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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 20-13

June 22, 2020
Howard County, Custodian
Michael David, Complainant

The complainant, Michael David, alleges that Howard County (“County”) charged an unreasonable fee when it requested prepayment of \$1,131.90 to respond to his Public Information Act (“PIA”) request for a “list of detainees turned over to ICE after finishing non-immigration incarceration time at Jessup [Correctional Institution],” including “whether they were convicted of the accused infraction, their immigration status while at Jessup, the time spent in non-ICE detention at Jessup and, if applicable, the time spent under ICE auspices at Jessup” for the time period January 1, 2018 to March 14, 2020. The complainant also contends that the County should have granted his request for a fee waiver.

The County responds that its Department of Corrections (“Corrections”) does not maintain such a list, and that it would take a Corrections employee approximately 30 hours, at a rate of \$37.73 per hour, to review the relevant paper records to compile the information requested, resulting in a total estimated cost of \$1,131.90 for the employee’s time. The final cost to the complainant would also include copying costs, at a rate of \$0.25 per page, and any time required for legal review of the responsive records. The County explains that it has already expended more than two non-compensable hours on the complainants’ PIA request.

Analysis

This Board is authorized only 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.” § 4-1A-05(a).¹ As we have explained on numerous occasions, this narrow jurisdiction does not permit us to review a custodian’s decision to deny a fee waiver request. *See, e.g.*, PIACB 19-11 (July 19, 2019); *see also* [Final Report on the Public Information Act](#) at 31-32 (Dec. 27, 2019) (recommending that this Board be given jurisdiction to review fee waiver decisions, among other matters). Accordingly, we will not address the complainant’s allegations pertaining to the County’s decision to deny his fee waiver request.

¹ References are to the General Provisions Article of the Annotated Code of Maryland, unless otherwise indicated.

We thus turn to the complainant's allegation that the County's \$1,131.90 fee estimate is unreasonable. The PIA defines a reasonable fee as "a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit." § 4-206(a)(3). Although an agency's estimation of a fee—as opposed to a fee based upon actual costs already incurred by an agency—presents certain difficulties for our review, *see, e.g.*, PIACB 17-04 at 3 (Nov. 22, 2016), we have nonetheless reviewed the reasonableness of a fee estimate when it comprises a precise figure based upon a detailed breakdown of anticipated costs, and when the custodian requires prepayment of the estimate before providing the records, *see* PIACB 19-01 at 2-3 (Sept. 24, 2018). That is the case here. Based on the materials submitted by the parties, we cannot conclude that the County's fee estimate is unreasonable.

First, we have no reason to believe that the County has not already provided the two non-compensable hours to which the complainant is entitled under the PIA. *See* § 4-206(c). The requested information at issue here was among a larger field of information the complainant initially requested from the County. Through a series of communications, it appears the County has provided some of the requested information and has denied access to some of the information, and the complainant has refined the scope of his request. Based on our review of the history, it is not unreasonable to assume that the County has already expended at least two hours to respond to the complainant's initial request, and the remaining information the complainant seeks does not constitute a "new" or separate PIA request for which he should receive two additional non-compensable hours. *See* Chapter 7 of the PIA Manual, 1-2 (explaining that an agency should not "artificially aggregate *separate* requests to increase the fee") (emphasis added).

Second, contrary to the complainant's assertion that the County must have a "listing or file specifically of inmates turned over to ICE," the County explains that it does not maintain such a list, but that, instead, compiling all of the requested information will require a manual review of a large number of paper files. Based on the materials before us, we have no reason to doubt the County's claim.

Third, the complainant alleges that an employee with a lower hourly rate should be able to review the relevant records, but the County explains that the Corporal within Corrections who will review the records—at a rate of \$37.73 per hour—is actually the most economical employee for the job because that employee is a "day shift commitment officer who processes all intakes, releases, and coordinates transfers" and is most familiar with "reviewing release documents and file records." According to the County, this Corporal's experience is necessary in order to efficiently review the large volume of potentially responsive paper records, and a "less experienced" employee would likely take longer than 30 hours and result in a higher cost. We have no reason to second guess the County's decision here.

Accordingly, based on the submissions, we conclude that the County's fee estimate appears to reflect a "reasonable fee" as that term is defined by the PIA. Of course, because the fee is only an estimate, the County should closely track the amount of time actually required to search for potentially responsive records and refund any overage. In addition, to the extent feasible and only

if amenable to the complainant, we encourage the County to scan responsive paper records into an electronic format to reduce copying costs. *See* § 4-103(b) (the PIA “shall be construed in favor of allowing inspection of a public record, *with the least cost and delay*” to the requestor) (emphasis added); PIACB 20-05 at 3 (Nov. 7, 2019) (encouraging an agency to scan a voluminous number of paper records onto a CD so as to reduce costs to the requestor, and explaining that “[a]lthough there may be more staff time involved with this method, we suspect it will result in a lower overall fee in situations . . . where there are voluminous paper records and the agency is charging a relatively high per page copying fee”).

Conclusion

Based on the materials before us, we do not find that the County’s fee estimate of \$1,131.90 is unreasonable. We decline to review the County’s decision to deny the complainant’s fee waiver request as outside of our jurisdiction.

Public Information Act Compliance Board

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