

LAWRENCE J. HOGAN, SR.
GOVERNOR

BOYD K. RUTHERFORD
LT. GOVERNOR



JOHN H. WEST, III, ESQ.
Chair

CHRISTOPHER A. EDDINGS
DEBORAH MOORE-CARTER
RENE C. SWAFFORD, ESQ.
DARREN S. WIGFIELD

STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

March 21, 2016

Complainant: UNITE HERE Local 7, by Roxie Herbekian, President.

Custodian agencies: Maryland Aviation Administration, Maryland Department of Transportation

Date of original Public Information Act request: February 1, 2016

Date of custodian's response to requester, with fee estimate: February 8, 2016

Date of complaint to the Compliance Board: February 10, 2016

Fee estimate in dispute: \$8,500, revised by agency to \$4,420.90

Date of this opinion: March 21, 2016

Compliance Board's finding: Custodian did not charge an unreasonable fee.

Refund/reduction ordered: None.

OPINION

Complainant protested the fee that the Maryland Aviation Administration (“MAA”), a unit of the Maryland Department of Transportation (“MDOT”), estimated that Complainant would have to pay for MAA’s production of the six categories of email records and other documents that Complainant had requested. Specifically, Complainant alleged that it should not cost MAA \$8,500 to retrieve email communications from 2015 and 2016. In response, MDOT’s PIA Manager explained that, upon reviewing MAA’s fee estimate, he had revised the estimate to \$4,420.90. Notwithstanding the new estimate, Complainant maintained that it was unreasonable and that no amount should be charged, as they had requested a fee waiver on the assertion that their request was in the public interest.

The Public Information Act (“PIA”) charges us with resolving complaints that “a custodian charged an unreasonable fee under § 4-206 of [the PIA].” If we find that the custodian charged an unreasonable fee, we are to “order the custodian to reduce the fee to an amount [that we determine] to be reasonable and refund the difference.” § 4-1A-04.¹ A

¹ The PIA is codified in the General Provisions Article (2014, with 2015 Supp.) of the Maryland Annotated Code.

UNITE HERE Local 7

March 21, 2016

Page 2

“reasonable fee” under § 4-206 is “a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.” Our task is thus to determine whether the \$4,420.90 fee estimated by MDOT’s PIA manager bore a reasonable relationship to the agencies’ recovery of the actual costs of fulfilling Complainant’s request.

On March 10, 2016, we met to consider whether we could resolve this matter on the basis of the parties’ written submissions, and, if we could, to determine the amount of a “reasonable fee.” MDOT’s PIA Manager attended, as did the Unite Here representative who had made the PIA request. The PIA Manager explained that the agencies archive emails older than 90 days, that email recovery is done by a contractor, that the recovered emails then have to be searched for the terms, senders, and recipients specified in the PIA request, and that the agencies’ only way of performing that search is to do it manually, by reading each email, because the agencies do not yet have the capability of doing those searches electronically. The PIA Manager further explained why he had reduced MAA’s original estimate of the time it would take the contractor to accomplish the recovery process. He stated that MAA’s estimate had charged for the hours it would take the contractor to complete the process, that the contractor would be merely monitoring the recovery process for some of the time, and that, in his view, the fee should account for the fact that the contractor could perform other tasks during the monitoring phases. Unite Here’s representative asked why the agencies had quoted the contractor’s hourly rate at an amount significantly over the rate that MAA had quoted for similar work in November 2015 and that MAA had included in its estimate. The PIA Manager stated that the hourly rate contained in the revised estimate reflected the rate contained in MDOT’s contract with the contractor and that MAA had made a mistake which had been rectified by the reduction to \$4,420.92.

After deliberating on the matter, we found the \$4,420.90 fee to be reasonable if MDOT could provide us with evidence of the actual hourly cost of the contractor. MDOT has now done that by submitting contract documents that specify the fixed-price cost for the contractor’s services and show that email recovery falls within the scope of his or her work. We therefore find that the fee is reasonable. As to the Complainant’s suggestion that the fee be ordered waived, the Board has not been empowered to waive fees for requests in the public interest. We must adjust fees based only on their relationship to the actual costs incurred by the responding agency.

To our resolution of this matter, we add our recommendation to custodians that, when a fee is large, they might avoid disputes by educating the requester about the tasks required to fulfill the request. For example, as shown here, requesters do not know, unless they are told, that archived emails might not be searchable electronically.

UNITE HERE Local 7

March 21, 2016

Page 3

We recognize that Maryland law entitles PIA requesters to submit a complaint to this Board immediately upon receiving a cost estimate. Therefore, a requester's decision to appeal to our Board prior to attempting to work with the custodian or Ombudsman will have no bearing on our decisions. That said, in the interest of facilitating a resolution as quickly as possible, we encourage requesters to begin by discussing their concerns directly with the custodian. We encourage requesters to do that, with the help of the Ombudsman, if needed, and once she has begun her work, before submitting a complaint to us.

Public Information Act Compliance Board

John H. West, III, Esq.
Christopher A. Eddings
Deborah Moore-Carter
Rene C. Swafford, Esq.
Darren S. Wigfield