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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB-19-06

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 \$2,306.40 to respond to their May 15, 2018¹ Public Information Act (“PIA”) request for various electronic communication records. Specifically, the Blevins sought email messages sent and received by 29 different CCPS employees from July 2016 to the present that contained the name “Blevins.” On May 18, CCPS provided the Blevins with an estimated fee of \$1,546.40 to respond to their request, as follows:

- 58 searches (29 To and 29 From), plus downloading each into viewable format;
 - Search Time – 58 x 15 minutes = 870 minutes (or 14.5 hours)
 - Download, viewable setup time – 58 x 5 = 290 (or 4.83 hours)
- Total = 19.33 hours x \$80 (salary rate) = \$1,546.40

The custodian explained that this estimate did not include the time it would take to review the responsive emails. The Blevins agreed to pay half of this amount before CCPS began the search, but disputed that the search would take as long as CCPS predicted.

A couple of months later, in July, CCPS produced approximately 3,100 email records, and charged the Blevins an additional \$760 for the time it took two employees to review and redact those records. CCPS did not alter the initial search estimate of \$1,560, resulting in a total fee of \$2,306.40. The Blevins still did not believe that the search should have taken as long as CCPS claimed, so requested from CCPS’s Director of Information Technology (“IT Director”) the “search logs” from the electronic platform he used to search CCPS’s email archives for responsive records. According to the Blevins, these logs reveal that the search for emails actually took a fraction of the time that CCPS

¹ The Blevins made their original request on April 30, 2018, but narrowed the scope on May 15 after the custodian’s initial search resulted in over 10,000 records.

claimed. The Blevins complained to the IT Director and other CCPS officials, but did not receive satisfactory responses. The Blevins paid the balance of the fee “in protest,” and thereafter filed the instant complaint with this Board.

The complaint alleges that the search fee was excessive, and attaches, among other materials, a response sent to the Blevins by the IT Director that contains the search logs. The complaint also asserts that the IT Director did not use all of the software capabilities available to him in order to streamline the search, and alleges that a number of electronic records were improperly omitted from CCPS’s production. CCPS responds that the fee it charged was reasonable, and details additional costs it claims were not charged to the Blevins.

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-05.² 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 § 4-206(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, we decline to address the complaint’s allegations about omitted records as outside of our jurisdiction. *See* PIACB 19-04 (November 27, 2018) (“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.”). We also decline to second-guess the manner in which the IT Director utilized the software capabilities that were available to him. We urge custodians to employ those electronic search and retrieval tools that will most accurately and efficiently locate responsive records. However, absent an obvious failure to use such tools when they are readily available, we are not in a position to micromanage a custodian’s electronic search and retrieval process.

That said, we *are* in a position to determine whether the fee charged for CCPS’s search and retrieval process bears a reasonable relationship to the actual costs incurred by CCPS. We find that it does not. That search fee—\$1,546.40—was based on the assumption that each of the 58 searches would take 15 minutes, for a total of 870 minutes (14.5 hours). The search logs, however, reveal that the searches actually took a total of approximately 92 minutes, which is 778 minutes (almost 13 hours) less than the estimate.³ In his response to the Blevins, the IT Director explains that the search

² Citations to GP reflect references to Md. Ann. Code, General Provisions (2014, 2017 Supp.).

³ For reasons that are unclear to us, the search logs reveal a total of 134 searches, not 58. In his response to the Blevins, the IT Director explains that some of the searches had to be run several times

time/system processing time in the logs does not reflect the total time required to capture and export the emails, and to make them viewable, which, he explains, takes on average approximately 5 minutes per search. This may be true, but we note that CCPS's fee accounted for those tasks separately from the fee's "search" component. That is, CCPS charged for 290 minutes of "Download, viewable setup time" *in addition* to the charge for 870 minutes of searching (based on the assumption that it would take 5 minutes to perform those tasks on each of the 58 searches). Accordingly, CCPS cannot also charge for those tasks as part of its search time. We find that CCPS likely expended nearly 13 fewer hours to search for responsive emails than it charged, and therefore order CCPS to reduce its fee by \$1,040 (13 hours x \$80 per hour) and to refund that amount to the Blevins.

With regard to the \$760 fee for review and redaction of the emails, CCPS has provided us with signed affidavits from the two employees who performed those tasks which detail their hourly salaries and hours worked. Based on these materials, CCPS's response, and the fact that there were over 3,000 responsive emails, we do not find the review/redaction fee to be unreasonable.⁴

Conclusion

Based on the materials before us, we find that CCPS charged an unreasonable fee to search for records responsive to the Blevins' PIA request. We therefore order CCPS to reduce its fee by \$1,040, and refund that amount to the Blevins. We lack jurisdiction to address the Blevins' concerns about the volume of emails they received; that authority lies with Public Access Ombudsman.

Public Information Act Compliance Board

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"[b]ecause of a network glitch or a search being timed-out or various other reasons." The Blevins dispute this explanation. We need not decide this precise issue, however, to determine that the Blevins were overcharged for search time.

⁴ Indeed, CCPS maintains that it actually spent 40 additional hours on these tasks for which it did not charge the Blevins, *i.e.*, it did not charge them an additional \$1,520. Even if this is true, we do not believe it is fair, under the present circumstances, to allow the custodian to "make up" for an overcharge in one category by claiming, after the fact, that it undercharged by an equal or greater amount in another category. The basis for a fee, and any adjustments between the estimated and actual costs, should be made clear to the requestor at the time the fee is finalized—otherwise, the requestor cannot assess whether that fee is reasonable.