STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 21-12

May 27, 2021
City of Brunswick, Custodian
Eric Beasley, Complainant

The City of Brunswick ("City") charged the complainant $950 to respond to a Public Information Act ("PIA") request. The complainant has alleged that this fee is unreasonable. To support his allegation, the complainant has attached several emails that document the history of the request and the records that the City produced in response to his request. The City, through its City Clerk, responded and provided a breakdown of the fees assessed.

Background

On August 13, 2019, Siobhan Lynch submitted eleven PIA requests to the City.[1] The City aggregated the requests and summarized them as follows:

- "All communication, to include email, text messages, phone logs, generated by the Brunswick Police Department related to Eric Beasley, Elyse Beasley, Zane Beasley, and any report of child abuse perpetuated by Elyse Beasley as reported by a mandatory reporter between: 8/9/2019 and 8/14/2019";

- "All communication, to include email, text messages, phone logs, generated by the Brunswick Police Department related to Eric Beasley or Elyse Beasley between" four short, discrete time periods in 2018 and 2019; and

- "All communication, to include email, text messages, phone logs, sent by Margaret 'Beth' Johnson to any member of the Brunswick Police Department between" six discrete time periods in 2018 and 2019.

On September 10, 2019, the City responded that it had completed the search and review process, and that a total fee of $950 was due before the records would be released.

More than eighteen months later, on March 16, 2021, the complainant contacted the City and asked to arrange a time to deliver a check for the fees so that he could receive the records. The

[1] The complainant was not the original requester of the records from the City.

City initially indicated that it would require a wholly new PIA request in order to produce the records, but ultimately accepted a request for "[a]ll documents responsive to the PIA requests made on Aug 13, 2019." On March 19, 2021, the City sent the complainant an email to let him know that a packet containing the records was waiting for him at the front desk of City Hall. After retrieving and reviewing the records, the complainant submitted his complaint alleging that the $950 fee was unreasonable for several reasons, specifically that: (1) "the released documents contain[ed] numerous duplicates and information not within the scope of the requests for information" and he was charged for review of all of it; (2) the City produced police reports, which were "not included in the original requests"; and (3) "the City arbitrarily merged multiple PIA requests into a single PIA request with no justification."

The City responded by explaining that seventeen police department employees, including the Chief, the Captain, lieutenants, and officers and administrative staff were involved in responding to the PIA request. The City charges a standard rate of $25 per hour of staff time, a rate that is "significantly lower than some actual rates."[2] A total of twelve hours of staff time were charged, and the City provided a breakdown of how that staff time was allocated.[3] The City ultimately charged the complainant $300 for police department employee time. The City Attorney then spent two hours reviewing the documents at $325 per hour for a total of $650.[4] The City acknowledged that its response contained duplicative documents but contended that each employee searched for records individually and that "[s]taff does not consolidate documents in a PIA request, but rather, provides all applicable documentation." The City further acknowledged that the complainant was charged for review of the same document multiple times, but stated that "just because a document or email began as the same document doesn't mean it wasn't altered in any way which would require legal review (i.e. the same email with different comments added by the sender/recipient)." Regarding the production of police reports, the City responded by noting that the request sought "all communication to include email, text messages, phone logs" and that

---

[2] The complainant does not allege that the City's $25 hourly rate for staff time is unreasonable and we therefore do not review it. We do note, however, that this rate likely does not reflect the "actual costs" of preparing the response. Md. Code Ann., Gen. Provisions § 4-206(b)(2); *cf.* PIACB 17-06 at 3-4 (Nov. 28, 2016) (addressing a per-page fee calculation). An hourly rate of $25 works out to $52,000 annually, assuming a full forty-hour workweek. In its response to the complaint, the City avers that, for some department employees, this $25 hourly rate is "significantly lower" than the hourly rate based on their actual salaries. Police department salary information from 2017 is available online. *See* City of Brunswick Salaries, https://govsalaries.com/salaries/MD/city-of-brunswick?page=1 (last visited May 5, 2021). A review of those salaries indicates that—at least in 2017—a majority of police department employees actually earned less than $52,000 per year. However, both the Chief of Police and the Captain, who was responsible for orchestrating the response to the PIA requests here, did earn significantly more than that and both spent a significant amount of time—three and a half and two hours, respectively—responding to the PIA requests. Given the limited and dated salary information available to us, we could not determine, in any event, how closely the actual costs of staff time track the City's flat $25 hourly rate. But, going forward the City might want to consider assessing costs by using the actual prorated salary of the department employees who respond to PIA requests instead.

[3] The specific breakdown of the search time was: Chief of Police, three and a half hours; the Captain, two hours; two lieutenants, one for fifteen minutes, one for one hour; two corporals, both one hour each; ten police officers, one for five minutes, four for fifteen minutes each, three for thirty minutes each, and two for one hour each; and an administrator, forty-five minutes.

[4] The City did not charge the complainant for copies.

staff interpreted "communication" to cover police reports. Finally, the City indicated that it aggregated the requests because they were of a similar nature and submitted together on the same date, and that a requester "cannot submit in this manner simply to avoid going over the allotted 2 hours of staff time."

We shall address the complainant's allegations in reverse order, beginning with the allegation related to the aggregation of the PIA requests. Ultimately, we find that the $950 fee is unreasonable to the extent that it reflects costs assessed for review of records that were completely duplicative—e.g., review of the exact same email or exact same police report multiple times—or clearly not responsive to the request. As explained below, we shall order that the City refund the complainant $195 of the $950 fee assessed.

Analysis

We are 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).[5] 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), and may reflect "the actual costs of the search for, preparation of, and reproduction of a public record in standard format, including media and mechanical processing costs," § 4-206(b)(1)(ii). Staff and attorney review 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." § 4-206(b)(2). The PIA instructs that its provisions must 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). 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" 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"). If we find that a custodian charged an unreasonable fee under § 4-206, we must "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).

A. Aggregation of Requests

The complainant contends that the City should not have aggregated the original separate PIA requests and that, because it did, it unreasonably assessed fees for more hours of search and review time than it otherwise would have. The PIA does not explicitly address the practice of aggregating multiple requests from the same requester. As the PIA Manual explains, on "rare occasion[s]," a requester might "attempt to artificially break a large request into a series of smaller requests in order to obtain two free hours searching for each request," thereby circumventing the assessment of a higher fee. Maryland Public Information Act Manual 7-2 (15th ed. Nov. 2020), https://www.marylandattorneygeneral.gov/OpenGov%20Documents/Chapter7.pdf. While noting that, "[i]f that purpose is clear, it seems reasonable for the agency to aggregate those requests as a single request with the appropriate fee," the PIA Manual instructs that "an agency should not

[5] Citations are to the General Provisions Article of Maryland's Annotated Code, unless otherwise indicated.

artificially aggregate separate requests to increase the fee so as to discourage those requests." *Id.* at 7-2 – 7-3.

The issue of request aggregation has arisen in connection with at least two complaints we have reviewed in the past.[6] The more recent matter involved two requests to the same agency made a day apart. The first sought all email communications between agency employees and three specific email addresses over a period of three years; the second sought such communications over a period of four years regarding one of the email addresses. PIACB 21-01 at 1 (Oct. 5, 2020). The complainant in that case did not allege that agency acted unreasonably in aggregating his requests and, "[g]iven the close relationship of the two requests, both in time and the records sought," neither did we. *Id.* at 1 & n.2. In the second matter, PIACB 18-08 (Mar. 7, 2018), the requester sent four separate emails on two different days about one week apart seeking, among other things, "all emails and/or other documents that referred or related to him from eleven different [agency] employees for various periods of time." The complainant there did contend that the aggregation of his requests was unreasonable, but we concluded otherwise, stating: "Because the requests were sent within a short period of time and cover the same subject matter, i.e., emails pertaining to Complainant, it appears reasonable for the agency to have aggregated them." *Id.* at 1-2 & n.1. Thus, where multiple requests are submitted by the same requester to the same agency within a short timeframe, and where those requests seek records that are very similar in nature and substance, aggregation of those requests will generally be reasonable insofar as any fees assessed are concerned.

Here, the requests were all made on the same day to the same agency. All of the requests sought "all communication, to include email, text messages, phone logs," generated by the City's police department at various points in time during 2018 and 2019 regarding four specific individuals. Such records are likely to be found in the same places—e.g., the email accounts and phones of department employees—and consolidating the search process for the sake of efficiency makes sense. We do note that there is no indication that the original requester "artificially" and intentionally separated the requests in order to take advantage of the law's requirement that agencies provide two free hours of search and review time for each PIA request; rather it appears that the requester simply made a separate request for each of the eleven relevant timeframes. However, given that the requests were all submitted on the same day and, given the interrelated nature of the records sought, we do not find that the City acted unreasonably when it aggregated the requests for purposes of producing its response and assessing costs related to that response.

[6] Though there may be some question as to whether we currently have authority to review every complaint about request aggregation, it is fairly clear that we do have authority here. This particular complaint about request aggregation is clearly tied to whether the $950 fee that the City charged was reasonable. The complainant's allegation is essentially that, had the City not aggregated the requests, it would have provided more free hours preparing the responses and thus the fee would have been lower. On the other hand, had his allegation been, for example, that the decision to aggregate the requests led the City to conduct an inadequate search for records, we would lack jurisdiction to entertain it. *Compare, e.g.*, PIACB 19-04 at 2 (Nov. 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.") (emphasis original).

B. Inclusion of Police Reports in Response

The complainant also alleges that the City should not have included police reports relating to five distinct incidents in its response because the reports were non-responsive to the PIA request. He alleges that the $950 fee for the search for and review of the records produced by the City in its response was unreasonable in part because the fee included costs for search and review of these non-responsive reports.[7] The City responds that police department staff interpreted the requests to include police reports as a type of communication, and that legal review permitted inclusion of the reports in the City's response.

Initially, we must resolve the question of whether or not it was reasonable for the City to interpret the requests in the way that it did. If it was, then the inclusion of the police reports in the City's response—and, more importantly, the City's assessment of costs for search and review of those reports—was likely also reasonable. To answer this question, we look to the language of the requests. The requests asked for "all communications, to include email, text messages, phone logs" either generated by the Brunswick Police Department and involving Eric, Elyse, or Zane Beasley, or "sent by Margaret 'Beth' Johnson to any member of the Brunswick Police Department." While the requests sought "all communication"—and a police report certainly could be construed as a type of communication—the requests also clarified the *type* of communication sought, i.e., "email, text messages, phone logs." It is less clear that a police report, taken as a whole, falls into this category of communication. However, the narrative portion of a police report might contain the types of communication, or references thereto, specified in the requests. That is, a report might contain a communication made by Beth Johnson to a member of the police department, or a communication from one officer to another regarding Eric or Elyse Beasley. Given a custodian's responsibility to "conduct a search in good faith that is reasonably designed to capture all responsive records," *Glass v. Anne Arundel Co.*, 453 Md. 201, 232 (2017), and an agency's ability to recover the actual costs associated with that search, § 4-206(b)(1), we cannot say that it was unreasonable for the City to interpret the requests as potentially encompassing information that might be contained in police reports. It was therefore not unreasonable for the City to include the reports both in its search and among the documents provided to the City Attorney for review, and to assess the complainant the actual costs of the search and review of these reports.[8]

---

[7] We review this allegation only so far as it pertains to the reasonableness of the costs assessed and therefore consider the responsiveness of the police reports for this narrow purpose only. *Cf.* PIACB 19-04 at 2 n.2 (Nov. 27, 2018) ("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.").

[8] The responsiveness of the evidence and investigative records connected to case number 2018-011497, *infra* note 10—i.e., the email evidence of alleged harassment and a summons and response issued during the investigation—is a closer question. It is not clear whether the emails were "sent" to the department as evidence by Beth Johnson, in which case they would certainly be responsive. Given that these records are not clearly non-responsive and mindful of our narrow purpose in even addressing the question of responsiveness in the first place, we decline to find that it was unreasonable for the City to include these records when assessing costs for its response.

C. Duplication of Records and Review of Records in Response

The electronic version of the City's response—which was provided by the complainant along with his complaint—comprises 252 PDF pages. Some 88 of these pages are blank.[9] Seventeen pages simply contain the name of a police department employee and the results of their search, e.g., "Joel Storms No Documentation/Communication" or "Jacquelyn Druktenis See Attached 4 emails." The multi-page email dated August 14, 2020, from Captain Bryan Brown to police department employees with information about the PIA request and search instructions was produced in the response at least three times. As discussed above, the City also produced reports related to five incidents that occurred in 2018 and 2019 and involved the individuals named in the PIA request; several of these reports were produced more than once in the response—for example, the response contains three identical copies of reports written by Corporal Handler on December 9, 2018, (regarding an alleged assault) and December 12, 2018, (regarding alleged harassment). Included with the reports are what appear to be evidentiary and investigative records collected by police related to an allegation of electronic mail harassment.[10]

Once the City had collected the documents from the individual department employees, it appears that it simply handed the entire collection over to the City Attorney for review—the City Attorney who is paid $325 per hour, or thirteen times as much as the City charged for department employees' time. The City indicates that it took the City Attorney two hours to complete the legal review of the collection of documents given to him. This collection included the following: nine emails from individual officers to Captain Brown about the results of their search for records—these records were clearly not responsive to the PIA request as they were generated outside of the timeframe provided in the request; eleven emails that were completely identical to other emails in the collection; and five police reports that were wholly duplicative of other police reports in the collection. All told, among the roughly 147 pages of records that actually contained substantive information potentially in need of review there were twenty-seven emails that were responsive to the PIA request, five police reports that were arguably responsive to the PIA request, and nine pages of evidentiary and investigative records related to one of those reports.[11] Most of those emails were no longer than a paragraph or two—indeed, some were as short as a line or two—and most of those reports contained one to two pages of narrative information, along with the information populated in the standard fields found in each report. Putting the duplicative and clearly non-responsive documents aside, it is difficult to believe that the City Attorney would have spent two hours reviewing these twenty-seven short emails, five police reports, and nine pages of evidentiary and investigative records.

In our view, the City's position that "[s]taff does not consolidate documents in a PIA request, but rather, provides all applicable documentation," is not a reasonable one, especially in light of the gross disparity between the $25 per hour it charges for staff time and the $325 per hour

[9] It is unclear to us whether the blank pages are a result of the complainant's having scanned the hardcopies for our review or if the hardcopy response contained these blank pages.

[10] Specifically, the City included with its response copies of the allegedly harassing emails, a "Summons for Records in Aid of Information" to Wix.com for IP addresses and information related to the email addresses that sent those emails, and the information provided by Wix.com in response to that summons.

[11] Some of the evidentiary and investigative records were duplicated in the response as well.

it charges for City Attorney time. The City should have used staff time charged at this significantly lower rate to remove any documents that were completely duplicative and/or clearly not responsive (e.g., because they clearly fell outside the requested timeframe) so that the City Attorney did not spend time reviewing these things at much greater expense. *See* § 4-103(b) (PIA must 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") (emphasis added); *see also* PIACB 20-04 at 2 (Nov. 25, 2019) ("[W]here it is clear that a custodian has the capability and resources to perform response-related work 'in house' for less expense than engaging a contractor, the PIA likely would not permit the custodian to charge the requestor for the contractor's costlier fee."). In a sense, such a practice represents the flipside of aggregating PIA requests: just as requesters should not receive free labor to which they are not entitled by artificially separating PIA requests, requesters also should not be charged for duplicative effort and unnecessary review where a less costly method of preparing a response is available.

We also note that the record duplication was partially a product of the search method employed by the City—i.e., asking each of seventeen employees to search their email accounts and phones individually for responsive records. Many of the emails produced were sent to more than one person within the department; a good number appear to have been sent to the entire department. It makes sense then, that several employees might produce the exact same email after having conducted their search. We understand that the City is a small jurisdiction and that its police department might not have the staff and/or budget to conduct a more sophisticated search of an email archive. *See, e.g.*, PIACB 21-01 at 2 (Oct. 5, 2020) (noting that the State Highway Administration narrowed its collection of responsive emails from 3,511 to 305 "through an electronic de-duplication process in order to reduce review time"). However, in this particular case, which did not involve a voluminous amount of records, there is no reason that the City Attorney should have been asked to review multiple copies of the exact same emails and the exact same reports, or records that were clearly not responsive. *Cf.* PIACB 16-05 at 3 (June 1, 2016) (observing that some emails were sent to multiple attorneys and that "[a]s a result, a number of records underwent multiple reviews and were produced in multiple copies," and ordering a reduction in fee to "account for that duplication of effort"). We therefore find that cost associated with the review of duplicative and clearly non-responsive records is not reasonable.

Having determined that the City should not have assessed the complainant costs for review of duplicative and clearly non-responsive records, the question remains as to the appropriate fee reduction. *See* § 4-1A-04(a)(3). The emails that were clearly not responsive, the duplicative emails, and the duplicative police reports and investigatory records comprise about thirty percent of the City's substantive response. Thus, it would seem fair to reduce the fee assessed for the City Attorney's review of the response by thirty percent, or $195. We therefore order the City to provide the complainant with a refund in the amount of $195.

Conclusion

Based on the submissions, we find that it was reasonable for the City to aggregate the PIA requests in this matter so that the fee assessed included two free hours of search and review time as opposed to the twenty-two hours that would have resulted had each request been treated separately. We also find that it was reasonable for the City to include the police reports and associated evidentiary and investigative records in the search and review process. However, we find that the $950 fee assessed by the City was unreasonable to the extent that it included charges

for duplicative effort and review of clearly non-responsive records, and therefore order that the fee be reduced by $195.

Public Information Act Compliance Board*

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

* Board member Darren S. Wigfield did not participate in the preparation or issuance of this opinion.