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DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF LEGISLATIVE AUDITS  
MARYLAND GENERAL ASSEMBLY

Gregory A. Hook, CPA  
Legislative Auditor

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Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee  
Delegate Jared Solomon, House Chair, Joint Audit and Evaluation Committee  
Members of Joint Audit and Evaluation Committee  
Annapolis, Maryland

Ladies and Gentlemen:

The Office of Legislative Audits (OLA) conducted a review of a matter involving potentially unreasonable fees quoted by the Department of General Services (DGS) for a request made by an applicant for public records under Maryland's Public Information Act (PIA). This matter was referred to us by the Board of Public Works (BPW) after it completed an investigation into a complaint that had been filed with BPW. Our review disclosed that DGS had not established a documented methodology for calculating the fees charged to PIA applicants and did not maintain detailed support to substantiate the quoted fees. Consequently, we were unable to conclude on the reasonableness of the fees quoted to the applicant who submitted this PIA request to DGS.

We conducted the review under the authority of State Government Article, Section 2-1220 of the Annotated Code of Maryland. Since this review was not an audit conducted in accordance with *Government Auditing Standards*, we did not include recommendations. To complete our review, we interviewed employees at DGS and reviewed documentation received from personnel at BPW and DGS. We did not replicate the document request made by the PIA applicant (similar to the one made by BPW) because it had already been performed by BPW in its investigation into the complaint and would not enable a definitive conclusion on the amount quoted by DGS in response to the PIA request (as explained below). In addition, we reviewed past PIA records maintained by DGS, such as requests submitted to DGS and the related responses DGS sent to these applicants.

*Background of Maryland's Public Information Act*

The PIA generally grants people the right to access information and records about the affairs of State government and official acts of public officials and State employees. Applicants seeking records typically submit written requests to the agencies that maintain custody of the records. The PIA generally prohibits agencies from charging applicants a fee for the first two hours that are needed to produce the records, but agencies may charge applicants a “reasonable fee” for costs incurred after those two hours. State law defines a “reasonable fee” as “a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.” State agencies generally have 30 days to produce the requested records, but this time limit may be extended an additional 30 days with the consent of the applicant.

*BPW Review of the PIA Request*

We were advised by BPW personnel that they had performed a review of a PIA request for all contractual records related to a certain DGS procurement as part of its investigation into a complaint that had been filed with BPW. The complaint pertained to potentially unreasonable fees DGS quoted to an applicant that submitted a request for public records in August 2022. The applicant was seeking all documents and information for a contract that was administered by DGS, including all communications between DGS and certain entities involved in the contract. DGS’ September 2022 response to the applicant stated that it estimated it would take 722 hours of labor at a cost of \$78,597 to produce the records, plus additional attorney’s fees to ensure the legality of certain disclosures. DGS also stated that prepayment of the fee would be required prior to DGS delivering the documents.

In its response to the DGS letter, legal representation for the applicant stated that the fee quoted by DGS was exorbitant, and rather than litigate the fees in court, it submitted a revised less comprehensive PIA request. A letter DGS sent to the applicant in response to the revised PIA request stated it would reduce the fee to \$50,000. Ultimately, the applicant did not pay the fee or receive the documents from either the initial or revised request.

BPW personnel advised us that they requested similar documents from DGS that originally had been requested by the PIA applicant and concluded that, based on the volume and nature of the documents DGS provided, they did not believe it would require “anywhere close” to 722 hours quoted to the applicant to produce the documents (let alone the 1,756 hours actually used to calculate the cost, as noted below). In the opinion of BPW personnel, all of the documents provided to them by DGS could have been reviewed, redacted, and produced within 24 hours; however, we found that this estimate omitted the time required to locate the documents from DGS’ procurement files and emails, which while not calculated could have been significant given the comprehensiveness of the original PIA request. Consequently, we were not readily able to assess the reasonableness or correctness of BPW’s conclusion.

*OLA Review of DGS' Calculation of PIA Request Fees*

Our own review disclosed that DGS had not established a documented methodology for calculating the fees charged to PIA applicants to ensure the fee amounts reasonably reflected the recovery of actual costs, as permitted by State law. We were advised by DGS personnel that the fees charged to PIA applicants are calculated based on the estimated number of labor hours required to compile the requested records and the hourly salary rates of the employees who maintained custody of and reviewed these records. DGS was unable to provide us with any documented methodology showing how it determined who was responsible for the identification, collection, redaction, and review of the requested documents and how it estimated the number of labor hours required to complete these tasks.

In addition, our review of documentation provided by DGS for its calculation of the fees for the PIA request referenced in the referral to OLA from BPW disclosed that DGS had incorrectly quoted the 722 hours needed to complete this request in its letter to the applicant. DGS actually used 1,756 hours (excluding two free labor hours) to calculate the total fee of \$78,597. DGS agreed that the number of hours quoted to the applicant was an error and provided us the following breakdown of the 1,756 hours:

- 78 hours for its PIA Officer,
- 300 hours for two DGS executive management employees in the Office of State Procurement, and
- 1,378 hours for four employees in the Business Enterprise Administration unit.

We then requested support for the estimated hours used by DGS in its calculation. DGS did not have detailed support for its calculation of the hours (and therefore the fees) for this PIA request, such as a listing of the documents that would have been provided to the applicant, which is one of the primary factors used to determine the hours needed to fulfill the request. DGS advised us that, in addition to the contract documents, it identified over 7,860 emails that were related to the procurement that was the subject of the request, each of which needed to be compiled and reviewed before providing them to the requestor. However, DGS could not provide us with documentation to support the specific documents and emails it had identified for this request. As a result, we were unable to determine if the fees quoted to the applicant were reasonable for the request.

*Disposition of Other DGS PIA Requests in Calendar Year 2022*

Our review of documentation provided by DGS identified 97 other PIA requests submitted to DGS in calendar year 2022, of which 54 requests were completed at costs ranging from \$0 (because fewer than two hours were required to produce the requested records) to \$292. Eight of the requests were not completed because the applicant did not pay the fee (estimated fees quoted to the eight requestors ranged from \$230 to \$3,500 per PIA request). The remaining 35 requests

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were not completed for other reasons, such as DGS determining that it did not have custody of the requested documents.

After discussing our results, DGS generally agreed with the accuracy of the information presented. DGS advised that it is working on a new policy which will address the issues noted in this letter. We wish to acknowledge the cooperation extended to us during the review by DGS and BPW personnel.

Respectfully submitted,

A handwritten signature in black ink that reads "Gregory A. Hook". The signature is written in a cursive, flowing style.

Gregory A. Hook, CPA  
Legislative Auditor

cc: Senator William C. Ferguson IV, President of the Senate  
Delegate Adrienne A. Jones, Speaker of the House of Delegates  
Senator Guy J. Guzzone, Chair, Senate Budget and Taxation Committee  
Delegate Benjamin S. Barnes, Chair, House Appropriations Committee  
Governor Westley W. Moore  
Comptroller Brooke E. Lierman  
Treasurer Dereck E. Davis  
Attorney General Anthony G. Brown  
Secretary Helene T. Grady, Department of Budget and Management  
Secretary Atif T. Chaudhry, Department of General Services  
Nelson E. Reichart, Deputy Secretary, Department of General Services  
John T. Gontrum, Executive Secretary, Board of Public Works  
Gabriel Gnall, Procurement Advisor, Board of Public Works  
Victoria L. Gruber, Executive Director, Department of Legislative Services