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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 19-14

August 19, 2019

Board of Education of Baltimore County, Custodian
Ann Costantino and Charles Buzz Beeler, Complainants

The complainants, Ann Costantino and Charles Buzz Beeler, allege that the Board of Education of Baltimore County (“School Board”) charged them an unreasonable fee of \$2,225 to respond to their April 25, 2019 Public Information Act (“PIA”) request for “all email correspondence between [the School Board] and audit firm, UHY Advisors” from “March 1, 2018 to March 31, 2019.” The School Board requested a down payment of \$1,687.50 before it would finalize the response.¹

The School Board, through counsel, responded to the complaint with a breakdown of the costs that supported the initial \$2,225 estimate. Specifically, counsel explained that the request encompassed 17 current and former School Board members, and resulted in more than 3,000 potentially responsive email messages that would need to be reviewed before release; counsel estimated it would take him approximately 10 hours to review these email messages, at an hourly rate of \$225. According to the response, the School Board’s \$2,225 estimate was comprised solely of this review cost, and did not include a charge for several hours of staff time already expended in searching for and compiling the potentially responsive email messages. The response further explains, however, that after the complaint was filed, counsel conducted a preliminary review and realized many of the emails were not responsive to the request. Therefore, counsel instructed the School Board’s IT staff to conduct a narrower search, which resulted in only 122 responsive email messages. Accordingly, the School Board has now reduced its estimated fee to \$1,210.33, comprised solely of staff and attorney time as follows:

Position	Task	Hours	Hourly Rate	Total
Enterprise Systems Engineer	Narrowed search for responsive email messages (completed)	3.5	\$56.62	\$198.17
Policy and Compliance Officer	Print responsive emails for review by counsel (to be completed)	2.0	\$56.08	\$112.16
Counsel	Review responsive emails (to be completed)	4.0	\$225.00	\$900.00

¹ The complainants raise other issues that are not within our jurisdiction to address, such as the timeliness of the School Board’s response.

For the reasons that follow, we find that the School Board's reduced fee estimate of \$1,210.33 appears to be reasonable under the PIA, but is subject to revision after the School Board completes the work to provide the records.

Analysis

This Board is authorized to review complaints that allege: (1) that “a custodian charged a fee under § 4-206 of [the Public Information Act] of more than \$350” and (2) that “the fee is unreasonable.” GP § 4-1A-05.² The PIA 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). “Actual costs”, in turn, may include “the search for, preparation of, and reproduction of a public record” and “staff and attorney review costs,” which must be prorated to an hourly rate and reflect the actual time spent on the response. GP § 4-206(b)(1), (b)(2). That the PIA permits an agency to recover only actual costs ensures that agencies will not ordinarily profit from fees charged for public records. *See, e.g.*, PIACB 18-08, 3 (Mar. 7, 2018). 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).

Although the School Board's fee represents an estimate, and an estimated fee may present obstacles in our exercise of review and the availability of remedies, *see* PIACB 17-04 (Nov. 21, 2016), the estimate here is a precise figure based on set rates, and the School Board is requesting prepayment before it undertakes the work necessary to provide the requested records. In this scenario, we are in a position to consider the reasonableness of the estimated fee. *See, e.g.*, PIACB 19-01 (Sept. 24, 2018).

We begin by noting that the complainants' request was broad—it sought all electronic communications between each of 17 current and former School board members and the School Board's audit firm during a 13-month period. According to the School Board, it took an IT professional more than seven hours to conduct the initial search for potentially responsive email communications in the School Board's email archive. In addition, staff in the School Board's Office of Law apparently spent at least two hours formulating the relevant search terms and transferring the potentially responsive records to counsel for review. That it would take more than seven hours to query an email archive—even where 17 individual custodians are involved—strikes us as high. Once search terms have been established and custodians identified, we assume the amount of time expended on the electronic queries themselves would be much less than seven hours. *See, e.g.*, PIACB 19-06 (Nov. 27, 2018) (where a PIA request sought certain email records from 29 separate custodians—which necessitated 58 individual queries of the agency's email archive—the actual search time was closer to 1.5 hours than the estimated 14.5 hours). Nonetheless, we need not decide that precise issue because the School Board is not charging for any of the staff time prior to counsel's decision to direct a second, narrower search for responsive records. Accordingly, we turn our attention to the second phase of the response, which resulted in the revised estimate of \$1,210.33.

² Unless otherwise indicated, all citations are to the General Provisions Article of the Maryland Code, Annotated (2014, 2017 Supp.).

The only component of this estimated fee that has already been completed is the narrowed search for responsive email messages, conducted by IT staff, which apparently took 3.5 hours. Based on the submissions, we have no reason to believe that this amount of search time is inflated—indeed, it is far less than the seven hours of search time in the initial phase. Nonetheless, we remind the School Board that it should only charge for time that its staff was actively engaged in the search for records—it should not, for instance, charge for time in which records may have been downloading or uploading, but in which staff were free to undertake duties unrelated to the PIA response.

As for counsel’s estimated review time, again, we have no reason to believe it is inflated. Of course, counsel should charge only for the actual amount of time he spends on review. Given that counsel estimated it would take him 10 hours to review the more than 3,000 email messages that resulted from the first search, we assume it will take him far less time—likely fewer than the estimated four hours—to review the 122 messages that resulted from the second search. Similarly, we suspect it will not take two hours for a staff member to print the 122 messages for counsel’s review, and the School Board should only charge for the actual time spent printing the records.^{3 4}

Finally, we have no reason to doubt the hourly salary rates in the estimate. Although the complainants take issue with the fact that the School Board is employing outside counsel to assist in its PIA response, nothing prohibits it from doing so, and it may seek to recoup contractor costs as long as they are reasonable and are directly attributable to the response. *See, e.g.*, PIACB 19-01 (Sept. 24, 2018).

Conclusion

Based on the materials before us, we do not find that the School Board’s estimated fee of \$1,210.33 is unreasonable. This fee is subject to revision, however, based on the actual amount of time spent printing and reviewing the responsive records.

Public Information Act Compliance Board

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³ The School Board asserts that the responsive email messages must be printed for counsel’s review because he is unable to view .pst files electronically, and saving those same files to .pdf format will exclude the messages’ attachments. Because the complainants did not ask for the records to be produced in electronic format, and because the costs to print the electronic files is not a significant portion of the cost here, we need not address that assertion.

⁴ It is clear the complainants received at least two free hours during the initial phase, as required by GP § 4-206(c).