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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 25-01

November 8, 2024

Montgomery County Public Schools, Custodian
Tim & Dagmar Janss, Complainants

Tim and Dagmar Janss, complainants, sent a Public Information Act (“PIA”) request to Montgomery County Public Schools (“MCPS”) seeking high school health teacher training material. MCPS initially provided an estimated fee of \$6,494, which was then reduced to \$4,250. MCPS later provided a link to certain responsive records that were publicly available. MCPS also produced some records to the complainants at no charge. The complainants challenge the \$4,250 estimated fee, and also allege that MCPS failed to provide all responsive records and improperly redacted some of the records that it did provide. MCPS contends that the estimated fee is reasonable in light of the complexity of the complainants’ PIA request. As explained below, we find that MCPS has failed to demonstrate that the \$4,250 estimated fee is reasonable under the PIA.

Background

The complainants are the parents of a child who, in 2022, attended an MCPS high school. In September of that year, they requested “an electronic copy of the Tier 1 Training, High School Health Training, PDO Course #90924, July 11, 12, 19 and 21 and specifically the Student Link.” The complainants expressed a willingness to pay a fee, suggesting that “a fee of approximately \$30” might be reasonable. The complainants asked, if the fee “is different than this proposed amount,” that MCPS “please explain why.”

On September 14, 2022, MCPS sent the complainants a letter acknowledging receipt of the PIA request and providing an estimated fee of \$6,494. MCPS explained that it anticipated that a “health education content specialist” would spend 100 hours working on the request at an hourly rate of \$64.94. MCPS stated that it would “proceed with fulfilling [the] request” when it received payment of the estimated fee. MCPS also stated that if it became apparent that preparing the response would take longer than 100 hours, it would stop work and notify the complainants of any additional costs. MCPS explained that it would refund the difference if the work was completed in less time than estimated. MCPS also requested a thirty-day extension of the time for responding “due to the amount of time required to gather responsive documents.”

The complainants sent a letter in response on October 6, 2022. The complainants asked MCPS to “please explain why it costs a Montgomery County taxpayer \$6,486¹ to look at the only available lesson plans for a required class for their child.” The complainants also requested a fee waiver and provided some background information in support of that request.² The complainants contended that the estimated fee was arbitrary and was “being used as a deterrent barring [them] from obtaining this information.” Noting that the records “exist, in an electronic format, and were previously circulated,” the complainants argued that “[l]imited searching” and “no preparation” should be required. The complainants asked MCPS to “[p]lease explain in greater detail what exactly the MCPS Health Education Content Specialist would be searching for and reviewing for at least 100 hours at a cost of at least \$6,486 in order to respond to this MPIO request.” To further support their request for a fee waiver, the complainants emphasized that they were not a “commercial entity,” and that the information would “serve parents and guardians to guide their children through the lessons and create a better understanding of the material.”

MCPS sent the complainants another letter, dated November 14, 2022, in which it provided a “publicly available link” as a “partial response” to their PIA request. MCPS asked the complainants to “[p]lease advise if you wish to narrow the scope of your request and we will provide an updated fee amount.” More than a year later, in January 2024, the complainants contacted the Public Access Ombudsman for assistance with resolving their disagreements with MCPS regarding its response to their PIA request.³ The Ombudsman ultimately issued a final determination stating that the dispute was not resolved, and indicating that the issues presented were the complainants’ “belief that the estimated fees are excessive, the agency’s failure to respond to a fee waiver request, and the [complainants’] concern that MCPS’s response to the PIA request was incomplete.”

While the matter was pending with the Ombudsman, MCPS issued a revised fee estimate of \$4,250. MCPS explained that the revised estimate was based on an expectation that the health education content specialist would spend 85 hours working on the response

¹ We note that the fee in MCPS’s letter was slightly higher, \$6,494.

² The complainants noted that MCPS students are required to complete one year of health education to receive a high school diploma and that the Maryland State Department of Education (“MSDE”) “gave each County the autonomy to adjust the new lesson plan.” MCPS thus “revised the health curriculum and trained teachers using” the materials the complainants requested. The complainants asserted that, despite being told they would, they never received an invitation to review the new curriculum and that “[n]o text books, or material of any kind, are available to parents concerning the MCPS lesson plans.” Thus, the complainants sent their PIA request.

³ The Public Access Ombudsman is charged with making “reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records.” Md. Code Ann., Gen. Provisions § 4-1B-04(a). Before filing a complaint with our Board, a complainant must attempt to resolve the dispute through the Ombudsman and receive a final determination that the dispute was not resolved. *Id.* § 4-1A-05(a).

at an hourly rate of \$50. MCPS again asked for prepayment of the fee before work would begin. There is no indication that the complainants paid that fee, or any portion of it. Nevertheless, shortly after the final determination issued in June 2024, MCPS sent a link to responsive records. MCPS indicated that the records had been redacted and cited several exemptions in the PIA to justify those redactions, including § 4-313⁴ (student records), § 4-301(a)⁵ (records subject to the Family Educational and Privacy Rights Act (“FERPA”)), and §§ 4-343, 4-344 (records subject to the deliberative process privilege). MCPS also indicated that it applied redactions “in accordance with GP § 4-331,”⁶ and that “private information for community members has been withheld to protect their privacy.”

After receiving the Ombudsman’s final determination, the complainants timely filed this complaint with our Board. The complainants assert that they “asked for one, single, electronic document MCPS had used with teacher training, including incorporated documents like the referenced ‘student link,’ undoubtedly also electronic documents.” They accuse MCPS of “stonewalling by outrageous fee requests and foot-dragging” for nearly two years. While they acknowledge that MCPS has now provided some of the training materials they requested, the complainants note that there were many redactions and no “incorporated documents,” which the complainants believe to be “lesson plans and teacher guides as well as or as part of the ‘student link.’” The complainants challenge both “not receiving the full package” and the redactions that MCPS applied to the material provided. Stressing that the training was a “public presentation,” the complainants contend that the records do not reflect any “internal decision-making.” The complainants suggest that MCPS is “just hiding something improperly.” The complainants ask us to review the unredacted records and to direct MCPS to produce them to the complainants without redaction, including the student link, and presumably at no cost. The complainants also ask that we “provide any monetary relief . . . that is permitted.”⁷

In response to the complaint, counsel for MCPS states that “[w]hile the request for training course materials may be simple on its face, it requires more explanation.” MCPS

⁴ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise stated.

⁵ The letter cited § 4-304, which is not a standalone exemption in the PIA. Given MCPS’s reference to FERPA, we believe MCPS likely meant § 4-301(a)(2)(ii), which precludes inspection of records if it would be contrary to “a federal statute or a regulation that is issued under the statute and has the force of law.”

⁶ Section 4-331 generally requires a custodian to deny inspection of “the part of a public record that contains the home address, personal telephone number, or personal e-mail address of an employee of a unit or an instrumentality of the State or of a political subdivision.”

⁷ Unlike the provision governing PIA actions brought in circuit court, the PIA does not empower us to award costs or damages. *See* § 4-362(d) and (f) (allowing a court to award damages and costs under certain circumstances).

explains that the specific training at issue was provided as a “full day training on one of four days” using a platform called Professional Development Online. MCPS states that the one-day training “encompasses 36 weeks of daily curriculum for two separate courses that are taught over the course of an entire year,” and consists of seventy-five lessons in one health course and seventy-one lessons in another. The training course itself consists of a 67-page slide deck; the slide deck itself was provided to the complainants in PDF form with redactions to the embedded hyperlinks to the lessons. Counsel for MCPS explains that the slide deck and curriculum materials are “housed on an internal MCPS Google Drive in Google Drive documents,” and that “[t]hird parties that are not a part of MCPS do not have access to this online cloud-based file storage system.” MCPS further explains that the Google documents for the curriculum materials “contain hundreds of pages of embedded links that the teachers use to present the curriculum,” and that “[e]ach lesson document contains additional embedded links that provide things like videos, student assignments, articles, law references, scenarios, webpages, and other teaching tools.”

To process the complainants’ PIA request, counsel for MCPS advises that an employee must “click through each course, then all of the individual units, 146 lessons, and hundreds of embedded links,” and then “convert all of those links and documents within the Google Drive into a sharable PDF that is accessible separate and apart from the internal MCPS Google Drive.” MCPS explains that it anticipated that it would take an employee 30-45 minutes to process each lesson in this way, thus bringing the total estimated processing time to 73 to 109.5 hours, which was the basis for MCPS’s initial quote of 100 hours of labor, which MCPS then reduced to 85 hours. Though the employee who earned a prorated salary of \$50 per hour is apparently no longer in the position, counsel for MCPS indicated that it would honor that rate, thus arriving at its \$4,250 estimated fee.

Counsel for MCPS maintains that this \$4,250 estimated fee is reasonable under § 4-206 of the PIA. The fee, which counsel for MCPS states does not include employee benefits, represents preparation and reproduction costs, i.e., the labor of “one MCPS staff member, not an outside contractor, to review, process, and organize the records.” MCPS stresses that it has not charged the complainants for “the time the internal MCPS PIA team . . . will spend on finalizing the production” or the time already spent, nor has it charged for attorney review of the draft response. In keeping with its standard practice, counsel for MCPS states that the employee will “keep a detailed account of the actual time that employee expends on the preparation of the responsive records,” and that if the work takes fewer hours than estimated, MCPS will refund the complainants any amount overpaid.⁸

The complainants, in reply, continue to take the position that MCPS is “hid[ing] educational materials MCPS presents to our children.” The complainants “feel that, since

⁸ Counsel for MCPS also addresses the complainant’s request for a fee waiver. Because we lack jurisdiction to review a custodian’s decision to deny a request for a fee waiver, *see* PIACB 23-05, at 4 n.5 (Nov. 23, 2022), we do not detail MCPS’s arguments here.

MCPS trains teachers in these curricula in one day, [they] should be able to obtain the document[s] for a fee no greater than one day of a person clicking on each of the imbedded links.” Or, the complainants contend, because “the document exists in its entirety,” they “should be granted access for the simple transfer cost, as [they] suggested on Day 1, of \$30.” The complainants state that they “can click on the links all by [themselves].”

Noting that MCPS “went to all the trouble of blacking out the links to the additional documents that [the complainants] asked MCPS to produce electronically,” the complainants are “quite sure that all MCPS has to do is send [them] the documents without the links blacked out and [they] would have access to those materials.” Or, the complainants suggest, since MCPS uses Google Drive, MCPS could download the files from its internal drive and “put them in the same location in which [MCPS] initially shared the redacted documents.” The complainants also contend that, in its response to this complaint, MCPS has not “tried to justify the blackouts it made in the training documents for the reasons . . . stated in [the] June 18, 2024, letter.” This, the complainants assert, “proves that all the talk about ‘exceptions’ and ‘privileges’ was a bunch of legal nonsense trying to improperly withhold the documents.”⁹

Analysis

The PIA charges us with reviewing and resolving complaints alleging certain violations of its provisions, including that a custodian charged an unreasonable fee higher than \$350 for access to public records. § 4-1A-04(a)(1)(ii). If, after review of the submissions, we find that the alleged violation occurred, we must issue a written decision and order a remedy as provided in the PIA. § 4-1A-04(a)(2) and (3). When we determine that a custodian has charged an unreasonable fee, we must order 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). We have previously concluded that § 4-1A-04(a)(1)(ii) encompasses both actual fees charged after work on a response has been performed and estimated fees charged in advance of work beginning. *See* PIACB 22-07, at 4-5 (Feb. 3, 2022) (explaining the rationale for review of estimated fees); *see, e.g.*, PIACB 24-23 (Feb. 14, 2024) (reviewing an estimated fee for reasonableness).

Section 4-206(b) of the PIA allows a custodian to charge a “reasonable fee” for “the search for, preparation of, and reproduction of a public record.” For purposes of the PIA, a “reasonable fee” is one “bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit” responding to a PIA request, § 4-206(a)(3), including “staff and attorney review costs,” 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)(2).

⁹ Based on this record, which includes MCPS’s representations that it does not anticipate redactions to or withholdings of records, we do not need to resolve the complainants’ challenges to the redactions MCPS applied to records produced after mediation through the Ombudsman.

A custodian may not charge a fee for the first two hours of labor. § 4-206(c). While the PIA itself refers to “actual costs” and “actual time,” § 4-206(b), our State’s Supreme Court has observed that “agencies sometimes 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*, 453 Md. 201, 212-13 (2017). Indeed, in our experience, requiring advance payment of an estimated fee appears to be a common practice among custodians in Maryland. See PIACB 22-07, at 5 & n.7 (Feb. 3, 2022).

The questions before us is whether the \$4,250 estimated fee that MCPS has charged the complainants bears a reasonable relationship to the actual costs that MCPS anticipates it will incur in responding to their PIA request for the high school health curricula and teacher training material. We were unable to answer that question based on the information provided in the submissions, so we asked MCPS to provide additional information about the basis for the estimated fee. See § 4-1A-06(b)(2)(iii). Specifically, we asked MCPS to provide: (1) an estimate of the total number of pages in the 146 lessons that the hyperlinks lead to; (2) an explanation of what material in the records of the 146 lessons will need redaction and why; (3) an explanation of why it is necessary that a health education content specialist (as opposed to an employee with a lower hourly rate) process the records; and (4) a sample of the lesson records from the hyperlinks, with any material that MCPS maintains is non-disclosable redacted.

In response to our additional questions, counsel for MCPS advised that there are approximately 5,360 pages of records to review in total and that the estimated processing time is based on “the volume of documents and the need to convert those documents into a shareable PDF.” MCPS now states that it does not anticipate any redactions to this lesson material. As for why it is necessary that a health education content specialist perform the response work, counsel for MCPS states that the specialist is “already familiar with these records and in her role, she would have the capacity to process [the] request.” Counsel for MCPS explains that the Office of Curriculum and Instructional Programs (which is where the records are located) employs an administrative secretary, but that only a third of that secretary’s time is allocated to supporting the Curriculum Supervisor. Therefore, the secretary “would not have the capacity to fulfill [the] request without incurring overtime,” and she is also “not familiar with these records.”¹⁰

With this additional information, we turn to the reasonableness of the \$4,250 estimated fee that MCPS has charged. We start with the \$50 hourly rate that MCPS has applied with the expectation that the health education content specialist, rather than the administrative secretary, will perform the work of, in MCPS’s words, “clicking through the units, lessons, and hyperlinks to access the 5000 pages and converting them to a sharable PDF.” Though counsel for MCPS represents that the content specialist is familiar

¹⁰ MCPS did not provide a sample of the records because it is no longer “claiming that the records must be redacted or cannot be disclosed.”

with the records while the administrative secretary is not, we have no clear explanation of why familiarity with the records is important—especially given that MCPS is not, again in MCPS’s words, “claiming that the records must be redacted or cannot be disclosed.” We have said in the past that, to provide inspection of records “with the least cost,” § 4-103(b), ordinarily a custodian should “utilize the lowest-paid employee available and capable of producing the response,” PIACB 21-16, at 6 (July 30, 2021). MCPS has given us no compelling reason why the administrative secretary, who presumably earns a lower salary than the content specialist, cannot perform this work of clicking on links and converting pages to shareable PDFs.¹¹ We therefore find it unreasonable for MCPS to task the health education content specialist with preparing the response to the complainants’ PIA request.

Next, we turn to the amount of time—eighty-five hours—that MCPS anticipates it will take to “convert [the lesson] documents into a sharable PDF.” MCPS has advised that there are approximately 5,360 pages of records that will need such conversion. Eighty-five hours amounts to an average of just under one minute of processing time per page. That processing, counsel for MCPS has explained, consists of clicking on the embedded links to the pages and converting the pages to shareable PDFs. The complainants contend that this processing time estimate is excessive, largely because, in their view, MCPS should simply provide access to the links, thus obviating the need for any conversion in the first place. Though counsel for MCPS has not stated so explicitly, we take her representation that “[t]hird parties that are not a part of MCPS do not have access to [the] online cloud-based storage system” to mean that, even if the complainants had access to the links embedded in the 67-page slide deck, those links would not provide the complainants (who are third-parties) with access to the lessons or material.¹²

Although we are reluctant to rely on the unsworn statements of counsel, it does not strike us as improbable that MCPS would place restrictions on external access to records such as teacher training material. Thus, although not without a significant degree of hesitation given the lack of extrinsic evidence, we accept the representation that MCPS cannot simply provide the complainants access to all the teacher training material by providing them with the embedded links in the 67-page slide deck. *See also* PIACB 24-

¹¹ We recognize that counsel for MCPS has represented that the administrative secretary would need to perform response work during overtime. In the past, we have been “reluctant to condone the automatic use of [an] overtime rate before the work has been performed, especially where the agency has demanded prepayment of the higher amount.” PIACB 17-17, at 4 (Aug. 8, 2017). Further, “[w]hile the use of some overtime may, in some limited circumstances, be necessary,” the assumption that all time will be charged at overtime rates is “inconsistent with the purpose of the PIA to provide ‘all persons’ with ‘access to information about the affairs of government and the official acts of public officials and employees’ with ‘the least cost and least delay.’” PIACB 24-10, at 5 (Nov. 13, 2023) (quoting § 4-103(a) and (b)).

¹² If this is so, MCPS has not addressed why it needed to redact the links in the slide-deck material produced to the complainants.

10, at 7 (Nov. 13, 2023) (noting that “we generally refrain from any attempt to ‘micromanage’ an agency’s search and retrieval process”). At the same time, and with the understanding that MCPS does not need to review the records for exempt material, a full minute of processing time per-page seems excessive—especially for purposes of charging an *estimated* fee. It is hard to believe, without more explanation or evidence from MCPS, that it would take a person more than two full work weeks to convert 5,360 pages of records to shareable PDFs. We therefore find that, to the extent that MCPS has failed to demonstrate that its 85-hour time estimate is sound, MCPS cannot justify its \$4,250 estimated fee as bearing a “reasonable relationship to the recovery of actual costs” it will incur. § 4-206(a)(3).

Given this conclusion, we must determine what a more “reasonable” estimated fee might be, § 4-1A-04(a)(3)(ii)—a task that is typically challenging when a custodian has charged a fee before actually performing the work. As we see it, an average of ten seconds of processing per page—or six pages per minute—seems a more reasonable expectation at this stage in the process. We thus direct MCPS to reduce its estimated fee as follows: MCPS may charge the complainants for 14.9 hours of labor at the hourly rate of the administrative secretary assigned to the Curriculum Supervisor. MCPS may not, at the estimate stage, charge the overtime rate. *See supra*, note 11. If resort to overtime would be necessary to produce the records within the PIA’s time limitations, the complainants may wish to negotiate, e.g., a rolling production or extension of time to avoid that higher cost. *See* PIACB 24-10, at 6 n.6 (Nov. 13, 2023). As counsel for MCPS has stated it will, MCPS must carefully track the time the administrative secretary spends working on the response to the complainants’ PIA request. If the actual time spent is in excess of 14.9 hours, then MCPS may charge the complainants for any overage. Conversely, if actual time spent is less than 14.9 hours, MCPS must refund the difference. We note that our resolution here avoids a scenario where MCPS would be “expected to divert its resources” to respond to the PIA request “at an expense that will not be recovered.” *Glass*, 453 Md. at 233.

Conclusion

Based on the submissions, including the additional information provided by MCPS, and for the reasons explained above, we conclude that the \$4,250 estimated fee that MCPS charged the complainants for access to the high school health curricula and teacher training material is unreasonable under the PIA. We order that MCPS reduce the estimated fee to reflect 14.9 hours of anticipated processing time spent by the administrative secretary at the secretary’s ordinary hourly rate.

Public Information Act Compliance Board^{*,}**

Sareesh Rawat, Chair
Samuel G. Encarnacion

Debra Lynn Gardner

* For the reasons explained briefly below, Board member Quinton M. Herbert does not join fully in the Board's decision.

I agree that MCPS's \$4,250 estimated fee is unreasonable to the extent that it is based on assigning a higher-paid content specialist to perform the work of responding to the complainants' PIA request. Though ordinarily I would caution against our Board determining who the appropriate agency employee is to prepare a response, I believe that the facts in this case bear out that an administrative assistant could perform the necessary pulling and saving of documents to PDF format, given that redaction is not needed.

However, I disagree with the majority of the Board's conclusion that MCPS must calculate the estimated fee using an average of ten seconds of processing time per-page. In my view, an average of thirty seconds of processing time per-page is a more reasonable expectation of how long it will take to access the records, convert them to PDF, and save and prepare them for production. While our Board rightly tends to refrain from "micromanaging" an agency's search process, *see* PIACB 22-06, at 7-8 (Jan. 18, 2022), an average of one full minute of processing time per-page strikes me as excessive when no redaction or withholding is anticipated.

Quinton M. Herbert

** Board member Nivek M. Johnson did not participate in the deliberation, preparation, or issuing of this decision.