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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

Public Information Act Compliance Board

June 1, 2016

Complainant: Bernadette F. Lamson

Custodian agency: Montgomery County

Date of original Public Information Act requests: Request #1: October 8, 2015, revised November 10, 2015; Request #2: March 7, 2016, revised March 31, 2016

Date of custodian's response to requester, with fee estimate: Request #1: November 9, 2015, revised November 10, 2015 and January 13, 2016; Request #2: March 18, 2016, revised April 7, 2016 and May 4, 2016

Date of complaint to the Compliance Board: April 11, 2016

Date of Compliance Board's conference: May 20, 2016

Fees in dispute: For Request #1, \$2, 216.67; for Request #2, \$2,044.32

Date of this opinion: June 1, 2016

Compliance Board's finding: Custodian's fee for Request #1 ordered reduced to \$1,276.00 to reflect "actual salary" of staff in accordance with § 4-206(b)(2) and to account for duplication of effort; fee for Request #2 reduced to \$1,635.00 to reflect actual salary.

Refund/reduction ordered: For Request #1, \$940.00. For Request #2, \$409.00. Total refund ordered: \$1,349.00.

Opinion

Complainant Bernadette F. Lamson protested the \$4,260.99 fee that Montgomery County's records custodian charged her for responding to two records requests that her counsel made on her behalf. As explained below, we order the County custodian to refund \$1,349.00 to Lamson.

The Public Information Act ("PIA") charges us with resolving complaints that "a custodian charged an unreasonable fee under § 4-206 of [the PIA]."¹ If we find that the

¹ The PIA is codified in the General Provisions Article (2014, with 2015 Supp.) of the Maryland Annotated Code, and the citations in this opinion are to that Article.

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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. A “reasonable fee” under § 4-206 is “a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.” Here, we will begin with the hourly rate used by the custodian to calculate the fee and then turn to the number of hours used in the calculation.

Section 4-206(b)(1) sets forth two categories of tasks for which a custodian may charge an applicant a “reasonable fee.”² Both of those categories, one for the production of records in a “customized format” and one for “standard format” productions, pertain to the “search for, preparation of, and reproduction of” the requested public records. For a standard-format production, as occurred here, the custodian may charge a “reasonable fee” for the “actual costs” of those tasks, “including media and mechanical processing costs.” § 4-206(b)(1)(ii). From this language, it might appear that the custodian may charge a requester (as this custodian did) for all of the costs associated with a particular employee’s time in preparing documents of production – that is, for the hours spent multiplied by the compensation costs, including wages or salary and benefits, for that employee. Section 4-206(b)(2), however, explicitly addresses how “staff and attorney review costs” are to be calculated. Those costs, § 4-206(b)(2) provides, “shall be prorated for each individual’s salary and actual time attributable to the search for and preparation of a public record under this section.” What is clear to us is that we should apply the word “salary” in the ordinary sense when considering “staff and attorney review” costs. And, ordinarily, the word

² Section 4-206(b) provides:

- (1) Subject to the limitations in this section, the official custodian may charge an applicant a reasonable fee for:
 - (i) the search for, preparation of, and reproduction of a public record prepared, on request of the applicant, in a customized format; and
 - (ii) the actual costs of the search for, preparation of, and reproduction of a public record in standard format, including media and mechanical processing costs.
- (2) The staff and attorney review costs included in the calculation of actual costs incurred under this section shall be prorated for each individual’s salary and actual time attributable to the search for and preparation of a public record under this section.

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“salary” does not include “benefits.”³ We have conservatively estimated benefits at 20% of the compensation rate charged for the attorneys’ time and have reduced the fee for both requests accordingly.

The next question is whether the number of hours spent on each request was reasonable. Some of the records sought in the first request consisted of email chains of communications among multiple attorneys, and each attorney reviewed each chain. As a result, a number of records underwent multiple reviews and were produced in multiple copies. To account for that duplication of effort, we have reduced the fee for the first request by an additional 28%. Our ability to assess the extent of the duplication would have been improved by details on the tasks performed by the particular attorneys, and so we encourage custodians to ask the staff who work on PIA requests to document their time.

We have not addressed, as irrelevant to our task, the parties’ many contentions regarding Lamson’s grievance against the County. Our jurisdiction is limited to the question of whether a fee is reasonable, and we encourage complainants and custodians alike to confine their submissions to the facts relevant to that inquiry.

Public Information Act Compliance Board

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³ For example, the Bureau of Labor Statistics, in its release of the March 2016 Employment Cost Index, reported on the quarterly change in “compensation costs,” which were broken down into “wages and salaries” and “benefits.” <http://www.bls.gov/news.release/eci.nr0.htm>