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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 19-11

July 19, 2019
Talbot County
Dan Watson, Complainant

The complainant, Dan Watson, alleges that Talbot County should have granted in full his request to waive the \$616.43 fee it charged to respond to his Public Information Act (“PIA”) request for records pertaining to certain actions taken by the Talbot County Council. He does not allege that this fee was improperly calculated or otherwise does not reflect the actual costs incurred by the County to respond to his request, but rather that the “PIA request is entirely—100%—made in the public interest” and that the fee, therefore, which he paid in full, should be entirely refunded.

The County responds with an itemized description of its fee, and explains that it offered to refund 50% of the fee—or \$308.21—as a partial waiver, which Mr. Watson refused. The County also requests that we dismiss the complaint because we do not have the authority to order an agency to grant a fee waiver and because the County’s offer to refund 50% of the fee reduces the fee below the \$350 threshold for Board review.

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.” GP § 4-1A-05.3. The law defines a reasonable fee as “a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.” GP § 4-206(a)(3). If the Board finds that “the custodian charged an unreasonable fee under § 4-206” the Board shall “order the custodian to reduce the fee to an amount determined by the Board to be reasonable and refund the difference.” GP § 4-1A-04(a)(3).

With regard to fee waivers, we have explained on a number of occasions that the Board does not have the statutory authority to evaluate a custodian’s denial of a fee waiver request. *See, e.g.,* PIACB 18-08 at 2 (Mar. 7, 2018). We have not hesitated, however, to cite the PIA’s fee waiver provisions, *see* PIACB 18-01 at n.1 (Oct. 2, 2017), or provide modest guidance when it appears a custodian misunderstands them, *see* PIACB 19-08 at 2-3 (Jan. 17, 2019). Here, we do not have the authority to determine whether the County should have granted a full fee waiver to Mr. Watson, but note that the County appears to have considered the public interest in offering

Mr. Watson a partial waiver. We refer the parties to Chapter 7 of the PIA Manual, which is available on the Attorney General's website, for more information on fee waivers and the factors that custodians should consider when determining whether to grant them.

With regard to the fee itself, Mr. Watson does not allege that the fee does not "bear[] a reasonable relationship to the recovery of actual costs incurred by" the County. GP § 4-206(a)(3). Moreover, even assuming Mr. Watson had challenged the fee on this basis, nothing in the submissions leads us to believe that the fee is not reasonably tied to the County's actual costs, which consist solely of the prorated salaries of the staff involved in the collection and review of responsive records, minus two free hours. The majority of the staff hours are attributed to the County attorney's review of the responsive records for privilege. Although the County acknowledges that the initial fee of \$616.43 included staff benefits in the prorated salary amounts, the County, upon preparing its response to this complaint, learned of our previous prohibition against including benefits in salary calculations and therefore subtracted those amounts. *See, e.g.*, PIACB 16-05 at 2-3 (May 31, 2016). Accordingly, the County refunded \$118.89 to Mr. Watson, meaning the final fee Mr. Watson paid was \$497.54.^{1 2}

Conclusion

We do not have jurisdiction to order the County to grant Mr. Watson's request for a full fee waiver. Moreover, even assuming Mr. Watson had challenged the reasonableness of the fee itself, we find that the fee appears to be a "reasonable fee" under the PIA.

Public Information Act Compliance Board

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¹ It appears the County is still willing to refund half of this fee to Mr. Watson, should he be inclined to accept.

² This amount is clearly above the \$350 threshold for review by this Board. Because Mr. Watson has already paid, we are unpersuaded by the County's argument that its *offer* to refund half the fee removes the matter from our jurisdiction.