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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 22-07

February 3, 2022

Department of Budget & Management, Central Collections Unit, Custodian
John Galbreath, Complainant

The complainant, John Galbreath, submitted two Public Information Act (“PIA”) requests to the Central Collections Unit (“CCU”) of the Department of Budget and Management (“DBM”) seeking records related to debt collection investigations. DBM-CCU denied both requests but nevertheless, in the course of doing so, provided the complainant with estimates as to how much it would cost to fulfill his requests. The complainant alleges that both of those fee estimates are unreasonable. DBM-CCU responds that the complaint is moot because the complainant’s PIA requests were denied and that, in any event, the fee estimates were reasonable given the breadth of the complainant’s request and the confidential nature of the information the requested records contain. For the reasons outlined below, we dismiss the complaint because the matter is not ripe for our review.

Background

On August 12, 2021, the complainant sent a PIA request to DBM-CCU seeking the following records:

- Communications between alleged debtors and [DBM] or [CCU];
- Communications within DBM or CCU concerning the alleged debtors/debts; and
- Communications between DBM or CCU and any Maryland or Federal agency/governmental unit concerning the alleged debtors/debts.

The complainant limited his request to only those cases in which the alleged debtor requested an investigation after receiving notice of a delinquency and sought only records from within the past five years. DBM-CCU responded on August 23, 2021, and denied the “bulk” of the complainant’s request under the PIA’s exemption for information about the finances of an individual. *See* § 4-336(b)¹ (unless requester is a “person in interest,” custodian required to deny inspection of “the part of a public record that contains information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or

¹ Unless otherwise indicated, citations are to the General Provisions Article of Maryland’s Annotated Code.

creditworthiness”).² DBM-CCU’s response indicated that there were over 1,500 debtors with records responsive to the complainant’s PIA request, and denied inspection for all but those records related to the complainant’s own account.

After receiving DBM-CCU’s denial letter, the complainant amended his request. He requested the same records, but indicated that the amount of the alleged debt and any information that would identify the alleged debtor—e.g., name, address, telephone number, social security number, or EIN—could be redacted. In a letter dated September 9, 2021, the DBM-CCU provided the complainant with the records from his own account that were responsive to his request and denied inspection of the remaining records, stating that they contained “confidential financial information of individuals.” DBM-CCU also advised that, “[a]ssuming arguendo that [the complainant is] entitled to inspect or copy the requested documents after the appropriate redactions of all personal information of individuals and all confidential financial information of individuals,” the estimated fee for doing so would be \$221,367.23. That estimate represented an anticipated 10,893 hours of staff time, charged at prorated salaries of \$16.50 and \$31 per hour, and copying costs of 15 cents per page. DBM-CCU enclosed a breakdown of anticipated costs with its letter.

On September 22, 2021, the complainant submitted his second PIA request to DBM-CCU. This time, the complainant requested three specific records from the files of alleged debtors who had first requested a debt investigation between May 2018 and May 2020. The three records were:

- The initial [Tax Refund Intercept Program (“TRIP”)] notice sent to the alleged debtor;
- The letter from the alleged debtor that first requests an investigation; and
- The investigation report sent to the alleged debtor.

As with his amended first request, the complainant indicated that the amount of the alleged debt could be redacted from the records, along with the information that identifies the alleged debtor. DBM-CCU again denied the complainant’s PIA request, citing § 4-336(b). DBM-CCU also provided a reduced fee estimate of \$97,100.18 for production of redacted records in the event that the complainant was entitled to inspect them.

The complainant filed his complaint on December 7, 2021, challenging both fee estimates. He first argues that DBM-CCU violated the law in handling his own alleged debt case and that it is “seek[ing] to avoid review of whether it similarly violated the law in other debt cases” by charging him an “exorbitant fee” for the records he requested. He further alleges that the amount of time that DBM-CCU estimated it would take to search for and obtain the requested records is inflated. The complainant also indicates that he would accept electronic copies of the records to reduce the copying costs.

DMB-CCU responds that this Board does not have authority to review DBM-CCU’s substantive denial of the complainant’s PIA requests, and that it is “not necessary” for the Board to review the fee estimates DBM-CCU provided in its denial letters because, ultimately, it does not intend to produce the records for inspection. DBM-CCU explains that it provided those cost

² The PIA defines a “person in interest” as “a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit.” § 4-101(g).

estimates “as a courtesy, should a court determine Complainant was entitled to inspect the requested documents, with necessary and voluminous redactions to protect the confidential financial information of th[e] individuals.” DBM-CCU nevertheless defends its cost estimates.

First, it explains that it does not keep electronic copies of the documents the complainant seeks, and that, regarding his first request, there were 3,631 files that would contain the types of records requested. To arrive at its estimates, DBM-CCU tracked the amount of time it took for a CCU agent to locate one of the files, search through the documents it contained to find the responsive records, and scan those documents to create an electronic copy. According to DBM-CCU, it took the agent two hours and fifteen minutes to complete these tasks. Reasoning that it would take the CCU agent the same amount of time to locate, search through, and scan the remaining files, DBM-CCU determined it would take the agent a total of 8,169.75 hours. Multiplied by the CCU agent’s prorated hourly salary of \$16.50 and subtracting two hours’ time,³ DBM-CCU estimated the cost for the agent’s time to be \$134,767.88. In addition to timing the CCU agent, DBM-CCU also tracked the amount of time it took counsel to review and redact the records from one file—45 minutes. DBM-CCU again used that figure to estimate the time it would take to review and redact all of the records and arrived at 2,723.25 hours. Multiplied by counsel’s prorated hourly salary of \$31 per hour, DBM-CCU estimated the cost for counsel’s time would be \$84,420.75. DBM-CCU explained that copying costs (at 15 cents per page) would amount to \$2,178.60, thus bringing the estimated total cost of responding to the complainant’s first PIA request to \$221,367.23.

Regarding the complainant’s second PIA request, which sought records over a timespan of three years rather than five, DBM-CCU explains that there are still 1,593 files that would contain responsive records. DBM-CCU indicates that, for the complainant’s second request, the responsive records are the same and thus the amount of time anticipated to search for and prepare the records from one file would also be the same—i.e., two hours and fifteen minutes of the CCU agent’s time and 45 minutes of counsel’s time. Applying these figures, as well as copying costs, to 1,593 files, DBM-CCU estimated that a response to the complainant’s second request would cost \$97,100.18.

In a reply, the complainant argues that this Board has jurisdiction to review DBM-CCU’s estimated fees because the statute does not make provision of records (or an intent to provide records) a prerequisite for review. Rather, he maintains that this Board can issue an opinion and order “if the fee is more than \$350 or the applicant alleges that the fee is unreasonable.” He also contends that DMB-CCU’s assertion that it will take three hours of staff time (presumably between both the CCU agent and counsel) to search for and prepare the records is unreasonable. He questions whether it would (or should) really take this amount of time to access the relevant files, find three relevant documents within those files, and then scan, review, and redact those documents. The complainant suggests that there are “probably not that many documents in a given debtor’s file” and that the documents are “likely arranged in chronological order.” Lastly, the complainant argues that his second request is “clearly narrower” than his first, both temporally and in terms of the actual records sought. He notes that, unlike his first request, his second PIA request

³ See § 4-206(c), “[t]he 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.”

asked for three specific documents from each debtor's file, and did not seek any communications from within DBM or CCU, or between DMB or CCU and State or federal agencies. Thus, he contends that it should take DBM-CCU less time to search for and prepare the responsive records.

Analysis

We are authorized to review and resolve complaints that allege that a records custodian has charged an unreasonable fee higher than \$350 to respond to a request for public records. § 4-1A-05(a). A reasonable fee is “a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit” when it responds to a PIA request, § 4-206(a)(3), and it should not exceed “the actual costs of the search for, preparation of, and reproduction of a public record,” § 4-206(b)(1). “Actual costs” may include media and copying costs, as well as the cost of staff and attorney review, which must be “prorated for each individual’s salary and actual time attributable to the search for and preparation of a public record.” § 4-206(b). If we conclude that a custodian has charged an unreasonable fee as the PIA defines it, we are to “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).

The language of the PIA’s fee provisions might suggest both that custodians calculate and charge fees only after the work of responding to a PIA request is complete and the records ready for production, and that, in turn, our review of fees charged under the PIA is limited to such post-production scenarios. *See* § 4-206(b)(1)(ii) and (b)(2) (custodian may charge a reasonable fee for “actual costs” of responding to PIA request measured by “actual time attributable to the search for and preparation of a public record,” (emphases added)). Indeed, we are tasked with resolving allegations that a custodian has “charged an unreasonable fee under § 4-206 of [the PIA],” and § 4-206 does not, on its face, appear to provide for review of fees estimated in anticipation of responding to a PIA request. *Compare* § 4-203(b)(2)(ii) (where custodian reasonably believes it will take more than ten working days to produce a public record, custodian must, among other things, provide “an estimate of the range of fees that may be charged”). However, in light of the fact that custodians routinely demand prepayment of fees prior to actually performing the work of responding to a PIA request, *Glass v. Anne Arundel County*, 453 Md. 201, 212-13 (2017), it seems to us that the operative word is not “fee” or “estimated fee,” but rather whether the fee or estimated fee was “charged.”

The PIA does not define the words “fee,” “estimate,” or “charged.” In the ordinary sense, a fee is understood to mean “a fixed charge”⁴ or “[a] charge for labor or services, esp. professional services,” Black’s Law Dictionary 647 (8th ed. 2004). An “estimate” is “a rough or approximate calculation,” or “a statement of the cost of work to be done.”⁵ And, to “charge” typically means “to fix or ask as fee or payment” or “to ask payment of (a person).”⁶ *See also* Black’s Law Dictionary 248 (8th ed. 2004) (“charge” means to “demand a fee; to bill”). Clearly, we have authority to review cases where a custodian has “ask[ed] payment of” a requester for the cost of

⁴ Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/fee>.

⁵ Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/estimate>.

⁶ Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/charge>.

responding to a PIA request—i.e., the “fixed charge” for the “labor” (and copying or other media costs) the response requires. *See* § 4-1A-04(a)(1) (Board to review and resolve complaints that a custodian has charged an unreasonable fee under the PIA). The question is, when the fee charged is an estimated fee—i.e., a “rough or approximate calculation” of the cost of a response or a “statement of the cost of work to be done”—whether that alters the landscape such that we are deprived of authority to review a complaint. We believe the answer is no. Indeed, many of the complaints to this Board involve fee estimates assessed for work not yet done. *See, e.g.*, PIACB 21-14 (July 23, 2021); PIACB 21-01 (Oct. 5, 2020); PIACB 20-13 (June 22, 2020). In those cases where a custodian has required prepayment of an estimated fee that is based on a detailed breakdown of anticipated actual costs, we have evaluated the estimate’s reasonableness, reasoning that the agency has “‘charged a fee’ within the meaning of GP § 4-206.” PIACB 19-01 at 3 (Sept. 24, 2018); *see also* PIACB 17-04 at 3 n.3 (Nov. 22, 2016). Put differently, the agency has “ask[ed] payment of” a requester—payment of the “rough or approximate calculation” of the “work to be done” to respond to the PIA request. And, if a requester unable or unwilling to pay a fee estimate, he or she would have no other opportunity to challenge the fee charged. No records would be produced and no actual costs would be assessed. To conclude that we cannot review and resolve these complaints would leave a significant number of requesters without recourse to dispute the fee. Out of the 37 substantive opinions we have issued since inception, 21 have involved complaints about fee estimates.⁷ Clearly, a substantial number of custodians engage in the practice of charging requesters for PIA responses before the bulk of the work is done. In our view, the fees charged by the custodians who choose to do this are generally subject to our review and resolution when those fees exceed \$350 and a requester alleges that the fees are unreasonable.

This case, however, presents a different factual scenario—one that, as we see it, contains a fundamental and dispositive difference. While the breakdown of costs is indeed detailed and specific, DBM-CCU has not demanded payment, or even asked the complainant to agree to pay the fee at some later point in time. In fact, DBM-CCU does not expect payment at any point, because it does not intend to produce any records beyond those which it has already produced. There are significant and necessary intervening events that must occur before the complainant’s allegations are ripe for our review, including, apparently, an order with legal force and effect that directs DBM-CCU to produce the records the complainant seeks. We do not, at this time, have the authority to issue such an order. Because DBM-CCU would persist in denying the complainant access to the records regardless of whether or not we might order it to reduce its fee estimates, review here, at this point, would be meaningless. The complainant suggests that we have authority to review a matter “if the fee is more than \$350 or the applicant alleges that the fee is unreasonable.” But the complainant is overlooking a crucial word in the statute: we are to “receive, review, and . . . resolve complaints . . . alleging that a custodian *charged* an unreasonable

⁷ To be clear, we did not review and resolve each of these 21 complaints. Early in our existence, we generally dismissed as premature allegations of unreasonable fee estimates, even where prepayment was required. *See, e.g.*, PIACB 17-12 (May 18, 2017). Even in those early cases, however, we recognized that “[a]n argument could be made that, when a governmental unit requires payment of the estimated fee prior to providing the records, this Board could consider the matter under the auspices of the governmental unit having charged a fee.” PIACB 17-04 at 3 n.3 (Nov. 22, 2016). More recently our general practice—one we think more sound—has been to review and resolve those cases where the prepayment of a precise estimated fee is required.

fee under § 4-206 of [the PIA].” § 4-1A-04(a)(1) (emphasis added). Here, DBM-CCU has not “charged” a fee. It has not required the complainant to prepay the estimates in whole or in part because DBM-CCU does not intend to produce any records for inspection. Because DBM-CCU has not “charged a fee,” we dismiss the complaint as not ripe for our review.

We do, however, have some observations based on the information provided to us in the submissions. On a broader level, we take note of DBM-CCU’s suggestion that the CCU agent would need to search through “millions of files” to locate those that might contain responsive records, and that this is one of the justifications for DBM-CCU’s estimate that the agent would need two hours and fifteen minutes *per file* to search for, locate, and copy the records. While issues of file management and records retention generally fall outside the narrow scope of our authority, there is some overlap and we stress that each unit of State government is required to have a “program for the continual, economical, and efficient management of the records of the unit.” Md. Code Ann., State Gov’t § 10-610(a)(1). State regulations contain a similar requirement, *see* COMAR 14.18.02.04C, and one of the purposes of these regulations is to “[a]ssure public access to the records of government,” COMAR 14.18.02.01E; *see also* § 4-103(b) (generally public records should be provided with “the least cost and least delay” to a requester). We hope it is not the case that the CCU agent is literally searching through “millions” of hardcopy files in order to locate the files the agent needs.

We also tend to share the complainant’s concern regarding the time DBM-CCU anticipates it will take, once the file is located, to find the responsive records within, scan them, and redact exempt information—particularly with regard to his second PIA request, sent on September 22, 2021. We agree that second request is narrower in scope in a way that is not simply temporal, as DBM-CCU suggests that it is. The nature of the complainant’s first request would require DBM-CCU to carefully examine and consider far more documents in each file in order to determine whether or not a record is responsive—e.g., DBM-CCU would have to consider whether a record contained communications within DBM or CCU regarding the subject alleged debtor. The complainant’s second request would simply require DBM-CCU to locate the same three specific documents in each file. Viewed this way, it seems that the complainant’s second request would require less of the CCU agent’s time per file.

Conclusion

Because DBM-CCU has not “charged” the complainant a fee, as required by § 4-1A-04(a)(1) to trigger our review and resolution, we dismiss this complaint. Should circumstances change such that DBM-CCU is in a position where it must produce some or all of the records the complainant seeks, and the fees for production continue to exceed \$350 and be, in the complainant’s view, unreasonable, the complainant may file a complaint to that effect.

Public Information Act Compliance Board

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