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**STATE OF MARYLAND**  
**PUBLIC INFORMATION ACT COMPLIANCE BOARD**

**PIACB 21-08**

**December 1, 2020**  
**Washington County, Custodian**  
**Justin Holder, Complainant**

Complainant Justin Holder alleges that Washington County (“County”) charged an unreasonable fee when it estimated that it would cost \$1,000 to \$1,500 to respond to his September 11, 2020, Public Information Act (“PIA”) request for “[a]ll documents, evidence, pictures, photos, acts in pais notoriety, deeds, county road book description, surveys and drawings that shows ‘mt briar road’ or ‘county road 19-08 or i424 or as shown in screenshot of 1936 atlas found on plats.net’ is owned by the county and or that road has not been abandoned.”<sup>1</sup> Complainant attached a screenshot, taken from a 1936 atlas, of the road relevant to his request. The County responded to Complainant’s PIA request on September 24, 2020, and asked for a “deposit” of \$1,000 to proceed with its search for and review of responsive records. The County indicated that it had consulted with a professional surveyor in the Department of Engineering to arrive at its estimate.

In his complaint, which was submitted on October 11, 2020, Complainant noted that he is “disputing fees only charged at a quoted rate of \$15/hrs.” He further explained that, prior to bringing his complaint, he provided further information to the County, to wit: “the Md Road statute, county ordinance, statutory order to survey the roads, the atlas which was the result of said survey order and where it[']s located and the road book reference numbers and where that is located. This included pictures of the actual documents.” He alleged that it took him “less than 2 hours to find those data points never using the tools.”

The County responded to the complaint on October 23, 2020. It stated that Complainant has made more than 45 PIA requests between April 15, 2020, and October 20, 2020. It further stated that, on the same day he submitted the PIA request at issue here, and in the following weeks, Complainant submitted similar requests regarding twelve other roads, in and around Keedysville, which either no longer exist or are no longer in use. To respond to Complainant’s PIA request, the County consulted with the Survey Party Chief (“Survey Chief”) in the County’s Construction and Engineering Department. The Survey Chief estimated that it would take two staff members a minimum of twelve hours each to research the land records. The Survey Chief advised that research time could take up to two weeks and could involve records of other departments, *e.g.*, the

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<sup>1</sup> Later that same day, Complainant noted a correction to his request, stating that county road 19-08 was called “Eakles Mill Rd.”

Highway Department or Budget and Finance. Any potentially responsive records would then need to be reviewed by an assistant county attorney. Finally, the County noted that some of the records—plats or maps, for instance—would be oversized and therefore cost \$2 per page to copy. In sum, the County said, Complainant’s request “would require a complete title search, as well as research for sufficient evidence to support or dismiss a quiet title action.” The County was of the view that, due to its “previous course of interaction” with Complainant, efforts to narrow or refocus the request would not be “fruitful.” The County also expressed its view that its response “would be used either as a discovery device or an instrument of estoppel, or both.”

The County advised that it had established a fee policy for PIA requests about 19 years ago. The County charges \$15 per hour of staff time and, in accordance with the PIA,<sup>2</sup> does not charge for the first two hours. Regular-sized copies are charged at 15 cents per copy. The County averred that all of the staff members who would be involved in responding to Complainant’s PIA request are paid salaries “well in excess” of \$15 per hour. The County concluded it would likely take 62 hours of staff time to search for the relevant records and another three hours for an attorney to review and assemble them. Thus, search and review costs amounted to \$945. The County estimated that there would be 150 pages of deeds or title records and 20 pages of plats or oversized records, resulting in copying costs of \$62.50. Using these numbers, the County arrived at its total estimate of \$1,000 to \$1,500, and requested a deposit of \$1,000.

On October 24, 2020, the Board received Complainant’s reply to the County’s response. Complainant disagreed with the County’s estimate that it would take two days to search the land records for records responsive to his request. Complainant also disputed the copy fees, indicating that he preferred to receive electronic versions of the records. Complainant attached screenshots pulled from the 1936 atlas and a county road book and said he was surprised by the estimated fees given that it had taken Complainant “3 minutes and 20 seconds to locate the road record for this request.” He expressed his belief that the “real issue” was that the County “lacks a clear, concise, and objective standard of abandonment of roads,” and further opined that he has “provided compelling evidence that the fees being charged are not to find land records. The fees are to deter me from pursuing a request the county would prefer to refuse to answer.”

The County responded to Complainant’s reply on October 30, 2020, and advised that it does not have a “succinct tabulation of records of ‘all evidence, pictures, photos, acts in pais,’ etc., showing ownership or abandonment of what may or may not be a public roadway.” To support its contention that Complainant’s request involves a certain amount of complexity, the County cited several Maryland appellate cases addressing questions of ownership rights to and/or abandonment of real property. The County maintained that a “meaningful search” in response to Complainant’s PIA request would be expensive. The County also noted that the “roads being investigated by [Complainant] are the subject of several recent litigations in which [Complainant] is or was recently a party.”

### **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-

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<sup>2</sup> “The official custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection.” Md. Code Ann., Gen. Provisions § 4-206(c).

05(a).<sup>3</sup> A reasonable fee is “a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.” § 4-206(a)(3). While fee *estimates* can present challenges for review, *see, e.g.,* [PIACB 17-04 at 3 \(Nov. 22, 2016\)](#), this Board has evaluated the reasonableness of a fee estimate where the estimate constitutes a precise figure based on a breakdown of anticipated costs and the custodian has required prepayment of the estimate before providing the records. *See, e.g.,* [PIACB 21-01 at 3 \(Oct. 5, 2020\)](#); [PIACB 20-13 at 2 \(June 22, 2020\)](#). If the parties’ submissions give us “no reason to doubt” an estimate, [PIACB 20-13 at 2](#), the Board will not disturb it. If, on the other hand, the submissions show that an estimate is not reasonably related to the actual costs of a response, we will instruct the agency to modify or eliminate that portion of the estimate that does not accurately reflect the agency’s actual costs. *See, e.g.,* [PIACB 20-05 at 3-4 \(Nov. 7, 2019\)](#) (finding no clear basis for \$42 per CD reproduction charge and instructing agency to either eliminate from fee estimate or modify charge to reflect actual costs). Any conclusions about the reasonableness of a fee estimate for tasks not yet performed do not change the fact that the final fee for tasks *actually* performed must bear a reasonable relationship to the actual costs incurred by the agency. *See* [PIACB 21-01 at 3](#) (“[F]inal assessments of costs must be based on the time actually expended, at the rates of the staff who expended it.”).

The PIA permits a custodian to charge a reasonable fee for “the actual costs of the search for, preparation of, and reproduction of a public record in standard format, including media and mechanical processing costs.” § 406(b)(1)(ii). Staff and attorney costs are “actual costs” and must be “prorated for each individual’s salary and actual time attributable to the search for and preparation of a public record under this section.” § 406(b)(2). The PIA instructs that its provisions should be “construed in favor of allowing inspection of a public record, with *the least cost and least delay* to the person or governmental unit that requests the inspection.” § 4-103(b) (emphasis added). An agency should not profit from its production of public records in response to a PIA request. *See* 71 Md. Op. Att’y Gen. 318, 329 (1986) (opining that “the most appropriate method for arriving at the ‘reasonable charge’ is to charge the actual costs incurred by the Division,” and instructing that the “goal in this regard should be for the State neither to make a profit nor to bear a loss on the cost of providing information to the public”).

Here, the County has provided a detailed breakdown of its estimated fee of \$1,000 to \$1,500, and has required that Complainant pay a “deposit” of \$1,000 before the County begins the search and review process. We therefore are able to review the County’s fee estimate and determine whether it is reasonable. In doing so, we focus first on the precise PIA request itself. Complainant has asked the County to produce: “*All* documents, evidence, pictures, photos, acts in pais notoriety, deeds, county road book description, surveys and drawings that shows ‘[Eakles Mill Road]’ or ‘county road 19-08 or i424 or as shown in screenshot of 1936 atlas found on plats.net’ is owned by the county and or that road has not been abandoned.” (emphasis added). Complainant’s request is not limited in time. He seeks *all evidence* in the County’s possession that might bear on whether the County owns or has abandoned a particular road. At the very least, it would seem that locating this evidence would require searching records dating as far back as 1936 and quite possibly even further.<sup>4</sup> Nor does Complainant limit the type of record he desires;

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<sup>3</sup> Citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise indicated.

<sup>4</sup> The website cited by Complainant in his PIA request, “plats.net,” is a “system developed by the Maryland State Archives, the Administrative Office of the Courts and Maryland Circuit Court Clerks to preserve and make accessible all plats filed with the Land Office and the Circuit Courts of Maryland[.]”

instead he asks for all documents, pictures, photos, acts *in pais*,<sup>5</sup> deeds, surveys, and drawings, etc. Though Complainant avers that it took him only “3 minutes and 20 seconds” to locate the road in question on publicly available maps and plats, it is clear that he is seeking more than what is already publicly available. If he could satisfy his informational needs via the records available on the Maryland Archives website (plats.net), ostensibly he would not be making the PIA request he makes. Further, Complainant’s request requires the County to make a legal determination about whether any of these records tend to show ownership or abandonment of the road at issue, which, as the County points out, is not necessarily an easy determination to make.<sup>6</sup>

Given that Complainant’s PIA request is extremely broad both temporally and in the types of records sought, and that, in effect, Complainant’s request asks the custodian to research legal issues in order to determine what documents might be responsive, this Board does not at this point question the County’s estimate of 62 hours’ staff time to search for responsive records and three hours for review of those records. Complainant suggests that the “real issue” is that the County does not have a “clear, concise, and objective” method of cataloging information as it relates to the ownership or abandonment of roads. As we have said before, this Board generally is not in a position to micromanage the way in which an agency or public body organizes and stores its public records. See [PIACB 19-06 at 2 \(Nov. 27, 2018\)](#); see, e.g., [PIACB 20-11 at 2 \(Mar. 30, 2020\)](#) (rejecting argument that information sought “should be readily produced in a single, simple database”). In this case, the submissions before the Board give it no reason to question the County’s claim that it does not have a “succinct tabulation” of the records Complainant seeks or its explanation of the search required to find those records and the entities that such search might involve. See [PIACB 20-13 at 2](#) (“[C]ontrary to the complainant’s assertion that the County must have a ‘listing or file specifically of inmates turned over to ICE,’ the County explains that it does not maintain such a list, but that, instead, compiling all of the requested information will require a manual review of a large number of paper files.”). Again, Complainant seeks *all* record evidence, in whatever form, and dating back potentially hundreds of years, relating to ownership of a particular road. It is not surprising that a search to satisfy such an exhaustive request might take a

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Plats.net, <https://plats.msa.maryland.gov/pages/index.aspx> (last visited Nov. 5, 2020). For Washington County, there are records that date back as far as 1724.

<sup>5</sup> “An act performed out of court, such as a deed made between two parties on the land being transferred.” Black’s Law Dictionary (8th ed. 2004).

<sup>6</sup> See *Chevy Chase Land Co. v. U.S.*, 355 Md. 110, 159 (1999) (“Since there is rarely direct evidence of an intent to abandon, the question of abandonment hinges upon the manifestations (or lack thereof) of an intent to abandon, and ‘the issue in most cases is reduced to the question of what factors or circumstances are sufficient to justify an inference that there existed an intent to abandon.’”); see, e.g., *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 199 (2011) (“In order to survive summary judgment on its abandonment defense, Cartage would have to point to evidence from which a fact-finder could reasonably infer that Baer, or one of his predecessors in title, had performed an “ ‘act clearly indicative of an intention to abandon the right....’ ” *Chevy Chase Land Co.*, [355 Md. at 159, 733 A.2d 1055](#). There is no such evidence for the simple reason that all of the material physical actions pertaining to the easement, namely, planting the screen of trees and placing the log barrier, were performed by Cartage or its predecessors, not Baer and his. Even taking Richmond’s testimony in the light most favorable to Cartage, Baer’s participation in the variance hearing does not rise to an act “of such a decisive character” as to indicate an intent to abandon the right of way.”).

significant amount of time and, given Complainant's assertions of "abandonment" by the County and request for "evidence," that counsel will review any potentially responsive records found.

Turning to the rate charged for search and review, we have, in the past, cautioned against using a "flat-fee" model when it comes to calculating the actual costs of responding to a PIA request. [PIACB 19-12 at 3 n.4 \(Aug. 7, 2019\)](#). Instead, we have repeatedly explained that any fees assessed must be based on the amount of time expended and the hourly rates of the staff who actually expended it, and the actual costs of reproducing the records. § 4-206(b); [PIACB 17-06 at 3-4 \(Nov. 28, 2016\)](#). However, here the County has assessed the search and review costs at \$15 per hour regardless of the staff who performs them, and has averred that the staff who will conduct this particular search and review are paid "well in excess" of that rate. We do not doubt that this is true. A person paid \$15 per hour earns a gross salary of \$31,200 per year, assuming he or she works a full 40-hour week. Surely the Survey Chief and assistant county attorney, both trained professionals, are paid more than this.<sup>7</sup> Any error in application of the PIA's fee provisions is thus made in Complainant's favor and therefore does not warrant a reduction of or modification to the fee estimate. See [PIACB 20-05 at 3](#) (finding hourly charge reasonable where it was lower than actual salary of reviewing staff); cf. [PIACB 17-06 at 4](#) (finding \$2 per page fee reasonable; noting that use of separate fees for copying, search, and preparation would have yielded higher cost and concluding "[t]o the extent that the fee charged might not be reasonably related to BCPD's actual costs, it errs in favor of the applicant and, therefore, satisfies the goal of the PIA that an agency not profit from the fee charged"). We find that the County's estimated fee for search and review of responsive records is reasonable.

Though we do not necessarily find the reproduction fees unreasonable *per se*, we do urge the County to produce any responsive records in electronic format, as Complainant has asked. While there may still be a fee associated with doing so—fees more properly assessed as staff costs as opposed to copying costs—we suspect any fee will be lower than the estimated \$62.50. See [PIACB 20-05 at 3](#) (encouraging production of responsive records in electronic form and noting "[a]lthough there may be more staff time involved with this method, we suspect it will result in a lower overall fee in situations . . . where there are voluminous paper records and the agency is charging a relatively high per page copying fee"). We also remind the County that the fees ultimately charged for search, review, and reproduction once the response is complete must be based on the *actual* costs incurred. [PIACB 21-01 at 3](#). If the search and review process takes less time than estimated, a refund of the difference between the \$1,000 deposit paid and actual costs incurred would be in order. [PIACB 20-11 at 3](#).

Finally, and to the extent that (1) Complainant suggests that the County has artificially inflated its estimated fee in order to deter his PIA requests, and (2) the County has alluded to the litigious reasons it believes are motivating Complainant's requests, we note—as we have on prior occasions, [PIACB 17-07 at 2 \(Feb. 28, 2017\)](#)—that issues aside from cost may arise in this case. As in [PIACB 17-07](#), "the submissions raise issues indicating mutual distrust that lie outside of our jurisdiction and that seem likely to persist between these parties." To that end, we encourage the parties to seek the services of the Public Access Ombudsman, should further, non-fee related disputes occur. And, despite the County's assertion that engaging in efforts to refine and narrow

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<sup>7</sup> A search of the salaries of the individual employees named in the submissions confirms that this is correct. See Washington County, Maryland Employee Salaries, <https://openpayrolls.com/county/washington-county-md/> (last visited November 6, 2020).

Complainant's PIA request would not be "fruitful," we also encourage the parties to communicate with the goal of producing the specific public records Complainant seeks with the least cost in time and money to both. One way to reduce the fees estimated here might be for Complainant to provide a date range and identify the records that he is looking for by the type of document, rather than the legal proposition he wishes to prove.

### **Conclusion**

The submissions do not establish that the fee estimated by the County is unreasonable. However, in light of Complainant's stated desire to receive an electronic version of any responsive records rather than hard copies, the County should either eliminate the copying cost for the documents that can be scanned or modify the cost to reflect the staff time required to scan the records. As always, the County's final assessment must be based on the time actually expended and costs actually incurred. If Complainant has grounds to believe that the final fee charged is more than the costs the County actually incurred, he may file a new complaint that specifies that basis.

Public Information Act Compliance Board

*John H. West, III, Esq., Chair*  
*Christopher Eddings*  
*Deborah Moore-Carter*