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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-23
February 14, 2024
University of Maryland, College Park, Custodian
Ryan Milliron, Complainant

The complainant, Ryan Milliron, challenges the estimated fees charged by the University of Maryland, College Park (“UMCP”) for responses to two Public Information Act (“PIA”) requests. In response, UMCP maintains that those fees are reasonable under the PIA. We conclude that the fees are unreasonable to the extent that they are based on an expectation that a highly-paid attorney will do nearly all of the work of preparing the responses. We explain further below.

Background

On May 6, 2023, the complainant sent three PIA requests to UMCP. The first, which UMCP labeled 227, sought “any emails in the account of Caroline Orr sent to or from” seventeen specific individuals between January 1, 2017, and May 5, 2023. The second, labeled 228, sought “any emails in the accounts of” seven specific individuals and “sent to or from” the same seventeen individuals identified in request 227. Finally, the third PIA request, labeled 229, asked for “any emails in the account of Caroline Orr containing the keywords of: ‘Graphika’ ‘Aspen’ ‘Atlantic Council’ ‘DFRLabs’ ‘Meedan.’” The complainant requested a fee waiver for all three requests, indicating that “the information requested is in the public interest and will be used for educational and research purposes.”

UMCP acknowledged receipt of the PIA requests on May 15, 2023, and estimated that it would cost \$3,000 – \$5,000 to respond to the requests. On June 2, 2023, UMCP sent the complainant an email with an updated estimate for request 229. UMCP advised that a preliminary search had returned 2,482 pages of responsive emails and that it would cost approximately \$6,000 to prepare those records for inspection. Then, on June 30, 2023, UMCP sent the complainant a letter providing the precise cost estimates at issue in this complaint. The estimated fees were as follows: (1) for 227, \$6,102.72 for 2,488 pages; (2) for 228, \$126,463.30 for 50,845 pages; and (3) for 229, \$6,057.22 for 2,476 pages. UMCP advised that each estimate factored in the two free hours of labor that the PIA requires

custodians to provide.¹ UMCP also declined to grant the complainant a full fee waiver, although it asserted that the complainant had already been provided a partial fee waiver because, among other things, the attorney fees were calculated using a 2018 salary rate.

After receiving UMCP's June 30 letter, the complainant decided to abandon request 228 and sought dispute resolution assistance through the Public Access Ombudsman regarding the estimated fees for requests 227 and 229. The Ombudsman issued a final determination stating that the disputes were not resolved and the complainant filed this complaint with our Board.

The complainant expresses broad concern that UMCP is "creating a moat through excessive fees to deny access to public records." In his experience requesting records in other states, the complainant has found both that labor rates are capped in some way—e.g., by a statutory provision permitting an agency to charge no more than \$25 per hour—and that "the vast majority" of his requests are processed by non-lawyers. In contrast, here, the complainant points out, UMCP is using an attorney to perform the entire review and charging an hourly rate of \$74.67. The complainant argues that the "claiming of exemptions is rarely a challenging process," and that "no [a]gency needs an attorney to be the sole reviewer/processor of records." The complainant contends that if UMCP assigned the task of responding to a paralegal paid \$33.23 per hour,² with ten hours reserved for attorney review, the cost would be reduced to approximately \$3,102.71 per request.

The complainant also challenges the "processing rate"—i.e., the amount of time that UMCP anticipates review of responsive records will take. He suggests that UMCP's rate of thirty pages per hour³ is too slow and points to a recent decision in which we found that a rate of 200 emails per hour appeared reasonable. *See* PIACB 24-03 (Oct. 6, 2023). The complainant urges a broader comparison to that decision, contending that the facts here are similar and that we should thus find UMCP's estimated fees unreasonable. He also contends that there might be duplicate records between the responses for request 227 and request 229 which should be removed before review.

¹ *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.").

² The complainant takes this rate from cost grids that UMCP prepared and provided to the complainant, and which both the complainant and UMCP have attached to their respective submissions. Those grids contain names (presumably of other employees) and their hourly rates.

³ The complaint actually states that the review rate is "120 emails an hour." Shortly after we received the complaint, the complainant contacted our Board to indicate that he included this rate in error, and that the actual rate quoted by UMCP was two minutes of review per page, which would work out to thirty "emails per hour." UMCP then pointed out that all of its "measures" are in pages, not emails, noting that one email might have many pages. UMCP does not know how many responsive emails there are, but does know how many pages there are.

In response to the complaint, UMCP first points out that the PIA was enacted before the internet age. Contending that the “interjection of email into office operations has made processing public record requests woefully problematic,” UMCP states that the PIA does not “contemplate tens of thousands of pages of records in a single request.” In this case, UMCP emphasizes, there are 2,488 pages of records responsive to request 227 and 2,476 pages responsive to request 229.⁴ UMCP also explains that the requests ask for emails exchanged with a specific researcher in UMCP’s Applied Research Lab for Intelligence and Security (“ARLIS”), which has a “core mission to support the government’s security and intelligence communities.” Thus, UMCP argues that legal review of the responsive records is “critically important” and that several exemptions might apply, including non-disclosure provisions in federal law such as the National Security Agency Act⁵ and the Family Educational Rights and Privacy Act (“FERPA”).⁶

UMCP defends the \$74.67 hourly rate that it has applied to the fee estimates here. First, UMCP contends that, though it permissibly could have aggregated the complainant’s PIA requests for purposes of allocating the two free hours of labor, *see supra*, note 1, it did not and has instead granted him four hours free between the two requests. Moreover, UMCP represents that overhead costs and benefits are not included in the labor rates, and UMCP notes that the hourly rate has been discounted by 32% because the attorney who would perform the work actually earns \$109.99 per hour. UMCP also maintains that this attorney is the only UMCP employee that is available and capable of responding to the complainant’s PIA requests. UMCP explains that the Office of General Counsel (“OGC”) is “the only office on campus that has legal counsel available and qualified to review records as sensitive as those created by ARLIS employees.” Noting the complainant’s reference to the additional employees and rates listed in UMCP’s cost grids, *see supra*, note 2, UMCP explains that the \$33.23 hourly rate is not the rate of a paralegal but of a former employee in the Division of Information Technology. UMCP asserts that, other than the attorney, none of the employees listed on those grids are available and/or capable of reviewing the records responsive to the complainant’s PIA requests.

As to the time estimates for the request—81.9 hours for request 227 (for 2,488 pages) and 81.5 hours for request 229 (for 2,476 pages)—UMCP maintains that they are reasonable and accurate estimates as to how long it will take to process the requests and

⁴ UMCP advises that it uses the de-duplication function that is available to narrow the pool of responsive records. It is important that custodians use this type of technology when available, as it can significantly reduce the amount of time needed to review records. *See, e.g.*, PIACB 21-01, at 2 (Oct. 5, 2020) (noting that an agency’s search returned “approximately 3,511 potentially responsive emails, which it further narrowed to 305 through an electronic de-duplication process”).

⁵ *See* 50 U.S.C.A. §§ 3601 through 3619.

⁶ *See* 20 U.S.C.A. § 1232g.

produce responsive records. The estimates reflect approximately two minutes of work for each page. To justify that time expenditure, UMCP points again to the nature of the records sought—i.e., that they are records related to ARLIS, which conducts research to support governmental security and intelligence communities, and “aims to integrate social and behavioral sciences, AI, and computing for new Human Domain applied research and development capabilities.” Because many exemptions may apply, e.g., the federal laws cited *supra*, notes 5 and 6, or the PIA’s exemptions for personnel records, sociological information, and on-going research, UMCP stresses that thorough and more time-consuming review is required. UMCP also notes that the time estimates capture more than just review of the records, but also the time necessary to print the records for review, to redact the records as necessary, and to assemble and prepare the records for disclosure.

Finally, and more broadly, UMCP disputes the complainant’s allegation that UMCP is “creating a moat through excessive fees.” UMCP represents that, so far in the 2023 calendar year,⁷ it has received 468 PIA requests and that only ten of those requests (not including the complainant’s) have received an invoice charging fees. UMCP repeatedly insists that the real issue is that the complainant is unwilling to engage in a collaborative process and that he refuses to revise or narrow his requests so as to reduce the fees.

The complainant, in reply, contends that UMCP’s “only suggestion throughout this process [has been for him] to accept fewer records by limiting [his] requests.” He questions UMCP’s implied assertion that it has no support staff available to work on his requests and suggests that UMCP “is just lying.” The complainant attaches two LinkedIn profiles of paralegals purportedly employed by UMCP to support this contention.⁸ In addition, he attaches a job posting for the position of Legal Coordinator in UMCP’s OGC. He also challenges UMCP’s argument that the responsive records are likely to contain sensitive government security and intelligence information. Pointing out that only three or four of the individuals identified in his requests worked in government during the specified time frame, and that none of these individuals worked for the Department of Defense, the complainant contends that UMCP’s point is a “red herring,” and that there is no reason for UMCP to assign an attorney to perform every minute of review and redaction. And, even

⁷ We received UMCP’s response to the complaint on November 14, 2023.

⁸ Here we pause to note that neither of these paralegals appear to work for UMCP’s OGC. The profile for one states that she is a “Senior Paralegal at University of Maryland Francis King Carey School of Law.” The law school, while part of the broader University System of Maryland, is located in the University of Maryland Baltimore, not UMCP. See University System of Maryland, University of Maryland Baltimore, <https://www.usmd.edu/institutions/profile?Inst=UMB> (last visited Feb. 13, 2024). While the profile for the second paralegal states that she is a “Paralegal at University of Maryland,” she is not among the paralegals listed on the OGC website. See University of Maryland, Office of General Counsel Staff, <https://ogc.umd.edu/legalstaff/> (last visited Feb. 13, 2024).

if an attorney is assigned, the complainant believes that the fees should be assessed based on the “wage rate of the lowest paid paralegal at the University.”⁹

Analysis

The PIA authorizes us to review and resolve certain complaints, including complaints that allege that a custodian “charged an unreasonable fee under § 4-206 of [the PIA] of more than \$350.” § 4-1A-04(a)(1)(ii).¹⁰ If, after consideration of the complaint and all information before us, we determine that the alleged violation of the PIA has occurred, we must issue a written decision and order a statutory remedy.¹¹ § 4-1A-04(a)(2) and (3). When we conclude that a custodian has charged an unreasonable fee, we must direct the custodian to “reduce the fee to an amount determined by the Board to be reasonable and refund the difference,” if applicable. § 4-1A-04(a)(3)(ii).

Generally, a custodian must allow inspection of non-exempt public records with the “least cost and least delay.” § 4-103(b). At the same time, the PIA also permits a custodian to charge a “reasonable fee” for searching for and preparing responsive records when that search and preparation time exceeds two hours.¹² § 4-206(b) and (c). A “reasonable fee”

⁹ After we received the complainant’s reply, which was submitted pursuant to COMAR 14.02.02.04, both parties submitted additional memoranda to “correct[] several statements for the record” (UMCP) and “highlight a few omissions still existing in the record” (the complainant). While we have considered these submissions—which largely repeat previous arguments and take umbrage at various accusations that the parties have cast upon one another—we do not recount them here. We do, however, take this opportunity to emphasize that we typically assume that both parties are operating in good faith. While the parties to a complaint may disagree strenuously at times, we expect that custodians are interested in providing records in compliance with the PIA, and that records requesters are genuinely interested in obtaining the records identified in their requests. In addition, we are aware that UMCP had prepared a second supplemental response (i.e., a third submission) in order to further “correct the record.” We declined to accept this submission. Neither the statute nor our regulations provide for a third, unsolicited response from a custodian, *see* Md. Code Ann., Gen. Provisions § 4-1A-06(b); COMAR 14.02.02, and, given the repetitive and highly-contentious nature of the second round of submissions (which neither the statute nor our regulations provide for), we doubt that this third submission would prove useful and would likely only provoke a further back-and-forth between the complainant and UMCP. We note UMCP’s objection.

¹⁰ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise indicated.

¹¹ Before filing a complaint, a PIA requester must attempt to resolve a dispute through the Public Access Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a).

¹² While the PIA does not expressly authorize it, the Supreme Court of Maryland has suggested that a custodian may properly “require pre-payment of fees or a commitment to pay fees when the cost of processing a PIA request is likely to be substantial.” *Glass v. Anne Arundel County*,

is a fee that bears a “reasonable relationship to the recovery of actual costs incurred” by the agency responding to a PIA request. § 4-206(a)(3); *see also* 71 Md. Op. Att’y Gen. 318, 329 (1986) (explaining that an agency should neither “make a profit nor . . . bear a loss on the cost of providing information to the public”). Actual costs include the cost of time spent searching for and preparing the records—e.g., by redacting exempt material—and the cost of reproduction. § 4-206(b)(1). The cost of staff and any necessary attorney review time must be calculated by prorating “each individual’s salary”—not including benefits or any indirect costs, PIACB 22-06, at 5 (Jan. 18, 2022)—and the “actual time attributable to the search for and preparation of a public record,” § 4-206(b)(2). In order to provide responsive records “with the least cost,” § 4-103(b), a custodian ordinarily “should utilize the lowest-paid employee available and capable of producing the response,” PIACB 21-16, at 6 (July 30, 2021).

Once a complaint is properly before us, the burden is on the custodian to demonstrate that the fee is reasonable as the PIA defines the term. Though the statute does not explicitly address this issue as to fees, *compare, e.g.*, § 4-362(b)(2) (providing that the “defendant”—i.e., the custodian—“has the burden of sustaining a decision” to deny inspection or provision of a copy of a public record), such burden allocation is consistent with the PIA’s general purpose of promoting access to public records. In addition, the custodian is often the sole possessor of information about the fee, thus making it difficult for a requester to show with any degree of detail that a fee is conclusively *unreasonable*. *Cf.* 6 OMCB Opinions 74, 76 (2009) (explaining that normally the public body, and not the complainant, “has the necessary details to allow [the Open Meetings Law Compliance Board] to evaluate whether or not a violation of the Open Meetings Act has occurred”).

Despite the large volume of information and argument supplied by the submissions, we determined that we needed additional information to resolve the complaint. We therefore held an informal conference with the parties to obtain this information. *See* § 4-1A-07(b). In particular, we focused on UMCP’s review process, including its redaction process, and the roles that various OGC employees, including paralegals, typically play in that process. Additionally, we asked questions related to the anticipated substantive content of the responsive email records, e.g., about the nature of the specific researcher’s work and whether she works with students or is participating in on-going research projects. Due to certain timing constraints, UMCP was unable to provide answers to all of the questions during the conference, and so submitted written answers at our request at a later date. Our questions were aimed at better understanding UMCP’s two-minute per-page time estimate and its position that almost all of the work must be performed by an attorney.

453 Md. 201, 212-13 (2017). In light of this common practice, we have previously determined that we have authority to review estimated fees charged before work is actually completed. *See, e.g.*, PIACB 22-07, at 4-5 (Feb. 3, 2022).

During the informal conference, and in the written submissions that followed, UMCP provided extensive information and additional argument.¹³ While we have considered all of the information, we recount only the points potentially relevant to our decision here. First, UMCP explains that review and redaction of records is done both electronically and by hand. When the volume of responsive records is high, those records are often printed and exempt material is highlighted. The highlighted records are then scanned so redactions can be electronically applied. UMCP explains that records are reviewed in hardcopy form because “going back and forth on a screen is more complicated,” and a reviewer often needs to revisit pages already reviewed. Hardcopies, UMCP explains further, also allow a reviewer to remove pages that either will not be released even in redacted form, or that will be released without any redaction and thus provided to the requester sooner.

In response to our question about attorney review time—that is, how much of the two-minute per-page estimate represents attorney review—UMCP states that the “true measure” is probably closer to five minutes of total work per page. Thus, it anticipates that attorney review will actually take *longer* than two minutes per page for each of the 4,964 pages of records, although UMCP will not charge for that overage time. UMCP states that *all* email records typically require attorney review for exemptions, privileges, and other protected content. The records are reviewed first to see if they meet the PIA’s definition of “public record,”¹⁴ and then a “secondary legal review” is performed for exemptions. UMCP also asserts that no non-attorney OGC employee is available or capable of reviewing the records in this way, and that if our Board “mandated for those secretarial roles to perform the legal review, then a qualified person would have to go back and perform the review again,” which would not only be a “waste of time,” but also make review “take significantly longer.”

¹³ Although UMCP was asked to provide written answers to four discrete questions following the informal conference, UMCP provided information and argument that went far beyond answering those four questions. The complainant therefore responded to UMCP’s written submission, and we have considered his response.

¹⁴ We note here that the definition of “public record” is broad. A public record is “the original or any copy of *any* documentary material” that is made or received “by a unit or an instrumentality of the State or of a political subdivision . . . *in connection with the transaction of public business*” that “is in *any form*.” § 4-101(k)(1) (emphases added); *see also Lamson v. Montgomery County*, 460 Md. 349, 362 (2018) (“Because the MPIA is designed to grant access to documents regarding the affairs of government and the official acts of public officials, it follows that the definition of a public record should be broad enough to cover a wide range of document types.”). We suspect most UMCP records—including those that involve private individuals in some way—relate to “the transaction” of UMCP’s business, which is a “public business,” and therefore qualify as public records, even if they may be exempt from disclosure. Thus, in this case, we are skeptical of UMCP’s assertion that an attorney *must* review all email records at the outset to determine if they qualify as public records.

UMCP also provided information about the “secretarial tasks” that the OGC’s paralegals—who are discussed more below, and to whom UMCP refers in its submissions as “coordinators”—typically play in UMCP’s PIA response process. UMCP advises that a paralegal: logs requests and makes notes for each entry; drafts letters from a template for an attorney’s review; follows up on requests to other UMCP departments for responsive records; “maintains a robust correspondence file” for each request; assists requesters with accessing video footage; and schedules meetings. The annual salaries for the two paralegals employed by OGC are \$80,580 and \$81,600, which result in hourly rates of \$38.53 and \$39.02, respectively. UMCP reiterates its stance that, while the paralegals have been “helpful,” they are not “available and capable of reviewing the records and producing the response.”

Finally, UMCP provided some additional information about the potential substantive content of the responsive email records, given the type of work done by the specific researcher identified in the complainant’s PIA requests, Dr. Caroline Orr. UMCP again broadly stresses that ARLIS employee records “must be subject to careful review to ensure compliance with the National Security Agency Act and other applicable federal laws and PIA exemptions.” Exempt information may include, according to UMCP, not only student and personnel information, but also communications related to on-going research, inter- and intra-agency letters and memoranda, and “Controlled Unclassified Information,” or “CUI.” UMCP explains that “CUI requires control to prevent the release of unclassified information that, if publicly associated with defense missions or aggregated with other sources of information, often will reveal exploitable information to adversaries or violate statutory requirements.”

Although UMCP provides little information specifically about the nature of Dr. Orr’s work, we understand that she is a “postdoctoral research associate at ARLIS focusing on cognitive security and mis/dis/malinformation related to COVID-19, vaccination and the pandemic.” Univ. of Maryland, Applied Rsch. Lab’y for Intel. & Sec., Caroline Orr, <https://www.arlis.umd.edu/about-arlis/our-people/caroline-orr> (last visited Feb. 13, 2024). According to UMCP’s website, Dr. Orr’s expertise includes, among other things, social media analytics, online extremism, content analysis, and behavior change theory. *Id.* UMCP states that Dr. Orr both supervises and advises graduate students, and works on approximately three research projects at a time. Thus, in addition to CUI, UMCP states that the content of responsive emails may also include student records that fall under FERPA—e.g., “conversations between Dr. Orr and graduate students surrounding their work product, student work product, academic counseling, and collaborate communications related to the research they are working on”—as well as “communications related to ongoing research.” UMCP also expects to find personnel information, including “requests for leave (parental, sick, annual), and performance-related communications surrounding graduate students.”

With this additional information and the general background discussed above, we turn to the fees at issue here and first address the hourly rate that UMCP intends to charge—\$74.67, the “2018 rate” of one of its OGC attorneys. UMCP represents that this rate is based on salary alone and does not include benefits or overhead costs. We see no reason to doubt that representation. UMCP also represents that this rate is a discounted rate because the attorney who will prepare the response actually earns \$109.99 per hour, or approximately \$228,779 per year. While these figures might seem high, the PIA does not preclude a custodian from charging them solely because the rates are substantial.¹⁵ See § 4-206(b)(2) (“[S]taff and attorney review costs . . . shall be prorated for each individual’s salary.”). Though the complainant suggests that the hourly rates should be limited or capped in some way, our Legislature has not chosen to do this. *Compare, e.g.*, Colo. Rev. Stat. § 24-72-205(6)(a) (“After the first hour of time has been expended, the custodian may charge a fee for the research and retrieval of public records that shall not exceed thirty dollars per hour.”); Del. Code Ann. tit. 29, § 10003(m)(2) (precluding “administrative fees” for “any cost associated with the public body’s legal review of whether any portion of the requested records is exempt from FOIA,” and requiring any permissible administrative fees to be “billed at the current hourly pay grade . . . of the lowest-paid employee capable of performing the service”); Mass. Gen. Laws Ann. ch. 66, § 10(d)(ii) (“[I]f an agency is required to devote more than 4 hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested,” then the agency may “include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required,” but such fee “shall not be more than \$25 per hour.”).¹⁶

¹⁵ While we take UMCP’s point that the PIA, when enacted, did not necessarily envision the large volume of electronic records that government agencies generate today, we also wonder whether the PIA contemplated the comparatively high salaries that some attorneys command or the disparate practices of agencies in even assessing costs for attorney review in the first place. *Compare, e.g.*, PIACB 21-12, at 2 (May 27, 2021) (charging \$325 per hour for attorney review) with PIACB 21-13, at 2 (June 3, 2021) (charging \$31 per hour for attorney review); *compare also, e.g.*, PIACB 22-14, at 2 (May 6, 2022) (involving an estimated fee for police disciplinary records that did not include attorney review time) with PIACB 22-15, at 2 (June 27, 2022) (also involving an estimated fee for police disciplinary records and charging \$175 per hour for attorney review).

¹⁶ Massachusetts allows an agency to petition the Supervisor of Public Records for permission to charge more than \$25 per hour. Mass. Gen. Laws Ann. ch. 66, § 10(d)(iv). Such petition may be approved if “the request is for a commercial purpose” or “the fee represents an actual and good faith representation by the agency or municipality to comply with the request, the fee is necessary such that the request could not have been prudently completed without the redaction, segregation or fee in excess of \$25 per hour and the amount of the fee is reasonable and the fee is not designed to limit, deter or prevent access to requested public records.” *Id.*; see also Sec’y of Commonwealth of Mass., Petitions by Records Access Officers to the Supervisor of Records, <https://www.sec.state.ma.us/divisions/public-records/public-records-law/petitions-to-supervisor-of-records.htm> (last visited Feb. 13, 2024).

Although the PIA may allow UMCP to charge an hourly rate of \$74.67 for attorney review, it is not at all clear that UMCP may assign the task of preparing the responses almost entirely to that attorney. For request 227, UMCP anticipates that the attorney will spend 80.9 out of a total of 81.9 hours working on the response. For request 229, that figure is 80.7 out of 81.5 total hours. UMCP explains that the attorney time estimates include “printing the records out for review; reading every page of those records; assessing whether any provision of law permits or requires material to be withheld (e.g. legal review); redacting those records as necessary; and assembling/preparing those records for eventual transmittal.” Notably, many of these tasks do not require the skill of an attorney, thus the assignment of a highly-paid attorney to those tasks would seem to contravene the PIA’s mandate that public records generally be provided with “the least cost.” § 4-103(b).

Moreover, as noted above, OGC employs two paralegals, including one whose stated tasks include assisting attorneys with UMCP’s “responses to internal and external information requests, such as supporting Public Information Act (PIA) process.”¹⁷ See University of Maryland, Office of General Counsel Staff, <https://ogc.umd.edu/legalstaff/> (last visited Feb. 13, 2024) (bio of Erika Chicas, Paralegal). While UMCP stresses the number of exemptions that might apply to the responsive records here, and repeatedly asserts that the paralegals are not “capable” of performing substantive PIA response work such as reviewing records for exempt material, we have trouble with this blanket assertion. These requests are surely not the first ones UMCP has encountered that might implicate, e.g., FERPA or student or personnel records. It is hard to believe that a paralegal in the OGC—whose described duties include assisting with PIA requests—would be wholly unfamiliar with these exemptions or how they might apply to UMCP’s records. At the very least, it is hard to understand why this paralegal—or the paralegal who has a *law degree*, see *supra*, note 17—could not be trained to perform reviews for more routine exemptions, including exemptions that might apply to these records.¹⁸

To the extent that there may be genuine questions about whether certain records or information may be released, the paralegal may flag those for closer attorney review. See PIACB 21-15, at 6 (July 6, 2021) (explaining that lower-paid staff should “perform the bulk of the review and send only those responsive records that genuinely present a question of whether or not an exemption applies to its attorney for legal review”). However, in our view, UMCP may not assign the attorney to perform the bulk of the work captured by the

¹⁷ It appears that the OGC also currently employs a second paralegal who has a law degree. See University of Maryland, Office of General Counsel Staff, <https://ogc.umd.edu/legalstaff/> (last visited Feb. 13, 2024) (bio of Yolanda L. Harris, Paralegal).

¹⁸ To this end, we note that the Public Information Act Manual, published by the Office of the Attorney General, is an excellent and user-friendly resource available to those tasked with responding to PIA requests. See *Maryland Public Information Act Manual* (18th ed., Oct. 2023), <https://www.marylandattorneygeneral.gov/Pages/OpenGov/piamannual.aspx> (last visited Feb. 13, 2024).

fee estimates—which again, as UMCP explains, includes tasks like printing records, applying redactions, and assembling the final production—when paralegals, whose hourly rates are almost half that of the attorney, are employed by OGC. In this regard, we tend to agree with the complainant’s contention that allowing a custodian to simply state that non-attorney employees are almost *per se* incapable of reviewing records for exempt material, and that a highly-paid attorney must, in every case, review *all* email records, presents the danger that other custodians may “adopt [this] practice when they want to deny access to public records.”

We turn next to what is typically the more difficult question. To evaluate the overall reasonableness of the fee estimates, we must determine whether UMCP’s time estimates are accurate and fair estimates of the amount of time it will actually take to respond to the complainant’s PIA requests. When making this determination, we ordinarily afford the custodian considerable deference in recognition of the fact that the custodian is far more familiar than we are with the nature of their records and how they are kept. *See, e.g.*, PIACB 24-10, at 6-8 (Nov. 13, 2023); PIACB 24-03, at 6-7 (Oct. 6, 2023). *But see* PIACB 23-33, at 6-7 (Oct. 5, 2023) (reducing the estimated search time where the complainant sought only certain agreements located within “one of four or five files” in a Bankers Box, thus meaning that most of the records in the boxes did not need to be scrutinized or read closely for disclosure determinations).

Here, UMCP estimates that it will take 81.9 hours to prepare the response for request 227, which generated 2,488 pages of responsive records. For request 229, the estimate is 81.5 hours to prepare 2,476 pages for disclosure. Request 227 includes one hour of IT work while request 229 includes 45 minutes of IT work. As noted above, the remaining hours of work (161.6) include the tasks of printing the records (all 4,964 of them), reviewing the records for exempt material, redacting the records, and preparing them for disclosure. As UMCP explains, these numbers yield an average of roughly two minutes of work per page. Put a different way, UMCP anticipates that, if an employee were to work only on preparing the 4,964 responsive records for release, it would take that employee just over four work weeks (assuming a 40-hour week) to do so.

We start by flagging some concerns. First, it is unclear whether UMCP should be charging for anything other than minimal time spent printing and scanning the records. It seems to us that, while those pages are printing or scanning, an employee should be “free to undertake duties unrelated to the PIA response,” PIACB 19-14, at 3 (Aug. 19, 2019), such that the complainant should not be charged for the amount of time it takes the printer to produce 4,964 pages of records. Second, these time estimates are generally higher than the estimates provided by custodians in other matters we have reviewed that involve requests for email communications. For instance, in one case, a custodian estimated that it would take fifteen seconds per page to review 22,969 pages of email records, which worked out to 95 hours of total review time. PIACB 21-05, at 1 (Dec. 1, 2020). While that time estimate apparently did not include time for any necessary redaction, we are not sure

that incorporating that task would add a full minute and 45 seconds, on average, *per page*. Notably, the request in that matter was for the emails of a County Council member, which, like the requests at issue here, may also contain exempt information. *See also, e.g.*, PIACB 21-15, at 1-2 (July 6, 2021) (estimating one minute of review for each of 6,528 pages of emails responsive to a request for communications between a police department, city council, city administrator, and mayor related to two individuals who died in police custody).¹⁹

At the same time, based on the submissions and information we have, it seems that the bulk of the two-minute per-page estimate consists of the time anticipated to review the 4,964 pages of email records for material that cannot be disclosed or that may be withheld, assuming UMCP can justify why disclosure would be contrary to the public interest. *See* §§ 4-301, 4-304, 4-328, 4-343. On the one hand, we appreciate the potentially sensitive nature of some of the responsive records given their source. *See* C. Todd Lopez, *Applied Research Laboratory for Intelligence, Security Launches at University of Maryland*, (Dec. 2, 2021), <https://www.defense.gov/News/News-Stories/Article/Article/2860074/applied-research-laboratory-for-intelligence-security-launches-at-university-of/> (noting that ARLIS “leverages technology and science to meet increasingly critical national security challenges,” and that ARLIS will allow the Department of Defense to “conduct research, innovate, and undertake dynamic experimentation”). While we have no indication that Dr. Orr herself works directly with the Department of Defense, the scope of her work appears to include potentially sensitive topics such as the pandemic and online extremism. *See* Univ. of Maryland, Applied Rsch. Lab’y for Intel. & Sec., Caroline Orr, <https://www.arlis.umd.edu/about-arlis/our-people/caroline-orr> (last visited Feb. 13, 2024) (noting current work related to “COVID-19, vaccination and the pandemic,” and past work “focusing on detection and analysis of foreign and domestic disinformation campaigns”).

UMCP has also indicated that Dr. Orr generally has three active research projects going on at a time, which is not unsurprising given that she is a postdoctoral research associate. Thus, UCMP will likely need to determine whether § 4-346’s discretionary exemption applies to any of the information related to those active research projects. *See* § 4-346(a) (permitting denial of “the specific details of a research project that an institution of the State or of a political subdivision is conducting,” but precluding denial of “the name, title, and expenditures of a research project . . . and the date when the final project summary of the research project will be available”). We have recognized on several occasions that the nature of the records—including their substantive content—bears on the amount of time necessary to review and prepare them for disclosure. *See, e.g.*, PIACB 24-03, at 6-7 (Oct.

¹⁹ In PIACB 21-05, the custodian indicated that staff *and* the attorney would each spend one minute per page reviewing the responsive email records—thus, accounting for both, the estimate is similar to the one here, i.e., two minutes per page. However, we cautioned that, to the extent that the estimate anticipated that the attorney would review *all* of the records that staff had already reviewed, the estimated fee was likely unreasonable. PIACB 21-05, at 5 (July 6, 2021).

6, 2023) (records generated by an Assistant State’s Attorney who handled 50-75 criminal cases per year); PIACB 21-14, at 6-7 (July 23, 2021) (records generated by attorneys in a school system).

We take the complainant’s point that the parameters of his request—i.e., that he is only interested in Dr. Orr’s email communications with certain specific individuals who, as the complainant notes, are not her graduate students or supervisors, and who, the complainant asserts, are not employed by the Department of Defense—make it less likely that the email records will contain information exempt under, e.g., FERPA or the PIA’s personnel exemption. Those parameters may perhaps also make it less likely that CUI or other national security-related information will appear in the responsive records.²⁰ Though the complainant asks us to dismiss UMCP’s argument entirely as a “red herring” because he has “requested emails sent to or from predominantly political actors,” we decline to do so. Whether reviewed by an attorney or not, we suspect that these records are not routinely requested and credit UMCP’s representation that at least some of the responsive email communications will require careful review.

Thus, although not without a significant degree of hesitation, we cannot conclude that UMCP’s estimate that it will take an average of two minutes per page to prepare the response is unreasonable. However, as discussed above, in our view the PIA does not permit UMCP to assign the bulk of that time to an attorney and charge the attorney rate. Instead, UMCP must utilize its paralegal to perform the majority of tasks associated with responding to the complainant’s PIA requests—printing and scanning the records (if absolutely necessary and with minimal charge to the complainant), reviewing and applying redactions (either to material that is clearly exempt or to material flagged after attorney review), and compiling the disclosable records for release.

To the extent that attorney review is necessary, we think that it is appropriate, for purposes of the fee estimate, to anticipate that ten percent of the records may need close review by an attorney to determine whether any exemptions apply. *See* PIACB 22-08, at 3 n.6 (Feb. 23, 2022) (“[W]hen providing already-compiled and redacted records to an

²⁰ A 2010 executive order provides that “[t]he mere fact that information is designated as CUI shall not have a bearing on determinations pursuant to any law requiring the disclosure of information or permitting disclosure as a matter of discretion, including disclosures to the legislative or judicial branches.” Exec. Order No. 13,556, 75 Fed. Reg. 68,675 (Nov. 9, 2010). Thus, to be exempt from disclosure, § 4-301(a), which precludes disclosure if “contrary to,” among other things “a federal statute or a regulation that is issued under the statute and that has the force of law,” or another exemption in the PIA must apply to the CUI. Further, the order calls for uniform designations for identifying CUI, so in at least some instances it should not be difficult to identify the information that may need closer scrutiny. *Id.*; *see also* Dep’t of Defense, CUI Program, <https://www.dodcui.mil/> (last visited Feb. 13, 2024) (“CUI policy provides a uniform marking system across the Federal Government that replaces a variety of agency-specific markings.”).

attorney for review, a custodian should seek review of only those responsive records that genuinely present a question of whether or not an exemption applies.” (quotations and citation omitted)). In coming to this conclusion, we are mindful that, though UMCP has some insight into what information the responsive records may contain, it has chosen not to review even a sampling of the records to validate its position. Instead, it continues to rely over a period of many months on generalities about what the records could possibly include, based on a broad description of the types of records it sees in a wide variety of PIA requests. That speculation does not appear to be consistent with the narrow, specific nature of the requested records—though they may be voluminous. We also think it consistent with the pro-disclosure purposes of the PIA, *see* § 4-103(b), that fee estimates be conservative in the amount charged for labor by highly-compensated employees. High fees, especially at the estimate phase, can have a chilling effect on government transparency,²¹ which is certainly not what the General Assembly intended in enacting § 4-206, the PIA’s fee provision.

Thus, using the numbers provided by UMCP, we determine that more reasonable estimated fees are as follows: (1) for request 227, one hour charged at the IT rate, 74.6 hours charged at the lower paralegal rate, and 8.3 hours charged at the attorney rate; and (2) for request 229, 45 minutes charged at the IT rate, 74.3 hours charged at the lower paralegal rate, and 8.3 hours charged at the attorney rate. *See* 4-1A-04(a)(3)(ii) (requiring, if the Board concludes that a fee is unreasonable, that the Board “reduce the fee to an amount determined by the Board to be reasonable”). Application of those rates and times yields estimated fees of \$3,553.53 for request 227²² and \$3,511.40 for request 229.²³ Of course, UMCP is free to have its attorney do all of the work, but because we do not think it is *necessary* for an attorney to do all the work, UMCP cannot charge the attorney rate as it has. As we have explained above, doing so violates the § 4-103(b)’s mandate that records ordinarily be provided with “the least cost.”

Further, although we recognize that we lack authority to order it, in our view it would be reasonable and appropriate for UMCP to charge the complainant a portion of the estimated fees in advance, rather than demanding full payment upfront, given the

²¹ *See generally* Tae Ho Lee, *Public Records Fees Hidden in the Law: A Study of Conflicting Judicial Approaches to the Determination of the Scope of Imposable Public Records Fees*, 21 Comm. L. & Pol’y 251 (2016).

²² Paralegal work on 2,239 pages at two minutes per page yields 4,478 minutes, or 74.6 hours of work. Attorney work on 249 pages at two minutes per page yields 498 minutes, or 8.3 hours of work. Using the paralegal rate of \$38.53, the attorney rate of \$74.67, and IT rate of \$59.43 yields an estimated fee of \$3,553.53.

²³ Paralegal work on 2,228 pages at two minutes per page yields 4,456 minutes, or 74.3 hours of work. Attorney work on 248 pages at two minutes per page yields 496 minutes, or 8.3 hours of work. Using the paralegal rate of \$38.53, the attorney rate of \$74.67, and IT rate of \$38.48 yields an estimated fee of \$3,511.40.

uncertainty. *See* PIACB 24-10, at 8 (Nov. 13, 2023). As always, UMCP must carefully track the amount of time it takes to prepare the responses, as well as who is performing the work, so that the final fees assessed comport with § 4-206. Assuming the complainant pursues his PIA requests, we are particularly interested, in this case, to know what the actual cost of production is.

Conclusion

After consideration of the submissions and all of the information before us, we conclude that UMCP's estimated fees of \$6,102.72 (for request 227) and \$6,057.22 (for request 229) are unreasonable because they contemplate that a highly-paid attorney will perform nearly all the work of preparing the responses. Instead of assigning the bulk of the work to the attorney, UMCP should utilize the paralegal whose described duties include assisting with responses to PIA requests and assess estimated costs at the paralegal's lower hourly rate as outlined above. UMCP must carefully track the amount of time that each employee, including the attorney, spends working on the responses so that the final fees bear a "reasonable relationship to the recovery of [the] actual costs" that UMCP incurs. § 4-206(a)(3). In the meantime, we have determined that more reasonable estimated fees are \$3,553.53 for request 227 and \$3,511.40 for request 229.

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