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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 25-15
December 9, 2024
Department of General Services, Custodian
Beth Tomasello, Complainant

In December of last year, Beth Tomasello, the complainant, sent a Public Information Act (“PIA”) request to the Maryland Department of General Services (“DGS”) asking for records related to the construction of the Women’s Prerelease Facility. In January, DGS sent the complainant a letter indicating that responsive records would be shared with her electronically and that certain information had been redacted, including deliberations between the Department of Budget and Management (“DBM”) and DGS. DGS cited § 4-344¹ of the PIA as authority for the redaction of this deliberative material. DGS also charged the complainant a \$448.38 fee for the response to her PIA request. The complainant disagreed with several aspects of DGS’s response, including the redactions and the fee, and thus contacted the Ombudsman, who ultimately issued a final determination stating that the disputes were not resolved. The complainant continues to challenge DGS’s response to her PIA request in this complaint. In response to the complaint, DGS maintains that it has provided all responsive records that it has, that the records were properly redacted, and that the fee was reasonable under the PIA. After review of the submissions, we conclude that DGS did not constructively deny the complainant’s PIA request and that the \$448.38 fee was reasonable under the PIA. We also find that DGS has failed to justify its application of § 4-344 to redact and withhold information from the complainant. We thus direct DGS to produce the records in unredacted form and explain our decision in more detail below.

Background

In 2020, the Maryland General Assembly passed a law that required the Commissioner of the Division of Correction to “operate a comprehensive rehabilitative prerelease unit for women.”² See 2021 Md. Laws, ch. 16. In addition to detailing the

¹ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise stated.

² The Governor vetoed the legislation, citing the Covid-19 pandemic, which the Governor stated made it impossible to fund new programs or “adopt any legislation having any significant fiscal impact.” See Veto Letter of Governor Lawrence J. Hogan concerning Senate Bill 684 (May 7,

specific programs and services that the unit must provide, the legislation also set certain temporal benchmarks for the Department of Public Safety and Correctional Services (“DPSCS”). For example, DPSCS was to “identify a location, acquire property, and design a site plan for the prerelease unit for women on or before June 1, 2021” and “begin operating and providing services in the facility on or before June 1, 2023.” 2021 Md. Laws, ch. 16 (codified at Md. Code Ann., Corr. Servs. § 3-301(d)).

On December 11, 2023, the complainant sent a PIA request to DGS noting that “none of [the] statutory milestones have been met” regarding construction or operation of the Women’s Prerelease Facility. Citing other apparent inconsistencies, the complainant asked DGS to provide certain records so that she could “determine the status of planning, funding, and construction of the Women’s Prerelease Facility” and “learn what actions [DGS] has taken to date on behalf of DPSCS to implement the statutory mandate to plan, construct, and fund the Women’s Prerelease Facility.” The complainant asked for sixteen subsets of records “starting from February 3rd, 2020,” which was the date that women’s prerelease bill was introduced in the Senate. Some of those subsets simply asked DGS to provide records showing a date when something was done or the name and contact information of certain individuals associated with the project. Others sought records of communications regarding various stages of the project, e.g., “all communications between [DGS] and DPSCS regarding the hiring of consultants for designing or constructing the Women’s Prerelease Facility.” The complainant’s PIA request also sought records related to certain contracting processes, site plans, and cost and budget assessments. In short, the complainant’s PIA request was detailed and asked for a broad range of different records.

DGS issued a “ten-day letter”³ on December 27, 2023, in which it charged a \$448.38 estimated fee. The complainant paid that fee. On January 12, 2024, DGS sent the complainant a letter in which it advised that the responsive records would be provided to the complainant “via a secure file transfer system.” DGS also stated that, “[b]ecause their release would be an unwarranted invasion of privacy, the telephone numbers and email addresses of non-governmental employees, as well as telephone numbers of government employees that may be personal numbers have been withheld.” DGS cited § 4-103(b) of the PIA. DGS also advised that “deliberations” between DGS and DBM had been withheld under § 4-344, which, DGS asserted, “protects information that is of an advisory or deliberative nature.”

2020). The Legislature overrode the Governor’s veto in February 2021. *See* 2021 Md. Laws, ch. 16.

³ *See* § 4-203(b)(2) (requiring, if the custodian “reasonably believes that it will take more than 10 working days to produce the public record,” the custodian to notify a requester of that fact in writing and provide certain information, including “an estimate of the range of fees that may be charged”).

The complainant disagreed with several aspects of DGS's response to her PIA request, so she contacted the Public Access Ombudsman for assistance with resolving those disagreements.⁴ After the Ombudsman issued a final determination stating that the disputes were not resolved, the complainant filed this complaint with our Board. According to the Ombudsman's final determination, the unresolved disputes were the complainant's "concerns about (1) the completeness of [DGS's] final response, (2) the propriety of the redactions applied to the produced records, and (3) excessive fees."

In her complaint, the complainant first addresses the redactions applied to the responsive records she received from DGS. The complainant contends that § 4-344, which DGS claims protects its deliberations with DBM, "is no longer valid once a final decision has been made." The complainant states that "DGS issued Program Plan Part I and Part II for the capital project about which this MPIA request is focused (a final decision)," and that "DBM accepted this project into the FY2025 Capital Improvement Plan (a final decision)." Thus, the complainant argues that the records she requested "should be released in unredacted form."

Next, the complainant contends that "[i]t is clear from the documents that were released that documents responsive to [her] request were not provided." Noting that DGS did not provide an index of the records it withheld, the complainant states that she is unable to precisely identify the missing records. In general, though, she takes the position that "there were clearly discussions about this project, and likely emails and other documentation that were not provided" in response to her PIA request.

Finally, the complainant challenges the \$448.38 fee DGS charged for production of responsive records. The complainant indicates that, though she believed the fee was "outrageous and intended to keep [her] from continuing to request the documents," she nevertheless paid the fee because she wanted the records. The complainant continues to believe that the fee is excessive and "object[s] to paying state employees for their time in processing MPIA requests" because "responding to MPIA requests when necessary is a required part of every state employee's job." The complainant states that, in her position as a "former federal employee who often had to respond to FOIA^[5] requests," she "did not charge the requester for [her] time." According to the complainant, "[t]he State of Maryland should not be charging MPIA requesters for state employees' time because we already pay for it through our taxes."

⁴ The PIA requires the Public Access Ombudsman to make "reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records." § 4-1B-04(a). Before filing a complaint with our Board, a complainant must attempt to resolve the dispute through the Public Access Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a).

⁵ The Freedom of Information Act, or "FOIA," is the PIA's federal counterpart. See 5 U.S.C.A. § 552.

In response to the allegation that DGS improperly applied § 4-344 to redact information in the records produced, DGS first details the scope of the exemption—i.e., that it protects deliberative, pre-decisional material, the disclosure of which would be contrary to the public interest. DGS emphasizes that the exemption is focused on the quality of government decision-making. Turning to its application of § 4-344, DGS explains that it found fifty-one records responsive to the complainant's PIA request and that only three of those records were redacted under § 4-344. DGS states that the redacted material "contained questions and concerns related to the execution of the project posed in writing by [DBM] to DGS, as well as the responses DGS provided to DBM." DGS asserts that the "deliberations were necessary to inform DBM's decision making with respect to the feasibility of the project," and that they remain protected "even after a final decision was made."

As to the complainant's allegation that DGS has not produced all records responsive to her PIA request, DGS cites *Glass v. Anne Arundel County*, 453 Md. 201 (2017), for the proposition that the PIA requires a good-faith search reasonably designed to capture all responsive records, not a perfect search. DGS explains that the "Assistant Secretaries for the Office of Design, Construction and Energy (DCE) and the Office of Real Estate (ORE) were provided with a copy of [the complainant's] request." Those secretaries "tasked the appropriate individuals involved with the project and subject matter experts in their respective offices" with finding responsive records. DGS maintains that it provided all responsive records in its possession and that the response letter complied with the PIA.

DGS also defends the \$448.38 fee it charged the complainant, arguing that it is proper under § 4-206, which allows a custodian to charge a reasonable fee for the search for and preparation of records in response to a PIA request. In its response, DGS provides a detailed explanation of how it arrived at the fee.

First, DGS explains that it was necessary to have an individual from each office—i.e., DCE and ORE—search for responsive records because "different offices do not have access to the files held by other offices." DGS states that it assigned "subject matter experts" because doing so was more "expedient" as they have "the best understanding of the file structure and so the best idea of where to look for responsive records." After finishing the "queries of the files and/or emails," the subject matter experts reviewed the results for responsive records. In addition, a different ORE staff member gathered the Assistant Secretary's emails and identified responsive records. The time expended and hourly salaries of these employees were: (1) for the DCE subject matter expert (a senior capital project manager), four hours at \$60/hour; (2) for the OCE subject matter expert (a senior acquisition specialist), five hours at \$40.08/hour; and (3) for the additional ORE staff member, one hour at \$29.61. DGS advises that, once the records were collected, the PIA Officer then spent three hours reviewing for exemptions at a rate of \$32.79/hour. DGS states that the two free hours of labor were deducted from the DCE senior capital project

manager's work because that was the highest salary. DGS did not charge the complainant for legal review.

In reply, the complainant continues to insist that DGS has not disclosed all records responsive to her request. She notes that, during the planning process, the proposed location for the Life Skills and Reentry Center for Women ("LSRCW") was changed, as reflected in a revised program plan that issued on September 18, 2023. The complainant states that the location change was first mentioned in an email dated March 21, 2023, and then later mentioned again in an email exchange between two DGS employees. The complainant contends that this was a "major change in the program," and that it is "likely that there would have been more correspondence about it than just those two sets of emails."

Regarding the redactions to the records, the complainant explains that the basic information she seeks is "an explanation as to why the proposed site of the LS[RCW] was moved," and that there is "nothing sensitive or enforcement-related about that determination." Stressing again that the decision was final as of September 18, 2023, and has been submitted as part of the Capital Improvement Plan, the complainant argues that there is no reason to withhold records relevant to the decision. The complainant takes the position that "[i]f governmental divisions are allowed to withhold documents as mundane as the documents requested in this matter, the MPIA would have little meaning since citizens would never be able to learn the 'why' of government decisions."

Finally, as to the fee, the complainant reiterates her position that, because responding to PIA requests is "an integral part of each state employee's job," she "object[s] to paying for state employees' time" when she is "paying their salaries through [her] taxes." The complainant states that she was fortunate that she was able to pay the fee here and suggests that many requesters would not be able to pay fees of similar amounts.

Analysis

Section 4-1A-04(a) of the PIA authorizes us to review and resolve complaints from PIA requesters alleging that a custodian: (1) improperly denied inspection of public records; (2) charged an unreasonable fee higher than \$350 for public records; or (3) failed to respond to a request for public records within certain statutory time limitations. We have interpreted subsection (a)(1)(i) of this provision broadly to include allegations that a custodian improperly denied inspection by conducting an insufficient search that failed to locate all responsive records, or that a custodian withheld unidentified responsive records without explaining why. See PIACB 23-05, at 4-5 (Nov. 23, 2022); see, e.g., PIACB 24-112, at 7 (Oct. 3, 2024) (finding no improper denial in a complaint alleging a purposeful and deliberate failure to produce a specific record, even though the custodian ultimately produced the record after several searches); PIACB 24-34, at 4 (Apr. 1, 2024) (concluding that the custodian read the PIA request too narrowly and thus conducted an insufficient

search that resulted in a failure to find all responsive records). If, after review of the complaint and all submissions—including any additional information we request under § 4-1A-06(b)(2)—we determine that the alleged violation of the PIA has occurred, we must issue a written decision and order a specific remedy as provided in the PIA, § 4-1A-04(a)(2) and (3). For example, if we determine that a custodian has improperly denied inspection of a public record, we must “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(3)(i).

Maryland’s General Assembly enacted the PIA to provide “access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). In doing so, the Legislature directed that the PIA’s provisions “be construed in favor of allowing inspection of a public record, with the least cost and least delay,” unless “an unwarranted invasion of the privacy of a person in interest would result.” § 4-103(b). Thus, the Supreme Court of Maryland has explained that the PIA “establishes a public policy and a general presumption in favor of disclosure of government or public documents.” *Kirwan v. The Diamondback*, 352 Md. 74, 80 (1998). But, “[w]hile the public policy of the MPIA favors disclosure, the purpose of the Act reveals a legislative goal other than complete *carte blanche*, unrestricted disclosure of all public records.” *Immanuel v. Comptroller*, 449 Md. 76, 88 (2016). Instead, the PIA contains exceptions that exempt certain records or information from the general rule of disclosure. Some of those exceptions are mandatory, meaning that a custodian must deny inspection of records or information subject to exemption. *E.g.*, § 4-311 (personnel records); § 4-329 (medical or psychological information). Others, like the exemption at issue here, are discretionary, meaning that a custodian may deny inspection only if disclosure would be “contrary to the public interest.” § 4-343; *e.g.*, § 4-344 (exemption for “an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit”).

Section 4-201(a) provides that “[e]xcept as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time.” Thus, upon receipt of a PIA request, a custodian must “conduct a search in good faith that is reasonably designed to capture all responsive records,” and that uses “methods that can be reasonably expected to produce the information requested.” *Glass v. Anne Arundel County*, 453 Md. 201, 232 (2017) (quoting *Oglesby v. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). To ensure a sufficient search, a custodian must focus the search on “where responsive records are likely to be found.” *Id.* When the sufficiency of a search is challenged, the search must be evaluated “prospectively by how the agency designed the effort to find responsive records, not retrospectively by its success in locating every responsive record.” *Id.* As *Glass* explained, “[a] search may be reasonable and adequate without being perfect.” *Id.*; *see, e.g.*, PIACB 24-27, at 10-11 (Mar. 6, 2024) (finding that the fact that the custodian may have failed to locate certain potentially responsive emails did not “[o]n balance . . . undermine the [custodian’s] search so as to render it inadequate or unreasonable”).

Although a custodian generally must allow inspection of public records “with the least cost and least delay,” § 4-103(b), the PIA permits a custodian to charge a “reasonable fee” for the search and preparation efforts detailed above. *See* § 4-206. A “reasonable fee” for purposes of the PIA is one that bears a “reasonable relationship to the recovery of *actual costs* incurred by a governmental unit” in responding to a PIA request.⁶ § 4-206(a)(3) (emphasis added). The PIA requires that “staff and attorney review costs” 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). That prorated hourly rate may not include benefits or other indirect or overhead costs. *See* PIACB 22-06, at 4-5 (Jan. 18, 2022). In addition, we have explained that a custodian should make every effort to “utilize the lowest-paid employee available and capable of producing the response.” PIACB 21-16, at 6 (July 30, 2021).

We were unable to resolve all of the allegations in this complaint based on the submissions alone, so we asked DGS to provide additional information. Specifically, we asked DGS to provide more information about its search efforts, including the places the subject matter experts looked for responsive records and what search terms were used to locate electronic records. We also asked DGS to provide unredacted copies of the records it disclosed to the complainant. *See* § 4-1A-06(b)(2)(ii). As required by law, we will maintain the confidentiality of the unredacted records. § 4-1A-06(b)(5); COMAR 14.02.06 (regulations governing the Board’s treatment of confidential records). Any references to the redacted material will be general in nature so as to maintain the confidentiality of the information that DGS maintains is privileged under the PIA. COMAR 14.02.06.05.

We start with the allegation that DGS has not produced all responsive records. To resolve this allegation, we must focus on how DGS designed its search for responsive records and determine whether it was “reasonably calculated to uncover responsive records,” not whether the search “locate[d] every possible responsive record.” *Glass*, 453 Md. at 212. In response to our request for additional information, DGS explains that the individual from DCE searched email records and computer files, while the individual from ORE searched email records. Given the nature of the complainant’s PIA request, which sought records related to the planning, design, and construction of the women’s prerelease center, it seems reasonable that DGS focused its search on records held by its Office of Design, Construction, and Energy and Office of Real Estate. The PIA request also sought numerous records of communications, so searching email records for both of those offices would seem appropriate. DGS advises that, when searching its email and computer files, DCE used the project number and project title as search terms, while ORE used the terms “Women’s Pre-Release Center,” “Pre-Release Center,” “BPRU,” and “Baltimore City Pre-Release Center.” DGS states that these searches yielded a total of fifty-one records, only one of which was withheld in its entirety. DGS advises that, of the fifty records produced to the complainant, fourteen were one-page documents and thirty-six were multi-page

⁶ A 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.” § 4-206(c).

documents. According to DGS, it produced a total of 995 pages of records to the complainant, including email records.

The language of a PIA request is relevant to the evaluation of a custodian's search efforts. *See Glass*, 453 Md. at 233. Here the PIA request was detailed and, to some extent, sought specific records. But, the request was also broad in the range of different types of records it sought. In our view, the search terms used appear sufficiently designed to capture the wide swath of records related to the women's prerelease center that the complainant asked for. It also appears that the terms were unique to each office—e.g., using the DCE project number and title as opposed to the term "Women's Pre-Release Center." This suggests that DGS tailored each search to the way each office refers to and organizes records about the women's prerelease center. Just as in the context of reviewing a fee charged, we stay mindful that custodians are far more familiar with the content and organization of their records than we are, *see, e.g.*, PIACB 24-10, at 7-8 (Nov. 13, 2023), we also refrain from micromanaging a search effort when reviewing a claim of constructive denial. Thus, based on DGS's description of its search process and our review of the records produced, we cannot find that DGS fell short of what the PIA requires. Though we understand that the complainant suspects there may be, e.g., additional email communication regarding some of the key decisions made, that speculation alone does not necessarily suggest a violation. *Cf. Iturralde v. Comptroller*, 315 F.3d 311, 315 (D.C. Cir. 2003) (explaining, in the context of FOIA, that the adequacy of a search is "generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search"). We find that DGS's search was adequate and that it did not constructively deny the complainant's PIA request.

We move next to the record that was withheld and the redactions that were applied to the records produced.⁷ DGS argues that the redacted material and the record withheld

⁷ Because the complaint focuses on DGS's invocation of the deliberative process privilege and does not appear to challenge the redactions to phone numbers and email addresses, we review only the former. We do, however, note that DGS's response to the PIA request indicated that "telephone numbers and email addresses of non-government employees, as well as telephone numbers of government employees that may be personal numbers have been withheld pursuant to GP § 4-103(b)." Section 4-103(b), which provides in part that, "unless an unwarranted invasion of the privacy of a person in interest would result, [the PIA] shall be construed in favor of allowing inspection of a public record," is not a standalone exemption that entitles a custodian to withhold records or information whenever the custodian believes inspection would cause an "unwarranted invasion" of privacy. *See Police Patrol Sys., Inc. v. Prince George's County*, 378 Md. 702, 716-17 (2003) ("[T]here are no discrete 'public interest,' 'personal information,' or 'unwarranted invasion of privacy' exceptions to the MPIA."). Rather, § 4-103(b) is a general rule that guides interpretation of the PIA's provisions. We note further that § 4-331 generally requires a custodian to deny inspection of "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."

are subject to the deliberative process privilege and thus § 4-344 justifies denial of inspection. That exemption protects pre-decisional and deliberative communications between high- and low-level government employees and officials from disclosure if disclosure would be contrary to the public interest. *Stromberg Metal Works, Inc. v. Univ. of Maryland*, 382 Md. 151, 165 (2004); *see also Admin. Office of the Courts v. Abell Found.*, 480 Md. 63, 92 (2022) (explaining that § 4-344 is a “conditional exemption” and that “[t]o invoke it, a custodian must believe that the requested inspection would be contrary to the public interest,” (cleaned up)).

Generally, the deliberative process privilege applies to “advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated,” and other such “consultative views.” *Stromberg*, 382 Md. at 165, 167 (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975)). Though “purely factual” material ordinarily does not come within the privilege’s scope, some factual material may be “entitled to a degree of protection,” such as “investigative facts underlying and intertwined with opinions and advice, and facts the disclosure of which would impinge the deliberative process.” *Id.* at 166 (quoting *Hamilton v. Verdow*, 287 Md. 544, 564-65 (1985)). Records that contain pre-decisional and deliberative material may retain their privileged status, even after the final decision is made. *May v. Dep’t of the Air Force*, 777 F.2d 1012, 1014-14 (5th Cir. 1985).

As indicated above, DGS provided the records that it withheld and redacted pursuant to § 4-344 to our Board in unredacted form for our confidential review. After reviewing those records, we find that they fall within the scope of the deliberative process privilege and are therefore potentially eligible for denial under § 4-344, so long as DGS can demonstrate why disclosure would not be in the public interest. The withheld and redacted material is pre-decisional and deliberative in that it reflects a back-and-forth regarding many decisions that were being made as DGS and DBM worked to carry out their statutory mandates regarding the women’s prerelease center. The material contains the “consultative views,” *Stromberg*, 382 Md. at 167, of both agencies, and, at various points, explicit questions, answers, and opinions. We observe that DGS disclosed a lot of factual material in records that contain the redactions. While there is some factual material in the redacted portions (and in the one four-page record withheld in its entirety), that factual information appears “intertwined” with the deliberative material, *id.* at 166, making further granular redaction impractical.

We turn then to the public interest analysis. The complainant takes the position in her complaint that pre-decisional deliberative material categorically cannot be withheld once a final decision has been made. Though the status of a decision certainly affects the public interest calculus, that sort of bright-line rule is somewhat inconsistent with the purpose of the deliberative process privilege—i.e., to encourage government employees and officials to “give completely candid advice by reducing the risk that they will be subject to public disclosure, criticism and reprisals, and to enable decisionmakers to think out loud

uninhibited by the danger that tentative but rejected thoughts will become the subject of public discussion.” *Abell Found.*, 480 Md. at 92 (cleaned up). Thus, arguments about the public interest in disclosure of pre-decisional, deliberative information should focus on the effect it would have on the quality of government decision-making. See *NLRB*, 421 U.S. at 151 (“Manifestly, the ultimate purpose of this long-recognized privilege is to prevent injury to the quality of agency decisions.”); see also *Maryland Public Information Act Manual* (18th ed. Oct. 2023), at 3-38 (suggesting that “a presumption of disclosure should prevail, unless the responsible agency official can demonstrate specific reasons why agency decision-making may be compromised if the questioned records are released”).

In its response to the PIA request, DGS indicated that “deliberations” between DBM and DGS were withheld “pursuant to GP § 4-344, which protects information that is of an advisory or deliberative nature.” DGS did not explain, in that letter, why disclosure of those deliberations would be contrary to the public interest. In response to this complaint, DGS recognizes both the purpose underlying the deliberative process privilege and its duty to “explain why inspection of the communications by the requester would be contrary to the public interest.” DGS explains that the records “contained questions and concerns related to the execution of the project posed in writing by [DBM] to DGS, as well as the responses DGS provided to DBM,” and that the “deliberations were necessary to inform DBM’s decision making with respect to the feasibility of the project.” DGS argues that because the records “were created for deliberation of the project and before final decisions were to be made about the project,” the deliberative material remains exempt. While these statements may be true, they do not provide specific justifications for why denial of inspection is necessary to protect the integrity of agency decision-making related to the planning for and construction of the women’s prerelease unit. It appears that the prerelease facility may not be in operation until 2028, see Fiscal & Policy Note, H.B. 191, 2024 Leg. Reg. Sess. at 3, and we can imagine reasons why DGS might believe that release of this material might have a detrimental affect on the planning process. But, it is for DGS to put forth the necessary facts and argument, and not for us to speculate. We thus find that, because DGS has not explained why disclosure of the redacted and withheld material would be contrary to the public interest, as required by § 4-343, it has failed to justify denial of inspection under § 4-344.

Lastly, we consider the complainant’s fee-related allegations. We first note that the PIA empowers us to review allegations that a custodian “charged an *unreasonable* fee under § 4-206 of [the PIA] of more than \$350.” § 4-1A-04(a)(1)(ii) (emphasis added). The fee here was \$448.38, so the \$350 threshold is certainly met. As discussed above, the PIA provides a specific definition of reasonable—i.e., one that bears a “reasonable relationship to the recovery of actual costs incurred by a governmental unit.” § 4-206(a)(3). Thus, to be “unreasonable” for purposes of § 4-1A-04(a), there should be some allegation that the fee charged is not reasonably related to the actual costs that the agency incurred or, in the case of estimated fees, expects to incur. Here, the complainant’s allegation is more that the fee is unreasonable because DGS should not be allowed to charge for its employees’

time in the first place. That, however, is a policy judgment for the Legislature to make. As it stands now, the PIA permits custodians to charge for the time it takes, in excess of two hours, for employees to search for and prepare records for inspection, so long as those charges are reasonably related to actual costs—i.e., based on the employees’ prorated salaries and the actual amount of time spent working on the PIA request. § 4-206(b).

Though we question to some extent whether the complainant has truly alleged that the fee is unreasonable within the meaning of §§ 4-206(a)(3) and 4-1A-04(a)(1)(ii), we will nevertheless review the \$448.38 fee that DGS charged the complainant. *See Glenn v. Maryland Dep’t Health & Mental Hygiene*, 446 Md. 378, 384-85 (2016) (explaining that “the provisions of the statute are to be liberally construed in order to effectuate the Public Information Act’s broad remedial purpose,” (cleaned up)). DGS has not asked us to dismiss this allegation outright, but instead provides information and argument to justify that fee. DGS states that four employees were involved with preparing the response to the complainant’s PIA request, which, as noted above, had considerable breadth. Two of those employees were “subject matter experts” paid relatively high hourly salaries—a DCE senior project manager earning \$60 per hour and an ORE senior acquisition specialist earning \$40.08 per hour. A third employee, an ORE staff member, earned \$29.61 per hour. DGS’s PIA Officer, the fourth employee who ultimately reviewed the records retrieved, earned \$32.79 per hour. We have in the past cautioned that, to adhere to the Legislature’s direction that records should be provided “with the least cost,” § 4-103(b), “an agency should utilize the lowest-paid employee available and capable of producing the response.” PIACB 21-16, at 6 (July 30, 2021). But, we have also recognized that this is not a “hardline rule,” and that sometimes “the use of a higher-compensated employee might actually enable a more efficient and accurate response.” *Id.* at 6-7 (citing PIACB 20-13, at 2 (June 22, 2020)). Here, DGS states that it was “more expedient for the subject matter expert to complete the search since he or she has the best understanding of the file structure” and “the best idea of where to look for responsive records.” Given the breadth of the PIA request and the somewhat technical nature of some of the records requested, we credit this representation and find that the hourly rates charged were reasonable.

DGS states that the two subject matter experts spent four hours (DCE) and five hours (ORE) “gathering and identifying responsive records.” The third ORE staff member also spent one hour on the same task, but focused on the Assistant Secretary’s emails in particular. The PIA Officer then spent three hours reviewing the records that the other employees collected for exemptions to disclosure. DGS states that it deducted the two free hours of labor that the PIA requires from the DCE senior capital project manager’s work because that employee earned the highest salary (\$60 per hour). In our view, these time expenditures do not appear excessive in light of the nature of the PIA request and the records that were produced in response. The request asked for a wide range of records related to the women’s prerelease center, and DGS ultimately produced nearly 1,000 pages of records, including email communications and various programming and planning status

reports. We therefore find that the \$448.38 fee that DGS charged is reasonable as the PIA defines it.

Conclusion

After consideration of everything before us, we find that DGS performed a reasonable and sufficient search for records and therefore did not constructively deny the complainant's PIA request. We also find that the \$448.38 fee that DGS charged was reasonable under the PIA. However, we conclude that, although the redacted and withheld information is pre-decisional and deliberative—and thus potentially eligible for withholding under § 4-344—DGS has not demonstrated why disclosure of this information would be contrary to the public interest. Specifically, DGS has not provided specific justifications for why denial of inspection was necessary to protect the integrity of agency decision-making related to the planning for and construction of the women's prerelease unit. Since DGS has failed to do so, it has failed to justify its application of § 4-344. We order DGS to produce the responsive records to the complainant in unredacted form.

Public Information Act Compliance Board

Sareesh Rawat, Chair
Samuel G. Encarnacion
Debra Lynn Gardner
Quinton M. Herbert
Nivek M. Johnson