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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 20-11

March 30, 2020
Montgomery County Public Schools, Custodian
Mark Flatten, Complainant

The complainant, Mark Flatten, alleges that Montgomery County Public Schools (“MCPS”) charged him an unreasonable fee estimate of \$442.96 to respond to his Public Information Act (“PIA”) request for various records pertaining to MCPS employees who received paid time off to perform union-related work in fiscal year 2019.¹ MCPS, through counsel, responds that the original fee estimate contained an incorrect personnel charge, and that the corrected fee estimate is now \$296.53. MCPS states that this revised fee estimate is reasonable based upon the personnel time required to retrieve the records responsive to Mr. Flatten’s request.

Analysis

This Board is authorized to review complaints that allege: (1) that “a custodian charged a fee under § 4-206 of [the PIA] of more than \$350” and (2) that “the fee is unreasonable.” § 4-1A-05(a).² The law defines a reasonable fee as “a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.” § 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.” § 4-1A-04(a)(3).

We have in the past explained that an agency’s *estimation* of a fee—as opposed to a fee based upon actual costs incurred by an agency—presents certain difficulties for the Board. *See,*

¹ Mr. Flatten also alleges that he is entitled to a fee waiver. As we have explained on numerous occasions, we do not have jurisdiction over a custodian’s decision to deny a fee waiver request, and therefore decline to address that aspect of the complaint. *See, e.g.,* PIACB 19-11, 1-2 (July 19, 2019). The parties may wish to consult Chapter 7 of the PIA Manual, which is available on the Attorney General’s website, for more information on fee waivers and the factors that custodians should consider when determining whether to grant them.

² References are to the General Provisions Article of the Annotated Code of Maryland.

e.g., PIACB 17-04 at 3 (Nov. 22, 2016). Nonetheless, we have reviewed the reasonableness of a fee estimate when it comprises a precise figure based upon a detailed breakdown of anticipated costs, and when the custodian requires prepayment of the estimate before providing the records. *See* PIACB 19-01 at 2-3 (Sept. 24, 2018). That is the case here, so we will review the reasonableness of the estimated fee.

As a threshold matter, MCPS requests that we dismiss the complaint as moot now that the revised estimated fee is less than \$350, which is below our review threshold. We note, however, that MCPSS revised its fee estimate only in response to the complaint, so we will treat that information accordingly—that is, we will consider it as part of MCPS’s response to the complaint, not as information that deprives us of jurisdiction.

MCPS’s initial fee estimate of \$442.96 was based upon the personnel time required to search for, retrieve, and respond to the request—minus two free hours—as follows:

- \$233.34 (3 hours at \$77.78 per hour – Director, Department of Employee and Retiree Services)
- \$130.86 (2 hours at \$65.43 per hour – Coordinator, Office of Employee Engagement and Labor Relations)
- \$78.76 (2 hours at \$39.38 per hour – Communications Specialist – Office of Communications)

In response to the complaint, MCPS reviewed the estimated fee and discovered that it had overcharged for the personnel time attributed to the Department of Employee and Retiree Services. Instead of charging \$77.78 per hour for three hours of a director’s time, MCPS instead would charge \$28.97 per hour for three hours of a data support specialist’s time, bringing the revised estimate to \$296.53.

Based on the materials before us, we cannot say that this revised fee estimate is unreasonable under the PIA. Mr. Flatten’s request is broad in that it seeks information across all MCPS departments and a detailed employee-by-employee breakdown for certain employees who received paid time off for union-related activities. MCPS explains that the request will require it to “pull the raw data for 23,000+ employees, then export, review, analyze and reformat the data.” MCPS further explains that its “data system for employees is undergoing upgrades precisely because such data pulls are manually time intensive.” Mr. Flatten argues that, on the contrary, all of the information he seeks “should be readily produced in a single, simple database,” and it is therefore “difficult to believe that retrieving this information at MCPS would entail anything more than a simple search of payroll records for [a] unique payroll code denoting paid union release time, which should take no more than a few minutes.”

As we have explained in the past, “we are not in a position to micromanage a custodian’s electronic search and retrieval process,” short of an obvious failure to use readily-available

technology. *See* PIACB 19-06, 2 (November 27, 2018). Accordingly, based on the materials before us, we cannot say that MCPS's proposed response plan and resultant fee estimate is unreasonable. Of course, MCPS should keep detailed track of the actual time required to respond to Mr. Flatten's request and refund any difference between the fee estimate and the actual cost.

Conclusion

For the reasons above, we find that MCPS's estimated fee of \$296.53 appears to reflect a reasonable fee under the PIA, but is subject to revision after MCPS performs the actual work to respond to the request.

Public Information Act Compliance Board

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Deborah Moore-Carter
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