

**LARRY HOGAN**  
GOVERNOR

**BOYD K. RUTHERFORD**  
LT. GOVERNOR



**JOHN H. WEST, III, ESQ.**  
CHAIR

**MICHELE L. COHEN, ESQ.**  
**CHRISTOPHER EDDINGS**  
**DEBORAH MOORE-CARTER**  
**DARREN S. WIGFIELD**

**STATE OF MARYLAND**  
**PUBLIC INFORMATION ACT COMPLIANCE BOARD**

**PIACB 22-17**

**May 18, 2022**

**Montgomery County Police Department, Custodian**  
**Deborah Levi, Complainant**

Complainant Deborah Levi, an Assistant Public Defender, sent two separate Public Information Act (“PIA”) requests to the Montgomery County Police Department (“MCPD”), each one seeking copies of internal affairs complaints and records related to those complaints. The first request involved 49 police officers; the second involved sixteen police officers. The MCPD estimated that it would cost \$325,223 to respond to the complainant’s first request, and \$86,870 to respond to the second. The complainant has alleged that these fees are unreasonable. As discussed in more detail below, we agree to a certain extent and therefore direct the MCPD to revise the estimated fees charged for video footage.

**Background**

On October 25, 2021, shortly after the law governing disclosure of police internal affairs records changed,<sup>1</sup> the complainant sent her first PIA request for copies of internal affairs complaints to the MCPD. That request, which involved 49 police officers, sought the complete investigative files for each complaint, including reports of recorded statements, video surveillance or body camera footage, witness interviews, and photographs, as well as the investigative findings of each complaint, any correspondence from the Police Advisory Commission, and the final disposition in each case. The complainant’s second request, sent separately, asked for the same type of records, but related to sixteen different police officers.

---

<sup>1</sup> See 2021 Md. Laws, ch. 62. That law, known as “Anton’s Law,” changed the status of records related to alleged police misconduct so that they are no longer subject to the PIA’s mandatory exemption for personnel records. See Md. Code Ann., Gen. Provisions § 4-311 (personnel exemption); see also *Maryland Dep’t of State Police v. Dashiell*, 443 Md. 435, 458-59 (2015) (concluding that the internal affairs files at issue were personnel records exempt from disclosure). Instead, such records are now classified as investigative records, which a custodian may withhold if the custodian “believes that inspection . . . would be contrary to the public interest.” Md. Code Ann., Gen. Provisions §§ 4-343, 4-351(a)(4). Records that relate to a “technical infraction,” however, are still considered personnel records. *Id.* §§ 4-311(c)(2), 4-351(a)(4); see also *id.* § 4-101(l) (defining “technical infraction”).

The MCPD sent a “status update and fee notification” letter on December 10, 2021, regarding the first request. In that letter, the MCPD indicated that it had found potentially responsive and disclosable records, and explained that review and redaction of documents would be done by MCPD clerical staff and charged at \$30 per hour, while review and redaction of media would be done by MCPD technical staff and charged at \$50 per hour. The MCPD then listed each officer subject to the request and either indicated that no records existed or provided estimated fees for document and media redaction for each file. The MCPD did this to allow the complainant to “select any or all processing [she] want[ed] for the release of these records.” The total estimated fee for review and redaction of *all* responsive records was \$325,223. Noting that the first two hours of labor would be provided at no cost,<sup>2</sup> the MCPD also advised that the complainant had to pay the “total cost of the reproduction” in advance. The MCPD sent a separate letter regarding the complainant’s second request, also on December 10, 2021, and indicated that it was searching for responsive records and that it expected to have a fee estimate within ten business days.

On February 23, 2022, the MCPD sent a letter providing an estimated fee regarding the complainant’s second PIA request. That letter indicated that there were no responsive records for five of the sixteen officers, and that the total estimated fees for review and redaction of the records related to the remaining officers was \$10,320 for documents (charged at \$30 per hour) and \$76,550 for media (charged at \$50 per hour). As with the estimated fee related to the complainant’s first request, the MCPD advised that it would not charge a fee for the first two hours of labor and that, in order to proceed, the complainant had to pay the estimated fees in advance. Though not entirely clear from the submissions, we presume that the complainant did not pay the estimated fees for either of her requests, either in whole or in part.

On March 24, 2022, the complainant sent an email to the MCPD inquiring as to the status of both of her requests. In that email, the complainant stated that she was “still actively seeking IAD files for both lists of officers,” and asked the MCPD to explain the reasons for the estimated fees, which she believed were “entirely unreasonable.” The MCPD responded to the complainant via email on March 28, 2022, advising that it “st[ood] by the fee estimates which were presented to you earlier.” The MCPD noted that the files contained “various and sundry documents and many media files comprised of audio and video interviews and [body worn camera] footage,” and that it would take time to redact those records as the PIA requires. Addressing the complainant’s request for more information about the estimated fees, the MCPD indicated that it would need an additional thirty days to provide a “detailed explanation.”

Rather than wait for that explanation, the complainant filed her complaint with this Board on March 30, 2022. We forwarded the complaint to the MCPD on April 4, 2022. The complainant alleges that the estimated fees charged for both of her PIA requests are unreasonable because, given the high fees, “[t]he records are effectively not public.” In response to the complaint, the MCPD provides an extraordinary amount of detail about the nature and volume of the responsive records and the various tasks associated with preparing those records for production. The MCPD explains that its internal affairs files are in paper format and contain DVDs of audio and video recordings. For the complainant’s first PIA request, the MCPD found 35 case files; for her second

---

<sup>2</sup> See Md. Code Ann., Gen. Provisions § 4-206(c) (“The official custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection.”).

request, it found 28 case files. MCPD staff reviewed each file to determine how many pages worth of documents there were and how much audio and video footage existed. The MCPD then applied specific formulas—discussed in more detail below—to arrive at its estimated time expenditures for document redaction, audio file redaction, and video file redaction. Regarding the hourly rates charged (\$30 for document redaction and \$50 for audio and video redaction), the MCPD advises that these are the lowest hourly rates for an employee performing that type of work.

Describing the complainant’s PIA requests as “bulk requests,” the MCPD notes that it did not “itemize a free 2 hours,” which we take to mean that the MCPD did not provide two free hours of labor for the files related to each officer subject to the two requests. Or, put differently, if one were to view, e.g., the complainant’s first request as 49 separate requests (one for each police officer), then the MCPD aggregated those requests for purposes of attributing the free labor that the PIA requires it to provide.<sup>3</sup> The MCPD also notes that it did not assess costs for the time expended on several tasks. Specifically, it did not charge for the time it took staff to: (1) identify and pull the paper files (24 hours); (2) count pages or calculate the total length of media files (24 hours); or (3) digitize the paper files and upload media files.

In its response, the MCPD also indicates that it has modified its fees. It explains that some of the files have since been the subject of PIA requests filed by other requesters who have paid the fees associated with production. Therefore, the MCPD will not assess those fees again. Now the MCPD estimates that the fee for production of records responsive to the first request will total \$285,770, and that the fees for production of records related to the second request will total \$70,710. To support those modified fees, the MCPD attaches, for both PIA requests, detailed breakdowns of the anticipated costs associated with the production of records from each internal affairs file.

### **Analysis**

We are charged with reviewing and resolving complaints that allege that a records custodian has charged an unreasonable fee higher than \$350 to respond to a request for public records. §§ 4-1A-04(a); 4-1A-05(a).<sup>4</sup> Under the PIA, custodians are permitted to charge a “reasonable fee,” which is defined as “a fee bearing a reasonable relationship to the recovery of [the] actual costs” incurred by responding to a PIA request. § 4-206(a)(3). Reasonable fees may include media and copying costs, as well as the cost of time for staff and attorney review, which must be “prorated for each individual’s salary and actual time attributable to the search for and preparation of a public record.” § 4-206(b). Generally, the PIA is to be construed “in favor of

---

<sup>3</sup> The MCPD’s December 10, 2021, and February 23, 2022, letters providing the original estimated fees for the complainant’s two separately submitted PIA requests both indicate that the first two hours of labor were being provided at no cost. The complainant does not specifically allege that the MCPD should have provided two free hours for each officer subject to her two PIA requests. Even if she had, we would find no issue with the manner in which the MCPD allocated the free labor that the PIA requires it to provide. *See* PIACB 21-12 at 3-4 (May 27, 2021) (discussing aggregation of PIA requests).

<sup>4</sup> Citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise indicated.

allowing inspection of a public record, with the least cost and least delay.” § 4-103(b). If we conclude that a custodian has charged an unreasonable fee as the PIA defines it, we are to “order the custodian to reduce the fee to an amount determined by the Board to be reasonable and refund the difference.” § 4-1A-04(a)(3).

The PIA does not expressly allow custodians to charge these reasonable fees in advance of preparing records, but often agencies will require prepayment of an estimated fee before they will begin the work of responding to a PIA request. *See Glass v. Anne Arundel County*, 453 Md. 201, 212-13 (2017). In doing so, the agency will typically break the estimated fee down to reflect its anticipated actual costs recoverable under § 4-206(b). Under these circumstances, a custodian has effectively “charged” a fee under § 4-206, thus affording us the ability to review the estimated fee for reasonableness. *See* § 4-1A-04(a)(1) (Board must “receive, review, and . . . resolve complaints . . . alleging that a custodian *charged* an unreasonable fee under § 4-206”) (emphasis added); *see also* PIACB 22-07 at 4-5 (Feb. 3, 2022) (addressing our authority to review estimated fees under certain circumstances). Here, the MCPD has provided a significant degree of detail about its estimated fees, and has required that they be paid in advance. Thus, we will review and resolve the complaint.

### **I. Hourly Rates**

First, looking at the hourly rates the MCPD charges—\$30 per hour for document review and redaction and \$50 per hour for media review and redaction—we find that the submissions do not give us any reason to question them. To start, in its response the MCPD provides more detail about the hourly rates of the various MCPD employees and contractors who have worked (or will work) on the responses to the complainant’s PIA requests. For example, the MCPD indicates that the police officer tasked with document redaction is paid an hourly rate of \$37, while the police aide tasked with the same duty is paid \$30 per hour. Regarding media review and redaction, the MCPD IT specialist’s rate is \$48 per hour, while the two technical contractors who performed (or will perform) media redaction have hourly rates of \$67 and \$59.<sup>5</sup> Thus, the \$30 per hour rate charged for document redaction is indeed, as the MCPD asserts, the lowest hourly rate of an employee (or contractor) performing the work. And, while it appears that the MCPD IT specialist’s rate is lower than the \$50 per hour charged for media review and redaction, that \$50 rate is at the low end of the three media-related rates that the MCPD indicates are actually paid. Assuming that these rates reflect salary alone, and that they do not include other compensation such as benefits or indirect costs, we cannot conclude that they are unreasonable rates to charge for purposes of an estimated fee. In the event that the rates do include costs other than salary, then the MCPD must recalculate them so that the rates are based solely on “each individual’s salary.” *See* § 4-206(b)(2); PIACB 16-05 at 2-3 (June 1, 2016).

---

<sup>5</sup> See Office of the Maryland Attorney General, *Maryland Public Information Act Manual* (16th ed. Sept. 2021) at 7-2, for a discussion of an agency’s use of an outside contractor to assist with the preparation of a response to a PIA request.

## II. Review and Redaction Time

### A. Documents

Next, we turn to the amount of time that the MCPD estimates it will take staff to review and redact the many documents contained in all of the responsive files. The MCPD advises that it anticipates three minutes of “redaction processing”—which includes reading and analyzing the content, and applying any necessary redactions—for each page. That estimate does, to some degree, strike us as potentially excessive in that it seems unlikely that each and every page will have substantive content or content that will need redaction. And, three minutes is far longer than the anticipated per-page review time that we have seen in other cases. *See, e.g.*, PIACB 21-05 at 1 (Dec. 1, 2020) (estimating that it would take an attorney “an average of 15 seconds to review and redact (if necessary) each email”).

At the same time, we also appreciate that internal affairs records are substantively different from, for example, the email records involved in PIACB 21-05, and that, in any event, the MCPD is far more familiar with the nature of the documents at issue here than we are. Absent an obvious inflation of time, it is generally not for us—at the estimate stage—to second-guess the length of time an agency anticipates review of its own records will take. *See* PIACB 22-06 at 7 (Jan. 18, 2022) (noting that it is not our role to “micromanage [an agency’s] search and retrieval process”). Moreover, we recognize that Anton’s Law *requires* a custodian to redact certain information, *see* § 4-351(d)(1),<sup>6</sup> and that the exemption for investigative records also vests custodians with general discretion to redact information that he or she determines would not be in the public interest to disclose, § 4-343; *see also* § 4-351(d)(2) (custodian “may redact the portion of a record described in subsection (a)(4) of this section to the extent that the record reflects witness information other than personal contact information”).

On balance, then, we cannot conclude that it is unreasonable for the MCPD to estimate that it will take three minutes to review and redact each of the responsive documents. But, we stress that the final fee must reflect actual costs of preparing those responsive records, which means that the MCPD must carefully track the *actual* amount of time that it takes to review and redact the documents. *See* § 4-206(b)(2). We are mindful that, due to the number of files requested, and the fact that some of those files contain a substantial number of documents—one file responsive to the complainant’s first PIA request contains 3,824 documents alone—the costs, even if recoverable under the PIA, are extremely high. It might be that the complainant could start by requesting the documents from a few select files and that preparation of those documents might give the MCPD a better sense as to whether or not its three-minute per-page estimate is accurate, or whether review of a single page actually takes less time, on average. If review does take less time, then that shorter average should be used to calculate estimated fees going forward.

---

<sup>6</sup> That information is: “medical information of the person in interest”; “personal contact information of the person interest or a witness”; and “information relating to the family of the person in interest.” § 4-351(d)(1).

B. *Video Footage*

Moving on, we examine the estimated fees for review and redaction of the media files—i.e., the video footage and audio recordings. We will address, as the MCPD does, the fees related to audio recordings and video footage separately, beginning with the video footage. At the outset, we observe that we have already seen some rather stark variation regarding how much time police departments anticipate review and redaction of video footage will take. For example, the average used by Baltimore County Police Department (“BCPD”) to calculate the estimated costs of preparing body worn camera footage is eight hours of review and redaction per one hour of footage. *See* PIACB 22-13 at 5 (May 6, 2022). Converting for the sake of comparison, then, where the BCPD estimates that it will take 480 minutes to review and redact each hour of video footage, the MCPD estimates that it will take 1,200 minutes per hour of footage. While we understand that there might be differences in software and skill, we struggle to understand why it would take the MCPD *two and a half times* longer than it apparently takes the BCPD, on average, to review and redact video footage. Moreover, it appears to us that the formula that the MCPD uses to calculate the estimated time expenditure assumes that *every minute* of video footage will need redaction. We are not sure that this is a fair assumption. In our view, it is more reasonable to assume that an hour’s worth of footage will require some redaction, and under the MCPD’s formula, an hour of footage would require 1,200 minutes—or *twenty hours*—of review and redaction. It is hard to fathom that each hour of video footage will take, on average, two and a half working days to prepare.

We understand that video footage—particularly body worn camera footage—may present unique challenges for custodians, and that this is certainly not the first time that the problem of the time and effort required to prepare video footage in response to a PIA request has been raised. *See, e.g., Hearing on S.B. 777 Before the Senate Jud. Proc. Comm., 2022 Leg., Reg. Sess., at 1:15:30 (Mar. 15, 2022) (statement of Bill Jorch, Maryland Municipal League) (explaining that “as more body camera footage becomes . . . subject to Public Information Act requests our records custodians are overwhelmed and could use some assistance,” and that “we’ve been banging on the table for several years now about body camera footage in particular as it relates to the Public Information Act”).* That said, the time component of the formula used by the MCPD to estimate fees for production of responsive video footage appears excessive to us. It therefore does not bear a “reasonable relationship to the recovery of actual costs,” § 4-206(a)(3), that the MCPD can reasonably anticipate it will incur. While, ultimately the final costs of responding to the complainant’s PIA requests must be based on the “actual time attributable to the search for and preparation of a public record,” § 4-206(b)(2), we think that it is reasonable, for purposes of the estimated fee, to anticipate that it will take an average of ten hours to review and redact each hour of responsive video footage. This average is based on the average formulated by the BCPD’s Technology Unit, *see* PIACB 22-13 at 5 (May 6, 2022), and on information provided in written testimony from the Maryland Municipal League, an organization that represents municipal governments, *see Hearing on S.B. 777 Before the House Jud. Comm., 2022 Leg., Reg. Sess. (Apr. 5, 2022) (written testimony of Bill Jorch, Maryland Municipal League) (stating that “review of body worn camera footage can take 10 minutes for every one minute of the recording”).*

Given the detailed information that the MCPD provided in its updated fee breakdowns, and the fact that—as discussed below—these updated breakdowns might result in more narrowed

requests for records, we do not order a discrete reduction to the total modified fees. Rather, the MCPD must apply the formula that we have determined is reasonable, § 4-1A-04(a)(3), to any estimated fees charged for video review and redaction related to the complainant's PIA requests.

### C. *Audio Recordings*

The MCPD's formula for estimating fees for preparation of audio recordings—that it will take two minutes of review and redaction for each minute of the recording—appears more reasonable to us. First, given the redaction obligations that § 4-351(d) places upon custodians, *see supra* note 6 and accompanying text, a custodian will need to review, at the very least, the full content of all of the recordings. And, the MCPD's estimate that it will take, on average, two minutes to prepare each minute of an audio recording is consistent with the practices of at least one other police department. *See* PIACB 22-14 at 7 (May 6, 2022) (finding the Howard County Police Department's estimated time expenditure for preparation of audio files reasonable). However, we emphasize again that the final fees assessed must reflect the actual costs of review and redaction—i.e., they must be based on “each individual's salary and actual time attributable to the search for and preparation of” the responsive audio recordings. § 4-206(b)(2).

### III. **Broader Observations**

It is clear to us that a lot of work went into calculating and preparing the estimated fees here. We note that the breakdown for each file provides a lot of substantive information about that file's contents, and that this information may assist this complainant (and other requesters) in narrowing her requests and reducing the associated fees. For example, the MCPD case numbers applied to each file appear to indicate the year in which the related complaint was filed. Thus, if the complainant is more interested in, e.g., recent complaints, she has the ability to select those complaints. We also note that the breakdowns for each officer reveal not only how recently a complaint has been lodged, but how many complaints there have been overall—this is also substantive information that might make it so some of the records are of more interest. And, for the complainant's first request, the MCPD's breakdown of costs related to media files also indicates not only the number and length of the media files, but also their general content (e.g., body worn camera footage from the incident, or interview video) and the subject of that media file (e.g., which officer the body worn camera footage was taken from). This too might permit the complainant to be more selective from within the individual internal affairs files themselves and thus potentially decrease costs.

While we certainly commend the MCPD for doing this work, and take it as evidence that the MCPD is putting thought and care into its responses to requests made under the new disclosure laws that relate to internal affairs files, we also take the complainant's point that the high fees associated with production of these records generally serve as a barrier to the public's access to them. This barrier is contrary to the pro-disclosure intent of Anton's Law in particular and of the PIA more generally. *See Hearing on S.B. 777 Before the Senate Jud. Proc. Comm., 2022 Leg., Reg. Sess., (Mar. 15, 2022)* (written testimony of bill sponsor, Senator Jill P. Carter) (noting that Anton's Law was “designed to provide transparency to police discipline and bring the state in line

with the majority of the country”).<sup>7</sup> Indeed, the Court of Appeals has observed that “the PIA involves a tradeoff in which state and local agencies incur additional expense for the benefit of a private right of access to government records,” and that “[t]he ‘broad remedial purpose’ of the Act places a larger burden on state agencies to organize and provide access to information at the request of any individual desirous of such records.” *Ireland v. Shearin*, 417 Md. 401, 410 (2010). There are two points raised by the MCPD in its response that seem to bear upon this general principle. First, the MCPD stresses that it did not charge the complainant for the time it took to identify and pull the files, to assess the volume and content of those files, or to digitize the paper files and upload media files to storage. Second, the MCPD states that there are certain files responsive to the complainant’s PIA requests that have since been produced to other requesters who have paid the associated fees, and that the MCPD will not charge the complainant for the records from those files.

To us, it seems that one of the broader, as-yet unanswered questions is who—as between records requesters and agencies—should bear the financial burden of setting up the infrastructure necessary to respond to PIA requests under the new disclosure laws applicable to police misconduct records. On the one hand, in identifying and itemizing the files, and scanning and uploading their contents—presumably for ease of repeat access and dissemination—the MCPD has apparently taken on at least part of that cost. At the same time, the fees are extraordinarily high even absent those initial costs, and it seems that the first requester is the one expected to pay those fees, and thus enable access by other requesters who come later. The PIA’s “reasonable fee” provision notwithstanding, we are not sure that this was the General Assembly’s intent.

### Conclusion

Based on the information before us, we find that the hourly rates charged by the MCPD to assess estimated fees for responding to the PIA requests here are reasonable as the PIA defines the term. We further find that the MCPD’s estimated time expenditures for review and redaction of documents and audio recordings are also reasonable. However, we conclude that the time component included in the MCPD’s formula for calculating estimated fees for production of video footage is not reasonable, and that it is more reasonable to estimate that it will take, on average, ten hours to review and redact each hour of video footage. We therefore direct the MCPD to use that formulation to calculate the estimated fees for preparation of responsive video footage.

---

<sup>7</sup> We note that Sen. Carter was also the sponsor of Anton’s Law. *See* S.B. 178, 2022 Leg., Reg. Sess. (Enrolled). Senate Bill 777, introduced and passed during the 2022 legislative session, initially began as a measure to limit the fees that law enforcement agencies may charge to respond to PIA requests for police misconduct records. *See* S.B. 777, 2022 Leg., Reg. Sess. (First Reader). The bill underwent substantial amendment in committee, however, and, as passed by the General Assembly, now creates a task force to review and study the “costs charged” and “procedures applied” by law enforcement agencies related to the disclosure of records under the PIA. *See* S.B. 777, 2022 Leg., Reg. Sess. (Third Reader). The bill directs the task force to submit an interim report on or before December 31, 2022. *Id.*



**Public Information Act Compliance Board**

*John H. West, III, Esq., Chair*

*Michele L. Cohen, Esq.*

*Christopher Eddings*

*Deborah Moore-Carter*

*Darren S. Wigfield*