the Blevins”), allege that Calvert County Public Schools (“CCPS”) charged them an unreasonable fee of \$3,137 to respond to their May 9, 2018 Public Information Act (“PIA”) request for various financial records dating back to September 1, 2016. CCPS provided the complainants with an estimated fee of \$3,137 on May 18, which detailed the labor and number of hours CCPS believed would be required to respond to the request. The Blevins agreed to a down payment before CCPS began work, and paid the balance upon receiving the records. According to CCPS, the actual cost of responding to the request was \$3,829.62, not including two uncharged hours, but CCPS nonetheless charged only \$3,137—the amount of the initial estimate.

The Blevins allege that this fee was unreasonable for the primary reason that they “did not receive many of the records [they] requested.” Relatedly, they complain that the records they did receive do not justify the high fee they paid. According to the Blevins, they received a stack of papers nearly 10 inches high, and a flash drive containing an Excel spreadsheet with 3,437 rows of data.

In its response to the complaint and to the Board’s requests for supplemental information, CCPS provided a breakdown of the actual costs it claims to have incurred in responding to the Blevins’ request, and signed affidavits from employees detailing hours worked, tasks involved, and hourly salaries (not including benefits). According to these submissions, it took six employees a total of 86.5 hours—not including two uncharged hours—to respond to the request, with hourly salaries ranging from \$56 for the Supervisor of Finance, to \$19.94 for the Accounts Payable Clerk.

Analysis

This Board is authorized to review complaints that allege: (1) that “a custodian charged a fee under § 4-206 of [the Public Information Act] of more than \$350” and (2) that “the fee is unreasonable.” GP § 4-1A-05.¹ This provision limits our authority to the question of whether the fee that a custodian has charged is reasonable. The PIA defines a reasonable fee as “a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.” GP § 4-

¹ Citations to GP reflect references to Md. Ann. Code, General Provisions (2014, 2017 Supp.).

206(a)(3). If the Board finds that “the custodian charged an unreasonable fee under § 4-206,” the Board shall “order the custodian to reduce the fee to an amount determined by the Board to be reasonable and refund the difference.” GP § 4-1A-04(a)(3).

Here, the complainants’ primary assertion is that the fee was unreasonable because they should have received additional responsive records, and the content of some of the records they did receive was not what they expected. Generally, complaints about the volume and content of records received in response to a PIA request are not within the Board’s limited jurisdiction, unless *clearly* tied to a fee’s reasonableness. For example, if a custodian charges a requestor for copying, 400 pages, but provides the requestor only 200 pages, that charge would clearly be unreasonable. Here, however, it is unclear how the complainants’ assertions about the volume and content of the records are directly tied to the fee’s reasonableness. We note that the Public Access Ombudsman, not the Board, is authorized to mediate a PIA dispute that involves “the [alleged] failure of the custodian to . . . disclose all records relevant to the request.” GP § 4-1B-04(a)(3).² It is our understanding that the Blevins did not wish to pursue Ombudsman mediation before bringing their complaint to the Board. Nonetheless, we will examine whether, based on the materials provided to us, CCPS’s fee of \$3,137 appears to bear “a reasonable relationship to the recovery of actual costs” CCPS incurred in responding to the Blevins’ request.

We begin by noting that the Blevins’ request was broad: it sought various financial records—broken down into 18 categories—for a period going back almost two years. CCPS provided the Blevins with a fee analysis that detailed the number of hours required to respond to the individual categories of the request.³ We note that the majority of hours were dedicated to the categories that involved hard documents such as purchase orders, expense reports, reimbursements, receipts, and the like. It is to be expected that those types of documents are the most labor-intensive from a search and production standpoint. Indeed, CCPS avers that its retrieval of these records required it to search a remote storage facility, and then required scanning or photocopying the individual hard copies, and reviewing and redacting for sensitive information. Moreover, according to the information in the complaint, these types of documents accounted for much of the nearly 10 inch stack of responsive records the Blevins received. In other words, the majority of hours charged correspond with the majority of hard documents produced, which makes sense given the nature of the documents requested. Similarly, many fewer hours—or none at all—were dedicated to categories that involved

² Tying a fee to the volume and content of records produced is an unreliable guide to the fee’s reasonableness for any number of reasons. For example, a custodian may spend time searching for records that ultimately do not exist, or expend labor retrieving and reviewing records that end up being confidential. The PIA clearly envisions that an agency is entitled to reimbursement for search and review time, regardless of the outcome. *See* GP § 4-206(b).

³ A few categories did not have an associated fee in the estimate; it appears CCPS combined these categories with others for purposes of retrieval and production.

computer-generated reports. This makes sense given the brief amount of time it may take to query an electronic database. In sum, based on the materials before us, there is no obvious reason to believe that CCPS inflated the hours it claims to have devoted to the Blevins' broad request.

Our conclusion is supported by signed affidavits from the CCPS employees who actually worked on the response. In each affidavit, the employee affirms the number of hours they worked on the response, the tasks involved, and their hourly salary, not including benefits. According to these affidavits and CCPS's response, employees actually expended 26.5 hours in addition to the 60 hours CCPS had initially estimated, without increasing the Blevins' fee. CCPS also did not charge for copies. We do, however, note a small discrepancy between the affidavits and the response with regard to the hourly rates charged for the Payroll Clerk and the Staff Accountant. According to the affidavits, the former, who dedicated 27.57 hours to the Blevins' request, makes \$.05 less per hour than claimed in the response, and the latter, who dedicated 1 hour to the request, makes \$1.32 less per hour. Accordingly, CCPS overcharged a total of \$2.70 for these two positions. However, it appears that CCPS *undercharged* for the hourly rates of the Administrative Assistant and the Executive Secretary—according to the affidavits, the former, who spent 3.5 hours on the response, makes \$9.11 more per hour than claimed in the response, and the latter, who also spent 3.5 hours, makes \$.39 more per hour. Moreover, as discussed, CCPS claims that it undercharged the Blevins for many other aspects of the project. Under these circumstances, it is not reasonable for us to order a miniscule fee reduction.

Conclusion

Based on the materials before us, we do not find that CCPS charged an unreasonable fee to respond to the Blevins' request for financial information. We lack jurisdiction to address the Blevins' concerns about the volume and content of records they received; that authority lies with Public Access Ombudsman.

Public Information Act Compliance Board

John H. West, III, Esq., Chair
Larry E. Effingham
Deborah Moore-Carter
René C. Swafford, Esq.
Darren S. Wigfield