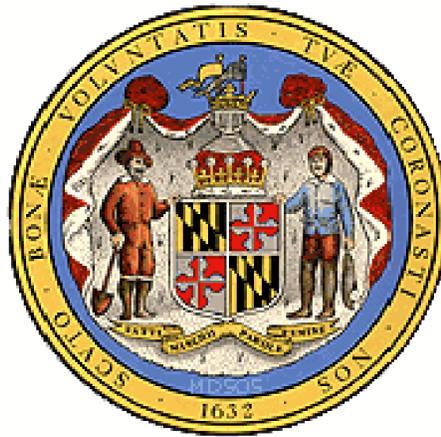


FIFTH ANNUAL REPORT
OF THE
STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD



BOARD MEMBERS

JOHN H. WEST, III, ESQ., CHAIR
DEBORAH F. MOORE-CARTER
RENÉ C. SWAFFORD, ESQ.
DARREN S. WIGFIELD

SEPTEMBER 25, 2020

**FIFTH ANNUAL REPORT
OF THE STATE
PUBLIC INFORMATION ACT COMPLIANCE BOARD**

The General Assembly created the State Public Information Act Compliance Board (“Board”) in 2015 to review the reasonableness of fees greater than \$350 charged under the Public Information Act (“PIA”). Pursuant to § 4-1A-04(c) of the General Provisions Article of the Maryland Code, the Board submits this annual report for the period July 1, 2019, through June 30, 2020 (FY2020).

This report contains a description of the Board’s activities during FY2020, including summaries of the Board’s opinions, the number and nature of complaints filed with the Board, recommendations made by the Board in its “Final Report on the Public Information Act,” published jointly with the Public Access Ombudsman, and the Board’s related legislative activities during the 2019 session. In addition, although the law does not provide an opportunity for the Public Access Ombudsman to submit a similar annual report, the Board believes such a report is useful to understand the current state of dispute resolution under the PIA. For this reason, the Board has included a report from the Ombudsman as Appendix C to this report.

**I.
ACTIVITIES OF THE BOARD**

A. Responsibilities of the Board

The duties of the Board include:

- Receiving, reviewing, and resolving complaints that a custodian of public records charged an unreasonable fee that exceeds \$350;
- Issuing a written opinion regarding whether a violation has occurred relating to a fee, including the ability to direct a reduction of a fee or a refund of the portion of a fee that was unreasonable;
- Studying ongoing compliance with the PIA by custodians of public records; and
- Making recommendations to the General Assembly for improvements to the PIA.

There are currently four members of the Board and one vacancy, as follows:

- John H. West, III, Esquire – Chair; citizen member – Expires 06/30/2022 (reappointed on 07/01/19 for a second term)

- Deborah F. Moore-Carter – knowledge/Maryland Association of Counties/Maryland Municipal League member – Expired 06/30/2018 (carrying over until successor is named)
- René C. Swafford, Esquire – attorney member – Expires 06/30/2021 (reappointed on 07/01/18 for a second term)
- Darren S. Wigfield – citizen member – Expires 06/30/2022 (reappointed on 07/01/19 for a second term)
- Vacant¹ – non-profit/open government/news media member

On February 5, 2020, Larry E. Effingham resigned as the non-profit/open government/news media member, due to his relocation out of state. The Board thanks Mr. Effingham for his dedication and service and wishes him well.

The Attorney General’s Office provides the Board with the services of counsel and an administrator, posts the Board’s opinions and other Public Information Act materials on its website, and bears the incidental costs of administering the complaint and review process. The Board appreciates the excellent service it has received from the Attorney General’s Office in the performance of these tasks. Specifically, the Board wishes to thank Janice Clark, who serves as the Board’s administrative officer, and Assistant Attorney General Jeffrey Hochstetler, who serves as counsel to the Board.

The Board also extends its thanks to the Public Access Ombudsman, Lisa Kershner, who is always willing to offer her assistance in matters over which the Board has no jurisdiction.

B. Processes and procedures

The Board adheres to the statutory process for receiving and handling complaints. The Board’s procedures appear on the website, along with a description of the type of information the Board finds useful for making its decision. The website also contains tips for complainants and custodians to attempt to resolve an issue before submitting a complaint to the Board.

Generally, complaints are received by Board staff at the Office of the Attorney General and numbered based on the date received. Board counsel makes an initial determination as to whether the complaint falls within the Board’s jurisdiction. If the complaint involves an assertion of an unreasonable fee that exceeds \$350, Board staff

¹ Chairman’s note: Christopher Eddings was appointed to the vacant Board position on August 14, 2020. His term expires 6/30/23.

forwards the materials to the relevant custodian of records for a response. Once all materials are compiled, the Board reviews them and determines whether to schedule a conference with the parties or to decide the matter based on the materials. The Board typically makes its decision within thirty days after the conference, if there is one, or within 30 days after receiving the custodian's response, if relying solely on the submissions.

When a complaint addresses only issues that are not within the jurisdiction of the Board, the matter will be dismissed. For example, if a complainant seeks review of a fee waiver request, but does not assert that the fee is unreasonable, the Board does not have the authority to consider the issue. These kinds of complaints, and those that include multiple issues in addition to the unreasonableness of a fee, often fall within the Public Access Ombudsman's authority to address. If the Board believes it does not have jurisdiction, and/or that the complaint might benefit from mediation, it refers the complainant to the Ombudsman.

C. Complaint and Opinion Activities for FY2020

1. Statistics

- New complaints submitted to the Board: 13
- Complaints dismissed without opinion: 9
 - Not within Board's limited jurisdiction: 7
- Opinions issued during FY2020: 7
 - Carryover from FY2019 complaints: 3
 - Opinions requiring conference with the parties: 0
- Complaints submitted in FY2020 and still pending on 7/1/20: 0

2. Complaints Dismissed without an Opinion

More than half the complaints received by the Board in FY2020 included issues other than the reasonableness of a fee greater than \$350, which is the sole issue within the Board's jurisdiction. Some of these complaints were from complainants who claimed they could not afford the fee, or that their request for a fee waiver should have been granted, rather than that the fee was unreasonable. Other complaints concerned untimely responses or allegations that records were wrongly withheld, neither of which is within the Board's jurisdiction.

The following matters did not result in a formal opinion of the Board because they were dismissed for lack of jurisdiction:

- **PIACB 20-01:** Complaint concerned the lack of response to a PIA request and a \$35 fee; referred to Ombudsman.
- **PIACB 20-02:** Complaint concerned the denial of a fee waiver; referred to Ombudsman.
- **PIACB 20-06:** Complaint concerned the improper handling of and response to a PIA request; complaint did not include return address or contact information, so no further action was taken.
- **PIACB 20-07:** Complaint concerned the lack of response to a PIA request; referred to Ombudsman.
- **PIACB 20-08:** Complaint was untimely because it was filed more than 90 days after the allegedly unreasonable fee was charged; referred to Ombudsman.
- **PIACB 20-09:** Complaint concerned the improper denial of requested records; referred to Ombudsman.
- **PIACB 20-10:** Complaint concerned the untimely response to a PIA request; provided information about Ombudsman and judicial review.
- **PIACB 20-12:** Complaint concerned improper response to PIA request and inability to afford response fee; referred to Ombudsman.

3. Complaints in which Board Issued an Opinion

When a complaint is clearly within the jurisdiction of the Board and ripe for review, the Board will issue a written opinion. During FY2020, the Board issued seven opinions, all of which were decided on the basis of the parties' written submissions.

The Board's opinions for FY2020 appear on the Office of the Attorney General's website at: <http://www.marylandattorneygeneral.gov/Pages/OpenGov/piaindex.aspx>. Summaries of the opinions appear in this report for ease of reference.

- **PIACB 19-11 (July 19, 2019)**

Agency: Talbot County

Issue: Complainant requested review of \$616.43 fee charged to respond to his Public Information Act ("PIA") request for records pertaining to certain actions taken by the Talbot County Council.

Decision: Board did not have jurisdiction to consider the denial of complainant's public interest fee waiver request, and the fee appeared to reflect a "reasonable fee" under the PIA.

- **PIACB 19-12 (August 7, 2019)**

Agency: State Department of Assessments and Taxation ("SDAT")

Issue: Complainant alleged that SDAT, through a private third party, was charging an unreasonable fee of \$2,100 to provide him with a detailed database of every business entity in Maryland in a machine-readable, structured-data format.

Decision: By statute, SDAT was permitted to provide its data to a third party, and the third party could charge a fee for that data when requested. However, any part of that fee remitted back to SDAT must be "reasonable" under the PIA, *i.e.*, it must reflect SDAT's actual costs in providing the requested data to the third party.

- **PIACB 19-14 (August 19, 2019)**

Agency: Board of Education of Baltimore County

Issue: Complainant challenged a fee estimate of \$1,210.33 to respond to PIA request for emails between the agency and an audit firm.

Decision: Because fee estimate was a precise amount based on detailed calculation of costs, Board could review for reasonableness. Board did not find the fee estimate to be unreasonable.

- **PIACB 20-05 (November 7, 2019)**

Agency: Baltimore County Police Department

Issue: Complainant challenged a fee estimate of \$2,665-\$3,315 to respond to PIA request for the contents of his investigative file.

Decision: Because fee estimate range was based on detailed calculation of costs, Board could review for reasonableness. Although Board found most elements of the estimate to be reasonable, it ordered the agency to eliminate or modify a \$42 per CD charge (a total of \$1,008) because it could not show how that charge was related to the agency's actual costs.

- **PIACB 20-04 (November 25, 2019)**

Agency: Montgomery County

Issue: Complainant challenged a fee estimate of \$3,468.75 to respond to PIA request for various records pertaining to her employment with the County.

Decision: Agency was permitted to charge fee for outside counsel's legal review of responsive records where records were related to parties' protracted litigation and it was likely counsel could most efficiently perform the work. Board found that fee was not unreasonable and declined to address other issues outside of its jurisdiction.

- **PIACB 20-11 (March 30, 2020)**

Agency: Montgomery County Public Schools

Issue: Complainant challenged a fee estimate of \$442.96 to respond to PIA request for various records pertaining to agency employees who received paid time off to perform union-related work in fiscal year 2019.

Decision: Agency recalculated fee in response to complaint and revised it to \$296.53. Board found that fee estimate appeared to be reasonable.

- **PIACB 20-13 (June 22, 2020)**

Agency: Howard County

Issue: Complainant challenged a fee estimate of \$1,131.90 to respond to PIA request for various records pertaining to detainees at Jessup Correctional Institution.

Decision: Board did not find fee estimate to be unreasonable where it was based on the actual salary cost of employee who could perform the work most efficiently. Board declined to review denial of requested fee waiver as outside of its jurisdiction.

II. FINAL REPORT ON THE PIA, 2020 LEGISLATIVE SESSION, AND BOARD RECOMMENDATIONS

A. *Final Report on the PIA*

On December 27, 2019, the Board, jointly with the Public Access Ombudsman, submitted the *Final Report on the Public Information Act* pursuant to a Committee Narrative request in the Legislature's Fiscal 2020 State Operating Budget ("Final Report"). The Report can be found [here](#).

The Board need not summarize the Final Report in its entirety, but will reiterate its key findings:

- 1) a significant and consistent number of PIA disputes across State and local agencies cannot be resolved by the Ombudsman's efforts alone;
- 2) the current Board and staff are severely underutilized due to the Board's very limited jurisdiction;
- 3) a great deal of the natural synergy that should exist between the Ombudsman and Board due to their complimentary processes and aims is almost completely lacking; the Board lacks jurisdiction to decide the vast majority of PIA disputes, and thus does not provide an incentive for parties to engage meaningfully with the Ombudsman or to comply with the law; and
- 4) the Ombudsman program and Board as currently configured are falling far short of their real potential to provide meaningful and accessible remedies for PIA disputes in a cost-effective manner.

Based on these findings, the Board and Ombudsman recommended that the Board's administrative jurisdiction be expanded to allow it to review and decide all PIA disputes, but only after the parties attempt an informal resolution through the Ombudsman's voluntary and confidential process. A final decision of the Board would be appealable to the circuit court, just as it is now, and the parties would not need to exhaust this dispute resolution process before going to court.

The Board and Ombudsman believe that this recommendation would benefit all stakeholders by:

- 1) preserving and enhancing the benefits of the current Ombudsman program without altering its character as a purely voluntary, informal, confidential, and non-binding process of facilitated dispute resolution;

- 2) providing a comprehensive and accessible dispute resolution remedy to both requestors and agencies where none presently exists;
- 3) facilitating the development and further articulation of the PIA without altering existing judicial remedies; and
- 4) maximizing public resources by enabling the Board and Ombudsman to interact in a fully complimentary and synergistic fashion, while at the same time utilizing both programs and staff to their fullest capacity.

The Final Report contained draft legislation that would implement the Board and Ombudsman's recommendations.

B. 2020 Legislative session

Based largely on the Final Report's recommendations and draft legislative language, House Bill 502/Senate Bill 590 were introduced with bipartisan sponsorship during the 2020 legislative session. The Board submitted written testimony, signed by all the members, in favor of the bills, and Board member Darren Wigfield—along with the Public Access Ombudsman—testified in person before the House and Senate Committees that were hearing the bills. Appendix A contains the Board's written testimony and Chairman West's opinion editorial that urged passage of HB502/SB590, which was issued jointly with the Ombudsman.

The Board and its staff also worked with the sponsoring legislators and with interested stakeholders to make technical amendments to the initial legislation in order to obtain the support of most interested stakeholders. These stakeholders included the Maryland Association of Counties ("MACO"), the Maryland Municipal League ("MML"), the Maryland, Delaware, District of Columbia Press Association ("MDDC"), Common Cause Maryland, and the Public Justice Center. However, due to the coronavirus pandemic, the legislative session was cut short before the bills could be approved by the relevant Committees and voted upon by the House and Senate.

A number of other PIA-related bills were also introduced during the session, primarily dealing with response timelines and particular exemptions; none of these passed. The Board and the Ombudsman made clear that they were most supportive of HB 502/SB 590 because those bills would enact the most comprehensive and efficient improvements to the PIA, as outlined in the Final Report.

C. Board recommendations for the 2021 Legislative Session

The Board intends to support and advocate for the reintroduction and passage of legislation that enacts the recommendations embodied in the Final Report. Appendix B contains an updated draft of HB502 that includes minor amendments requested by certain PIA stakeholders who testified on the bill and with whom Board staff collaborated to achieve consensus. The Board recommends that this language be introduced and passed during the 2021 session.

LAWRENCE J. HOGAN, JR.
GOVERNOR

BOYD K. RUTHERFORD
LT. GOVERNOR



JOHN H. WEST, III, ESQ.
Chair

DEBORAH MOORE-CARTER
RENÉ C. SWAFFORD, ESQ.
DARREN S. WIGFIELD
VACANT

STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

TESTIMONY IN SUPPORT OF HB 502 / SB 590
February 11, 2020
Health and Government Operations Committee

Dear Chair Pendergrass, Vice Chair Pena-Melnyk, and Members of the Committee:

The Members of the Public Information Act Compliance Board (“Board”) ask for a favorable report on House Bill 502, which stems from the Board and Public Access Ombudsman’s recommendations in the *Final Report on the PIA*, published in December 2019. Among other improvements to the Public Information Act (“PIA”), HB 502 would provide the Board with comprehensive administrative jurisdiction to review and decide PIA disputes that cannot be resolved through mediation with the Public Access Ombudsman. That improvement would allow the Board to play a much needed and meaningful role in the PIA dispute-resolution process, and in the development of PIA authority and guidance. The Board is ready and willing to fill this important role.

The Board is an independent body comprised of five members representing diverse interests and knowledge areas, including the media, the government, the bar, and the private citizenry. We are ably assisted by professional staff from the Office of the Attorney General. For the past four years, however, we have been underutilized and our impact has been minimal due to the extremely limited nature of our jurisdiction.

The Board was established through legislation in 2015 (HB 755 / SB 695). The first draft of that legislation provided the Board with the common sense and comprehensive PIA jurisdiction that HB 502 does now. However, the final legislation drastically limited the Board’s jurisdiction to reviewing and deciding only PIA complaints about unreasonable fees over \$350. Since October of 2015, the Board has received only 31 complaints that meet this narrow jurisdictional threshold—that’s fewer than eight complaints per year, on average.

By contrast, the Public Access Ombudsman, who has general jurisdiction to mediate—but not decide—PIA disputes, has received more than 900 mediation requests for all types of PIA disputes. The vast majority of these do not involve fees over \$350, but instead cover allegations ranging from unlawful withholding of records to untimely responses to overly broad or burdensome requests.

Although the Ombudsman makes valiant efforts to resolve these disputes, many are not resolved through mediation, and aggrieved requestors or custodians have no alternative but going to court—an alternative that is costly, time-consuming, complicated, and otherwise practicably

TESTIMONY IN SUPPORT OF HB 502

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inaccessible for most PIA requestors. HB 502 enables the Board to fill this gap in a way that enhances and complements the important work of the Ombudsman, while providing an accessible and meaningful remedy for those disputes the Ombudsman can't resolve.

Moreover, the Board is equipped to fill this gap without any major changes to its structure or operation. As described in the *Final Report on the PIA*, we believe the Board's increased caseload under HB 502 could be handled with two additional full-time staff. This is a modest expenditure in exchange for a crucial addition to the PIA dispute-resolution process and, ultimately, for improving transparency at all levels of State and local government.

For all of these reasons, we ask for a favorable report on HB 502.

Respectfully submitted,

John H. "Butch" West III, Esq.
Chair

Deborah Moore-Carter
Member

René C. Swafford, Esq.
Member

Darren S. Wigfield
Member



STATE OF MARYLAND
OFFICE OF THE
PUBLIC ACCESS OMBUDSMAN



STATE OF MARYLAND
PUBLIC INFORMATION ACT
COMPLIANCE BOARD

This year marks the 50th anniversary of the Maryland Public Information Act. The “PIA” guarantees governmental transparency by requiring State and local government agencies, upon request, to allow for the inspection of their records “with the least cost and least delay,” subject to certain exceptions for confidentiality, privacy, and privilege. Public records have changed a lot in 50 years, as government at all levels transitions into the digital age. But the core right guaranteed by the PIA—the right of citizens to know what their government is up to—has not.

In an effort to better secure this right, the General Assembly, in 2015, created two independent options for resolving PIA disputes without the need to go through the expensive, time-consuming, and often complex court process. The first option is the Office of the Public Access Ombudsman; the Ombudsman tries to resolve all kinds of PIA disputes, but can only do so on a voluntary and non-enforceable basis. The second option is the PIA Compliance Board, an administrative board that can review and issue a decision on a PIA dispute, but only if the dispute is about a fee greater than \$350.

After four years of operation, it is clear that neither of these options is working as well as it could. On one hand, the Ombudsman has wide jurisdiction to mediate all kinds of PIA disputes—from late responses and improperly withheld records, to unreasonably broad and repetitive requests—but lacks any remedy for the many disputes she cannot resolve through mediation alone. On the other hand, the PIA Compliance Board receives only a handful of complaints each year that fall within its extremely narrow fee jurisdiction, leaving the disputes that can’t be resolved through mediation with no remedy at all, short of a court lawsuit.

The Ombudsman and Board examined the scope of this problem in a [December 2019 joint report](#), and concluded that the best solution would be to expand the jurisdiction of the Board to review and decide all the kinds of PIA disputes that cannot be resolved through the Ombudsman’s mediation process. Analyzing the Ombudsman’s caseload over the last four years, the report estimated that the Board could be expected to receive around 60 additional disputes each year, about half of which would involve an agency’s denial or partial denial of a request. Importantly, the report also concluded that agencies sometimes need relief from requestors who make unduly burdensome or repetitive requests, so the Board should be authorized to review and provide relief for those kinds of disputes, too. Regardless of the dispute, the Board’s decision would always be subject to judicial review, as it is now.

House Bill 502, cross-filed as Senate Bill 590, implements these recommendations, along with other important updates to bring the PIA into the 21st century. The Bill, which has bi-partisan sponsorship, provides an efficient and user-friendly remedy for citizens and government agencies

where none currently exists, and does so by building on the two existing PIA dispute-resolution programs. It enhances the Ombudsman's mediation process by giving parties a meaningful incentive to cooperate so as to avoid Board review, while simultaneously enabling that review for disputes that are in real need of a binding decision. Ultimately, the Bill creates more equitable access, ensures transparency, and will help restore public trust in State and local government. The Ombudsman and members of the PIA Compliance Board unanimously support HB 502 / SB 590, and thank all of the Bill's sponsors and stakeholders who are working together to ensure its passage.

Sincerely,



Lisa Kershner
Public Access Ombudsman



John "Butch" West
Chair,
Public Information Act Compliance Board

1 AN ACT concerning

2 **Public Information Act - Revisions**

(Equitable Access to Records Act)

3 FOR the purpose of requiring each official custodian to adopt a certain policy of proactive
4 disclosure; providing that the policy may vary in a certain manner and include the
5 publication of certain records or information , to the extent practicable; requiring each official
custodian to
6 publish a certain annual report on a certain website, to the extent practicable , except under certain
circumstances; requiring a custodian to store a certain report in a certain manner under certain
circumstances;
7 requiring the report of an official custodian to include certain information; requiring
8 a certain member of the Public Information Act Compliance Board to have served as
9 a custodian, rather than an official custodian, in the State; requiring two members
10 of the Board, rather than one member, to be attorneys; requiring one member of the
11 Board to be knowledgeable about electronic records; requiring the Office of the
12 Attorney General to provide at least a certain number of staff members to assist the
13 Board and requiring the Office of the Public Access Ombudsman to carry out certain
14 duties; requiring the Board to receive, review, and resolve certain complaints from
15 applicants and applicants' designated representatives and certain complaints from
16 a custodian; altering the minimum fee charged under which the Board is required to
17 take certain actions with regard to a complaint; requiring the Board to order a
18 custodian to take certain actions under certain circumstances; requiring the Board
19 to issue an order authorizing a custodian to take certain actions under certain
20 circumstances; requiring the Board to adopt certain regulations; altering the
21 circumstances under which an applicant or an applicant's designated representative
22 is authorized to file a certain written complaint; authorizing a custodian to file a
23 certain complaint under certain circumstances; altering the time period within
24 which a certain complaint must be filed; altering the time period within which a
25 certain response must be filed; requiring a custodian to provide certain information
26 to the Board on request; requiring a custodian or an applicant, on request of the
27 Board, to provide a certain affidavit; requiring the Board to maintain the
28 confidentiality of certain records and information; providing that a custodian may not be civilly or
criminally liable for taking certain actions; providing for the construction of certain actions taken
under this Act; altering certain time periods
29 within which the Board must issue certain decisions and opinions under certain
30 circumstances; prohibiting a person from appealing a certain decision under certain provisions of law;
repealing a provision of law limiting the time period for which a certain appeal stays a certain decision
to no more than a certain number of days after a certain date; altering the list of disputes for which
the Ombudsman shall make reasonable attempts to resolve; requiring the Ombudsman to issue a certain
final determination

2

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1 within a certain period of time except under certain circumstances; requiring the
2 Ombudsman to inform the applicant and the custodian of the availability of certain
3 review by the Board under certain circumstances; authorizing the Ombudsman to
4 disclose certain information to certain persons; prohibiting a certain person from disclosing certain
5 information under certain circumstances; authorizing the Ombudsman to
6 transfer certain information to the Board under certain circumstances; requiring the
7 Ombudsman to submit a certain annual report to the Governor and the General
8 Assembly; requiring the Ombudsman's report to include certain information;
9 prohibiting a custodian from failing to respond to an application for the inspection of
10 a public record within certain time limits except under certain circumstances;
11 ~~prohibiting a custodian who violates a certain provision of this Act from charging a~~
~~certain fee~~ altering the circumstances under which certain time limits shall be extended pending
the resolution of a dispute; altering a certain definition; requiring the Office of the Attorney
General to allocate certain staff
12 members on or before a certain date; making stylistic and conforming changes; and
13 generally relating to the Public Information Act.

14 BY repealing and reenacting, without amendments,

15 Article - General Provisions
16 Section 4-101(a) and (c) and 4-1B-01
17 Annotated Code of Maryland
18 (2019 Replacement Volume)

19 BY adding to

20 Article - General Provisions
21 Section 4-104 and 4-105
22 Annotated Code of Maryland
23 (2019 Replacement Volume)

24 BY repealing and reenacting, with amendments,

25 Article - General Provisions
26 Section 4-101(j), 4-1A-02(a), 4-1A-03(d), 4-1A-04 through 4-1A-07, ~~4-1A-10~~, 4-1B-02(b),
4-1B-04,
27 ~~and 4-402~~ 4-203(d), and 4-362(a)
28 Annotated Code of Maryland
29 (2019 Replacement Volume)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

31 That the Laws of Maryland read as follows:

32 **Article - General Provisions**

33 4-101.

34 (a) In this title the following words have the meanings indicated.

35 (c) "Board" means the State Public Information Act Compliance Board.

(i) (1) "Public record" means the original or any copy of any
documentary material that:

(i) is made by a unit or an instrumentality of the State or of a political
subdivision or received by the unit or instrumentality in connection with the
transaction of public business; and

(ii) is in any form, including:

1. a card;
2. a computerized record;
3. correspondence;
4. a drawing;

- 5. film or microfilm;
- 6. a form;
- 7. a map;
- 8. a photograph or photostat;
- 9. a recording; or
- 10. a tape.

(2) "Public record" includes a document that lists the salary of an employee of a unit or an instrumentality of the State or of a political subdivision.

(3) "Public record" does not include:

(I) a digital photographic image or signature of an individual, or the actual stored data of the image or signature, recorded by the Motor Vehicle Administration; OR

(II) A RECORD OR ANY INFORMATION SUBMITTED TO THE BOARD UNDER SUBTITLE 1A OF THIS TITLE.

3

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1 (A) EACH OFFICIAL CUSTODIAN SHALL ADOPT A POLICY OF PROACTIVE
2 DISCLOSURE OF PUBLIC RECORDS THAT ARE AVAILABLE FOR INSPECTION UNDER
3 THIS TITLE.

4 (B) THE POLICY ADOPTED UNDER SUBSECTION (A) OF THIS SECTION MAY:

5 (1) VARY AS APPROPRIATE TO THE TYPE OF PUBLIC RECORD AND TO
6 REFLECT THE STAFF AND BUDGETARY RESOURCES OF THE GOVERNMENTAL UNIT;
7 AND

8 (2) INCLUDE PUBLICATION OF PUBLIC RECORDS ON THE WEBSITE OF
9 THE GOVERNMENTAL UNIT, TO THE EXTENT PRACTICABLE, OR PUBLICATION OF PRIOR RESPONSES TO
10 REQUESTS
11 FOR INSPECTION MADE UNDER THIS TITLE.

11 4-105.

12 (A) ~~ON (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ON OR~~
13 BEFORE JULY 1 EACH YEAR, EACH OFFICIAL CUSTODIAN SHALL
14 PUBLISH ON THE WEBSITE OF THE GOVERNMENTAL UNIT, TO THE EXTENT
15 PRACTICABLE, A REPORT ON THE REQUESTS RECEIVED DURING THE IMMEDIATELY
16 PRECEDING CALENDAR YEAR UNDER THIS TITLE FOR INSPECTION OF PUBLIC
17 RECORDS OF THE GOVERNMENTAL UNIT.

(2) IF THE GOVERNMENTAL UNIT DOES NOT HAVE A WEBSITE, THE
CUSTODIAN SHALL STORE THE REPORT IN A PLACE THAT IS EASILY ACCESSIBLE TO THE
PUBLIC.

17 (B) THE REPORT SHALL INCLUDE:

18 (1) THE NUMBER OF REQUESTS RECEIVED UNDER THIS TITLE,
19 INCLUDING:

20 (I) THE NUMBER OF REQUESTS GRANTED OR DENIED WITHIN
21 10 BUSINESS DAYS;

22 (II) THE NUMBER OF REQUESTS GRANTED OR DENIED WITHIN
23 30 DAYS; AND

24 (III) THE NUMBER OF REQUESTS GRANTED OR DENIED IN MORE
25 THAN 30 DAYS AND THE REASONS FOR THE DELAYS, INCLUDING THE NUMBER OF
26 EXTENSIONS REQUESTED AND THE NUMBER OF REQUESTS THAT WERE THE
27 SUBJECT OF DISPUTE RESOLUTION UNDER § 4-1B-04 OF THIS TITLE;

28 (2) THE OUTCOMES OF THE REQUESTS, INCLUDING:

29 (I) THE TOTAL NUMBER OF REQUESTS GRANTED IN FULL;

30 (II) THE TOTAL NUMBER OF REQUESTS GRANTED IN PART;

4

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1 (III) THE TOTAL NUMBER OF REQUESTS DENIED IN FULL; AND

2 (IV) THE TOTAL NUMBER OF REQUESTS FOR WHICH REDACTED
3 PUBLIC RECORDS WERE PROVIDED;

4 (3) THE AMOUNT OF FEES CHARGED UNDER § 4-206 OF THIS TITLE;

5 (4) THE NUMBER OF FEE WAIVERS GRANTED UNDER § 4-206(E) OF
6 THIS TITLE; AND

7 (5) A DESCRIPTION OF EFFORTS BY THE GOVERNMENTAL UNIT TO
8 PROACTIVELY DISCLOSE INFORMATION IN ACCORDANCE WITH THE POLICY
9 ADOPTED UNDER § 4-104 OF THIS SUBTITLE.

10 4-1A-02.

11 (a) (1) The Board consists of five members.

12 (2) (i) One member of the Board shall be a representative:

13 1. from a nongovernmental nonprofit group that is organized
14 in the State;

15 2. who works on issues related to transparency or open
16 government; and

17 3. who is nominated by representatives of the open
18 government and news media communities.

19 (ii) One member of the Board shall:

20 1. have knowledge of the provisions of this title;

21 2. have served as [an official] A custodian in the State as
22 defined in § 4-101(d) of this title; and

23 3. be nominated by the Maryland Association of Counties
24 and the Maryland Municipal League.

25 (iii) 1. Three members of the Board shall be private citizens of
26 the State.

27 2. A private citizen member of the Board may not be:

28 A. a custodian of a public record;

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1 B. a member of the news media; or

2 C. a staff member or spokesperson for an organization that
3 represents the interests of custodians or applicants for public records.

4 (3) At least [one member] **TWO MEMBERS** of the Board shall be [an
5 attorney] **ATTORNEYS** admitted to the Maryland Bar.

6 **(4) AT LEAST ONE MEMBER OF THE BOARD SHALL BE**
7 **KNOWLEDGEABLE ABOUT ELECTRONIC RECORDS, INCLUDING ELECTRONIC**
8 **STORAGE, RETRIEVAL, REVIEW, AND REPRODUCTION TECHNOLOGIES.**

9 **[(4)] (5)** (i) The Governor shall publish, on the website of the Office of
10 the Governor, notice of the Governor's intent to consider applicants for positions on the
11 Board.

12 (ii) The notice shall include:

- 13 1. application procedures;
- 14 2. criteria for evaluating an applicant's qualifications; and
- 15 3. procedures for resolving any conflicts of interest.

16 (iii) The Governor shall solicit recommendations for positions on the
17 Board from representatives of the custodian, news media, and nonprofit communities.

18 (iv) 1. An individual may submit to the Governor an application
19 for membership on the Board as provided under subparagraph (ii) of this paragraph.

20 2. The names and qualifications of applicants shall be posted
21 on the website of the Office of the Governor.

22 (v) When evaluating an applicant, the Governor shall:

- 23 1. consider the need for geographic, political, racial, ethnic,
24 cultural, and gender diversity on the Board; and
- 25 2. ensure the neutrality of the Board.

26 **[(5)] (6)** Subject to paragraphs (2) [and (3)] **THROUGH (4)** of this
27 subsection and with the advice and consent of the Senate, the Governor shall appoint the
28 members of the Board from the pool of applicants under paragraph **[(4)] (5)** of this
29 subsection.

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1 4-1A-03.

2 (d) (1) [The] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
3 Office of the Attorney General shall provide staff and office space for the Board.

4 (2) THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE AT
5 LEAST FOUR STAFF MEMBERS TO ASSIST THE BOARD AND THE OFFICE OF THE
6 PUBLIC ACCESS OMBUDSMAN TO CARRY OUT THE DUTIES OF THE BOARD UNDER
7 THIS SUBTITLE AND THE OFFICE UNDER SUBTITLE 1B OF THIS TITLE.

8 4-1A-04.

9 (a) The Board shall:

10 (1) receive, review, and, subject to § 4-1A-07 of this subtitle, resolve
11 complaints filed under § 4-1A-05 of this subtitle from any applicant or the applicant's
12 designated representative alleging that a custodian:

13 (I) DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF
14 THIS TITLE;

15 (II) charged an unreasonable fee under § 4-206 of this title OF MORE
16 THAN \$200;

17 (III) UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206(E)
18 OF THIS TITLE; OR

19 (IV) FAILED TO RESPOND TO A REQUEST FOR A PUBLIC RECORD
20 WITHIN THE TIME LIMITS ESTABLISHED UNDER § 4-203(A) OR (D) OF THIS TITLE;

21 (2) issue a written DECISION ~~opinion~~ as to whether a violation has occurred; and

22 (3) ORDER THE CUSTODIAN TO:

23 (I) IF THE BOARD FINDS THAT THE CUSTODIAN HAS DENIED
24 INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE, PRODUCE THE
25 PUBLIC RECORD FOR INSPECTION;

26 (II) if the Board finds that the custodian charged an unreasonable
27 fee under § 4-206 of this title, [order the custodian to] reduce the fee to an amount
28 determined by the Board to be reasonable and refund the difference;

29 (III) IF THE BOARD FINDS THAT THE CUSTODIAN
30 UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206(E) OF THIS TITLE, WAIVE ALL OR PART OF

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1 THE FEE OR RECONSIDER THE FEE WAIVER REQUEST; OR

2 (IV) IF THE BOARD FINDS THAT THE CUSTODIAN FAILED TO
3 RESPOND TO A REQUEST FOR A PUBLIC RECORD WITHIN THE TIME LIMITS
4 ESTABLISHED UNDER ~~§ 4-203~~ 4-203(A) OR (D) OF THIS TITLE, PROMPTLY RESPOND AND, AT THE
5 BOARD'S DISCRETION, WITH A WRITTEN DECISION AS TO THE REASONS, WAIVE ~~ANY~~ ALL OR PART OF THE FEE THE
CUSTODIAN IS OTHERWISE ENTITLED
TO
6 CHARGE UNDER § 4-206 OF THIS TITLE.

7 (B) THE BOARD SHALL:

8 (1) RECEIVE, REVIEW, AND, SUBJECT TO § 4-1A-07 OF THIS
9 SUBTITLE, RESOLVE COMPLAINTS FILED UNDER § 4-1A-05 OF THIS SUBTITLE FROM
10 ANY CUSTODIAN ALLEGING THAT AN APPLICANT'S REQUEST OR PATTERN OF
11 REQUESTS IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH;

12 (2) ISSUE A WRITTEN OPINION AS TO WHETHER THE APPLICANT'S
13 REQUEST OR PATTERN OF REQUESTS IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH;
14 AND

15 (3) IF THE BOARD FINDS THAT THE APPLICANT'S REQUEST IS
16 FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH, BASED ON THE TOTALITY OF THE
17 CIRCUMSTANCES INCLUDING THE NUMBER AND SCOPE OF THE APPLICANT'S PAST
18 REQUESTS AND THE CUSTODIAN'S RESPONSES TO PAST REQUESTS AND EFFORTS TO
19 COOPERATE WITH THE APPLICANT, ISSUE AN ORDER AUTHORIZING THE CUSTODIAN
20 TO:

21 (I) IGNORE THE REQUEST THAT IS THE SUBJECT OF THE
22 CUSTODIAN'S COMPLAINT; OR

23 (II) RESPOND TO A LESS BURDENSOME VERSION OF THE
24 REQUEST WITHIN A REASONABLE TIME FRAME, AS DETERMINED BY THE BOARD.

25 [(b)] (C) The Board shall:

26 (1) ADOPT REGULATIONS TO CARRY OUT SUBTITLE 1A OF THIS TITLE;

27 [(1)] (2) study ongoing compliance with this title by custodians; and

28 [(2)] (3) make recommendations to the General Assembly for
29 improvements to this title.

30 [(c)] (D) (1) On or before October 1 of each year, the Board shall submit a
31 report to the Governor and, subject to § 2-1257 of the State Government Article, the
32 General Assembly.

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- 1 (2) The report shall:
- 2 (i) describe the activities of the Board;
- 3 (ii) describe the opinions of the Board;
- 4 (iii) state the number and nature of complaints filed with the Board;
- 5 and
- 6 (iv) recommend any improvements to this title.

7 4-1A-05.

8 (a) Any applicant [or], the applicant's designated representative, OR A
9 CUSTODIAN may file a written complaint with the Board seeking a written opinion and
10 order from the Board UNDER § 4-1A-04 OF THIS SUBTITLE if:

11 (1) [a custodian charged a fee under § 4-206 of this title of more than \$350]
12 THE COMPLAINANT HAS ATTEMPTED TO RESOLVE THE DISPUTE THROUGH THE
13 OFFICE OF THE PUBLIC ACCESS OMBUDSMAN UNDER § 4-1B-04 OF THIS TITLE; and

14 (2) [the complainant alleges in the complaint that the fee is unreasonable]
15 THE PUBLIC ACCESS OMBUDSMAN HAS ISSUED A FINAL DETERMINATION STATING
16 THAT THE DISPUTE WAS NOT RESOLVED.

17 (b) The complaint shall:

18 (1) identify the custodian OR APPLICANT that is the subject of the
19 complaint;

20 (2) describe the action of the custodian OR APPLICANT, the date of the
21 action, and the circumstances of the action;

22 (3) be signed by the complainant;

23 (4) if available, include a copy of the original request for public records AND
24 THE CUSTODIAN'S RESPONSE, IF ANY; and

25 (5) be filed within [90] 45 days after the [action that is the subject of the
26 complaint occurred] COMPLAINANT RECEIVES THE FINAL DETERMINATION OF THE
27 PUBLIC ACCESS OMBUDSMAN UNDER § 4-1B-04 OF THIS TITLE.

28 4-1A-06.

29 (a) Except as provided in subsection (c) of this section, on receipt of a written

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1 complaint, the Board promptly shall:

2 (1) send the complaint to the custodian OR APPLICANT identified in the
3 complaint; and

4 (2) request that a response to the complaint be sent to the Board.

5 (b) (1) The custodian OR APPLICANT shall file a written response to the
6 complaint within [15] 30 days after [the custodian receives] RECEIVING the complaint.

7 (2) On request of the Board, the custodian shall [include with its written
8 response to the complaint] PROVIDE:

9 (I) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN FAILED
10 TO RESPOND TO A REQUEST FOR A PUBLIC RECORD WITHIN THE TIME LIMITS
11 ESTABLISHED UNDER § 4-203 OF THIS TITLE, A RESPONSE TO THE REQUEST FOR
12 THE PUBLIC RECORD;

13 (II) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN DENIED
14 INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE:

15 1. A COPY OF THE PUBLIC RECORD, ~~OR~~ DESCRIPTIVE
16 INDEX OF THE PUBLIC RECORD, OR WRITTEN REASON WHY THE PUBLIC RECORD CANNOT BE DISCLOSED, AS
APPROPRIATE; AND

17 2. THE PROVISION OF LAW ON WHICH THE CUSTODIAN
18 RELIED IN DENYING INSPECTION OF THE PUBLIC RECORD;

19 (III) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN
20 CHARGED AN UNREASONABLE FEE UNDER § 4-206 OF THIS TITLE, the basis for the fee
21 that was charged; OR

22 (IV) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN
23 UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206 OF THIS TITLE, THE BASIS
24 ON WHICH THE CUSTODIAN DENIED THE WAIVER REQUEST.

25 (3) ON REQUEST OF THE BOARD, A CUSTODIAN OR AN APPLICANT
26 SHALL PROVIDE AN AFFIDAVIT OR STATEMENT CONTAINING ~~A STATEMENT OF~~ THE FACTS THAT ARE AT
27 ISSUE IN THE COMPLAINT.

28 (4) THE BOARD SHALL MAINTAIN THE CONFIDENTIALITY OF ANY
29 RECORD OR ~~CONFIDENTIAL~~ INFORMATION SUBMITTED BY A CUSTODIAN OR AN
30 APPLICANT UNDER THIS SUBSECTION ~~THAT IS NOT A PUBLIC RECORD.~~

(5) A CUSTODIAN MAY NOT BE CIVILLY OR CRIMINALLY LIABLE FOR PROVIDING OR DESCRIBING A PUBLIC RECORD TO THE BOARD UNDER THIS SUBSECTION.

(6) THE PROVISION OF A RECORD OR A DESCRIPTION OF A RECORD TO THE BOARD UNDER THIS SUBSECTION MAY NOT BE CONSTRUED AS A WAIVER OF ANY APPLICABLE PRIVILEGE.

31 (c) If a written response OR INFORMATION REQUESTED UNDER SUBSECTION

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10

1 (B) OF THIS SECTION is not received within [45] 30 days after the [notice] REQUEST is
2 sent, the Board shall decide the case on the facts before the Board.

3 4-1A-07.

4 (a) (1) The Board shall review the complaint and any response.

5 (2) [If the information in the complaint and response is sufficient for
6 making a determination based on the Board's own interpretation of the evidence,] THE
7 BOARD SHALL ISSUE A WRITTEN OPINION within 30 days after receiving [the response,
8 the Board shall issue a written opinion as to whether a violation of this title has occurred
9 or will occur] THE WRITTEN RESPONSE AND ALL INFORMATION REQUESTED UNDER §
10 4-1A-06(B) OF THIS SUBTITLE.

11 (b) (1) (i) Subject to subparagraph (ii) of this paragraph, if the Board is
12 unable to reach a determination based on the written submissions before it, the Board may
13 schedule an informal conference to hear from the complainant, the AFFECTED custodian
14 OR APPLICANT, or any other person with relevant information about the subject of the
15 complaint.

16 (ii) The Board shall hold the informal conference under
17 subparagraph (i) of this paragraph in a location that is as convenient as practicable to the
18 complainant and the AFFECTED custodian OR APPLICANT.

19 (2) When conducting a conference that is scheduled under paragraph (1) of
20 this subsection, the Board may allow the parties to testify by teleconference or submit
21 written testimony by electronic mail.

22 (3) An informal conference scheduled by the Board is not a contested case
23 within the meaning of § 10-202(d) of the State Government Article.

24 (4) The Board shall issue a written opinion within 30 days after the
25 informal conference.

26 (c) (1) If the Board is unable to issue an opinion on a complaint within the
27 time periods specified in subsection (a) or (b) of this section, the Board shall:

28 (i) state in writing the reason for its inability to issue an opinion;
29 and

30 (ii) issue an opinion as soon as possible but not later than [90] 120
31 days after the filing of the complaint.

32 (2) (I) An opinion of the Board may state that the Board is unable to resolve
33 the complaint.

(II) A PERSON MAY NOT APPEAL AN OPINION OF THE BOARD MADE UNDER THIS PARAGRAPH UNDER § 4-1A-10 OF THIS SUBTITLE OR § 4-362(A)(2) OF THIS TITLE.

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1 (d) The Board shall send a copy of the written opinion to the complainant and the
2 affected custodian **OR APPLICANT**.

4-1A-10.

(a) A person or governmental unit need not exhaust the administrative
remedy under this subtitle before filing suit.

(b) (1) **[A] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE,**
A complainant or custodian may appeal the decision issued by the Board under
this subtitle in accordance with § 4-362 of this title.

(2) An appeal under this subsection automatically stays the decision of the
Board pending the circuit court's decision [or no more than 30 days after
the date on which the defendant serves an answer or otherwise pleads to the
complaint, whichever is sooner].

3 4-1B-01.

4 In this subtitle, "Ombudsman" means the Public Access Ombudsman.

5 4-1B-02.

6 (b) **[The] SUBJECT TO § 4-1A-03(D)(2) OF THIS TITLE, THE** Office of the
7 Attorney General shall provide office space and staff for the Ombudsman, with appropriate
8 steps taken to protect the autonomy and independence of the Ombudsman.

9 4-1B-04.

10 (a) Subject to subsection **[(b)] (D)** of this section, the Ombudsman shall make
11 reasonable attempts to resolve disputes between applicants and custodians relating to
12 requests for public records under this title, including disputes over:

13 (1) the custodian's application of an exemption;

14 (2) redactions of information in the public record;

15 (3) the failure of the custodian to produce a public record in a timely
16 manner or to disclose all records relevant to the request;

17 (4) overly broad requests for public records;

18 (5) the amount of time a custodian needs, given available staff and
19 resources, to produce public records;

20 (6) a request for or denial of a fee waiver under § 4-206(e) of this title; ~~and~~

21 (7) repetitive or redundant requests from an applicant ;

(8) FEES IMPOSED UNDER § 4-206 OF THIS TITLE; AND

(9) A REQUEST OR PATTERN OF REQUESTS FROM AN APPLICANT THAT IS
ALLEGED TO BE FRIVOLOUS, VEXATIOUS, OR MADE IN BAD FAITH.

22 **(B) WITHIN 90 DAYS AFTER RECEIVING A REQUEST FOR DISPUTE**
23 **RESOLUTION, UNLESS THE PARTIES MUTUALLY AGREE TO EXTEND THE DEADLINE,**
24 **THE OMBUDSMAN SHALL ISSUE A FINAL DETERMINATION STATING:**

25 (1) **THAT THE DISPUTE HAS BEEN RESOLVED; OR**

26 (2) **THAT THE DISPUTE HAS NOT BEEN RESOLVED.**

27 **(C) IF THE OMBUDSMAN ISSUES A FINAL DETERMINATION STATING THAT**

28 THE DISPUTE HAS NOT BEEN RESOLVED, THE OMBUDSMAN SHALL INFORM THE
29 APPLICANT AND THE CUSTODIAN OF THE AVAILABILITY OF REVIEW BY THE BOARD

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1 UNDER § 4-1A-04 OF THIS TITLE.

2 [(b)] (D) (1) When resolving disputes under this section, the Ombudsman
3 may not:

4 (i) compel a custodian to disclose public records or redacted
5 information in the custodian's physical custody to the Ombudsman or an applicant; or

6 (ii) except as provided in [paragraph] PARAGRAPHS (2) AND (3) of
7 this subsection, disclose information received from an applicant or custodian without
8 written consent from the applicant and custodian.

9 (2) (I) The Ombudsman may disclose information received from an applicant
10 or custodian to the assistant Attorney General assigned to the Office of the PUBLIC
11 ACCESS Ombudsman OR TO ANY OTHER PERSON WORKING UNDER THE DIRECTION
12 OF THE OMBUDSMAN.

(II) AN INDIVIDUAL TO WHOM THE OMBUDSMAN DISCLOSES
INFORMATION UNDER THIS PARAGRAPH MAY NOT DISCLOSE THE INFORMATION WITHOUT
WRITTEN CONSENT FROM THE APPLICANT AND CUSTODIAN.

13 (3) THE OMBUDSMAN MAY TRANSFER BASIC INFORMATION ABOUT A
14 DISPUTE, INCLUDING THE IDENTITY OF THE APPLICANT AND CUSTODIAN AND THE
15 NATURE OF THE DISPUTE, TO THE BOARD IF APPROPRIATE STEPS HAVE BEEN
16 TAKEN TO PROTECT THE CONFIDENTIALITY OF COMMUNICATIONS MADE OR
17 RECEIVED IN THE COURSE OF ATTEMPTING TO RESOLVE THE DISPUTE.

18 (E) (1) ON OR BEFORE OCTOBER 1 EACH YEAR, IN CONJUNCTION WITH
19 THE REPORT OF THE PUBLIC INFORMATION ACT COMPLIANCE BOARD REQUIRED
20 UNDER § 4-1A-04 OF THIS TITLE, THE OMBUDSMAN SHALL SUBMIT A REPORT TO
21 THE GOVERNOR AND, SUBJECT TO § 2-1257 OF THE STATE GOVERNMENT ARTICLE,
22 THE GENERAL ASSEMBLY.

23 (2) THE REPORT SHALL:

24 (I) DESCRIBE THE ACTIVITIES OF THE OMBUDSMAN;

25 (II) STATE THE NUMBER AND NATURE OF REQUESTS FOR
26 DISPUTE RESOLUTION MADE TO THE OMBUDSMAN;

27 (III) DESCRIBE THE AGGREGATE OUTCOMES OF DISPUTE
28 RESOLUTIONS CONDUCTED BY THE OMBUDSMAN;

29 (IV) HIGHLIGHT ANY AREAS OF CONCERN AND RECOMMEND
30 BEST PRACTICES FOR GOVERNMENTAL UNITS IN RESPONDING TO REQUESTS FOR
31 PUBLIC RECORDS UNDER THIS TITLE; AND

32 (V) RECOMMEND ANY IMPROVEMENTS TO THIS TITLE.

4-203.

(d) Any time limit imposed under this section:

(1) with the consent of the applicant, may be extended for not more than
30 days; and

(2) if the applicant OR CUSTODIAN seeks resolution of a dispute
under [§ 4-1B-04] SUBTITLES 1A OR 1B of this title, shall be
extended pending resolution of that dispute.

4-362.

(a) (1) Subject to paragraph (3) of this subsection, whenever a person or governmental unit is denied inspection of a public record or is not provided with a copy, printout, or photograph of a public record as requested, the person or governmental unit may file a complaint with the circuit court.

(2) [Subject] EXCEPT AS OTHERWISE PROVIDED IN SUBTITLE 1A OF THIS TITLE AND SUBJECT to paragraph (3) of this subsection, a complainant or custodian may appeal to the circuit court a decision issued by the State Public Information Act Compliance Board as provided under § 4-1A-10 of this title.

(3) A complaint or an appeal under this subsection shall be filed with the circuit court for the county where:

- (i) the complainant resides or has a principal place of business; or
- (ii) the public record is located.

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1 ~~4-402.~~2 ~~(a) (1) A person may not:~~3 ~~[(1) (I) willfully or knowingly violate any provision of this title;~~4 ~~[(2) (II) fail to petition a court after temporarily denying inspection of a~~
5 ~~public record; or~~6 ~~[(3) (III) by false pretenses, bribery, or theft, gain access to or obtain a~~
7 ~~copy of a personal record if disclosure of the personal record to the person is prohibited by~~
8 ~~this title.~~9 ~~[(b) (2) A person who violates [any provision] PARAGRAPH (1) of this [section]~~
10 ~~SUBSECTION is guilty of a misdemeanor and on conviction is subject to a fine not exceeding~~
11 ~~\$1,000.~~12 ~~(B) (1) A CUSTODIAN MAY NOT FAIL TO RESPOND TO A REQUEST FOR THE~~
13 ~~INSPECTION OF A PUBLIC RECORD WITHIN THE TIME LIMITS ESTABLISHED UNDER §~~
14 ~~4-203 OF THIS TITLE UNLESS THE CUSTODIAN HAS REQUESTED:~~15 ~~(I) AN EXTENSION UNDER § 4-203(D) OF THIS TITLE; OR~~16 ~~(II) DISPUTE RESOLUTION UNDER § 4-1B-04 OF THIS TITLE.~~17 ~~(2) A CUSTODIAN WHO VIOLATES PARAGRAPH (1) OF THIS~~
18 ~~SUBSECTION MAY NOT CHARGE A FEE FOR RESPONDING TO THE REQUEST.~~19 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before July 1, 2021, the
20 Office of the Attorney General shall allocate any additional staff members required to be
21 assigned under § 4-1A-03(d)(2) of the General Provisions Article, as enacted by Section 1
22 of this Act.23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~July~~ October
24 1, 2020.

APPENDIX C
REPORT OF THE PUBLIC ACCESS OMBUDSMAN
FY 2020

The General Assembly created the Office of the Public Access Ombudsman (“Ombudsman”) in 2015 through the same statute that created the Public Information Act Compliance Board (“Board” or “PIACB”).

The Ombudsman’s principal duties involve making reasonable attempts to resolve disputes between records custodians and applicants seeking public records under the Maryland Public Information Act (“PIA”). The Ombudsman’s process is voluntary, non-binding and confidential, and her jurisdiction includes any dispute under the PIA such as those involving exemptions, the failure of a custodian to respond timely, fee waivers, and repetitive or overly broad requests. See § 4-1B-04 of the General Provisions Article of the Maryland Code

In addition to mediating PIA disputes, the Ombudsman also regularly provides informal assistance, resource material, and PIA trainings across the state. These and other activities are reported by the Ombudsman on a semi-annual, annual, and “since inception” basis in summary statistical reports that are available on the Ombudsman’s website <http://piaombuds.maryland.gov> or on request.

This report describes the Ombudsman’s principal activities from July 1, 2019 through June 30, 2020 (“FY 2020”). For additional context, summary reports covering Ombudsman activities from program inception in 2016 through June 30, 2020, during calendar year 2019 and during the first six months of 2020 are attached to this Appendix at pages C-5 - C-10.

ACTIVITIES OF THE OMBUDSMAN

The Attorney General appointed Lisa Kershner as the first Public Access Ombudsman in March 2016 and reappointed her to a second four-year term effective March 30, 2020. The activities of the Ombudsman are supported by an Administrator and an Assistant Attorney General, who are full-time employees of the Office of the Attorney General (“OAG”).

Mediation Metrics

Impact of Covid-19: Since mid-March 2020, the Ombudsman and her staff have worked remotely, as have many of the state and local government offices with which the Ombudsman works to resolve PIA issues and disputes.

While most agencies have continued to process PIA requests during the covid-19 public health crisis, the additional duties and needs created by the pandemic combined with staffing and operational limitations affecting many agencies have had the overall effect of slowing the PIA response process as well as the Ombudsman’s ability to handle mediation

matters. Apart from the impacts of the covid crisis, the Ombudsman's caseload has remained largely consistent in many respects with program experience in prior years. For example, the Ombudsman has continued to receive requests for assistance from a wide variety of requestors and from agencies concerning a wide range of issues.

Requestors: As in prior years, the single largest category of requestors seeking assistance – approximately 52% during the first 6 months of 2020 – are individuals whose PIA requests most often are related to an agency action that impacts the requestor. In comparison, occupational users of the PIA – a diverse category that includes press, attorneys, advocacy organizations, and businesses – comprised about 29% of the Ombudsman's caseload during the same period. Requestors who are incarcerated and typically seek records related to their cases comprised about 19% of requestors during the first half of 2020.

Agencies: The Ombudsman continues to work with agencies at all levels of government (state, local and municipal). Although agencies initiate a relatively small number of mediations, they regularly seek informal guidance or proactive assistance from the Ombudsman aimed at preventing PIA problems or disputes. Proactive consultations with agencies are captured in the Ombudsman's statistical reports as "Help Desk" matters.

Disputes and Dispositions: Since inception, about 69% of the Ombudsman's caseload has involved exemption issues, incomplete/nonresponsive, or missing responses. The trend in calendar year 2019 and during the first 6 months of 2020 is similar, with about 70% of the caseload involving one of those issues.

As part of the work on the *Final Report on the Public Information Act* ("Final Report") issued jointly by the PIACB and Ombudsman in December 2019, see discussion, *infra*, at C-3 – C-4, the Ombudsman conducted a detailed review of all mediations handled during the 42 months from inception of the Ombudsman program in 2016 through September 30, 2019. The purpose of this case review was to estimate the number and complexity of matters as well as the types of issues that were not resolved by mediation and that were deemed likely to go to a Board with decisional authority if that remedy existed. The conclusions drawn from the case review include that some 25%-26% of all mediation matters submitted to the Ombudsman are in need of a decisional remedy at the conclusion of the mediation and that the majority of these matters involve the application of exemptions. See Final Report at p. 16-17. <https://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2019/12/Final-Report-on-the-PIA-12.27.19.pdf>.

Length of Time to Close Mediations: While the number of open mediation matters in the first half of 2020 (161) is comparable to the number of open mediation matters during the first half of 2019 (155), the rate at which the Ombudsman is able to close new matters has slowed. For example, during the first half of 2019, 49% of open mediation matters were closed within 3 weeks and 78% were closed within 6 weeks. By comparison, during the first half of 2020, only 24% of open matters were closed within 3 weeks and only 36

% were closed within 6 weeks. During calendar year 2019, overall, 44% of open matters were closed within 3 weeks and 73% were closed within 6 weeks.

The Ombudsman attributes the substantial increase in time required to close mediations to several factors including an uptick in the volume of new matters beginning in the summer of 2019 that coincided with the period during which the Ombudsman was required to devote increasing amounts of time to tasks necessary to complete the *Final Report* requested by the Chairmen of the Senate Budget and Taxation and House Appropriations Committees. These factors combined to create a longer than usual queue going into 2020, which has continued due both to a high volume of new matters received in January and February 2020, as well as circumstances related to the covid-19 pandemic.

Outreach and Training: The Ombudsman has seen a steady increase in requests for trainings and “help-desk” assistance since program inception in 2016. Until the onset of the covid crisis in March 2020, the Ombudsman regularly conducted one to two in-person trainings per month. Since March 2020, however, in-person trainings have been deferred indefinitely. The Office has published guidance on the handling of PIA requests during the pandemic through its blog (“*Open Matters*”), Twitter account (@MPIA_Ombuds), and website (<http://piaombuds.maryland.gov>) and is able to conduct virtual trainings on request.

Final Report – Legislation Needed to Implement Joint Recommendations

During FY 2020, the Ombudsman worked extensively on the state agency/cabinet-level survey and other research and outreach related to the *Final Report*, issued jointly by the Board and Ombudsman on December 27, 2019 as requested by the Chairmen of the Senate Budget and Taxation and House Appropriations Committees in April 2019.

The central recommendation of the *Final Report* is to create an accessible enforcement remedy for PIA disputes by expanding the jurisdiction of the Board to allow it to decide any dispute that cannot first be resolved by mediation through the Ombudsman program. Doing so will have two principal benefits. First, it will make the Ombudsman program much more effective by providing a real incentive for parties to engage meaningfully with the Ombudsman’s process, and secondly, it will provide an accessible and highly cost-effective remedy where none currently exists. Under this recommended framework, the benefits of voluntary and confidential mediation are fully preserved, while the Board, which currently is under-utilized, would play a more vital role in dispute resolution and the ongoing articulation of the PIA without altering any existing judicial remedy.

In order to assess the need, process and additional resources necessary to implement the recommendation to expand the Board’s jurisdiction, the Ombudsman and Board conducted extensive outreach to all stakeholders during 2019, researched programs in other states and considered data submitted by the state agencies surveyed per the Committee Narrative request. Additionally, the Ombudsman undertook a detailed review of all

mediation matters handled by her Office during the 42 months from inception of the program through September 30, 2019. The conclusions drawn from this data were reported separately for both fiscal year 2019 and from program inception through September 30, 2019 and are discussed in the *Final Report* at pages 13-17.

Briefly, these conclusions are that a Board with full jurisdiction would receive approximately 50 to 60 additional matters per year, that the biggest single issue area (about 45%) will involve exemptions and that the Board's expanded caseload will be relatively evenly split between matters appropriate for summary disposition and others requiring a more labor-intensive process such as research, review of privilege logs or records and potential hearings. *Id.* The Board and Ombudsman estimate that two additional full-time staff will be required to manage the expected additional caseload.

The Ombudsman also participated in the effort to pass HB 502/SB 590, the bill introduced during the 2020 session to implement the Board and Ombudsman joint recommendations. A copy of the Ombudsman's written testimony submitted to the House Health and Government Operations Committee is attached to this Appendix at pages C-11 - C-12.¹ Substantial consensus on the bill appeared imminent with certain clarifying amendments when the session closed in March without the bill being brought to a vote.

The Ombudsman looks forward to continuing her work with the Board and all stakeholders in 2021 in order to pass legislation needed to implement the central recommendations of the *Final Report*.

CONCLUSION

The Ombudsman wishes to thank the Attorney General for appointing her to this important position. In addition, the Ombudsman thanks the Board for providing this forum for sharing information about the Ombudsman program. Finally, the Ombudsman wishes to thank the dedicated staff from the Office of the Attorney General who support the Ombudsman.

Additional program information, including statistical reports, helpful tips, and PIA-related news and developments, are regularly posted throughout the year to the Ombudsman's website <http://piaombuds.maryland.gov>, and on Twitter @MPIA_Ombuds.

Respectfully submitted,

Lisa A. Kershner
Public Access Ombudsman

September 25, 2020

¹ The Ombudsman also submitted the same written testimony to the Senate Education, Health, and Environmental Affairs Committee.



51 Months Since Inception

MARYLAND PUBLIC INFORMATION ACT (PIA)
The public's right to information about government activities lies at the heart of democracy.

Metrics Handout

Office of the Public Access Ombudsman

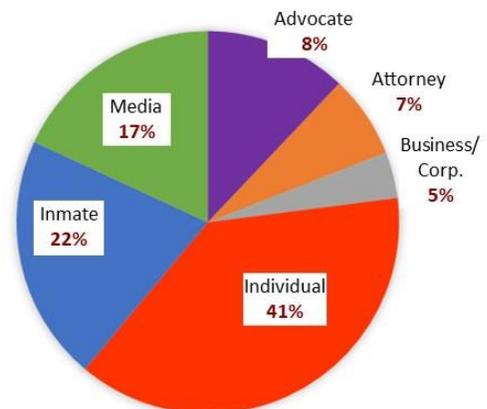
Since Inception Report
 March 30, 2016—June 30, 2020

1646 since March 30, 2016

- 1022- Mediation requests
- 624+ - Other / "help-desk" inquiries

The Big Picture: Mediation Matters!
Early resolution of disputes saves time and resources and increases public knowledge and awareness of the PIA process. Mediation is entirely voluntary, confidential, and in many cases doesn't require an attorney.

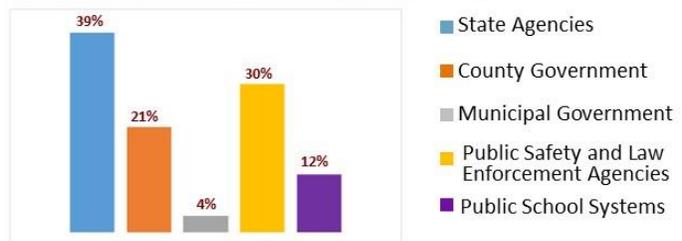
The Requestors



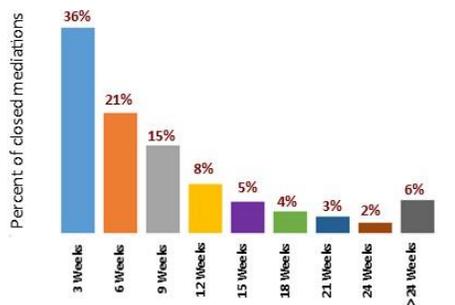
The Agencies

266 unique agencies participated in mediation matters with the PIA Ombudsman since the beginning of the program. Agency jurisdictions are state, county and local level.

What Agencies are Participating in Mediation?

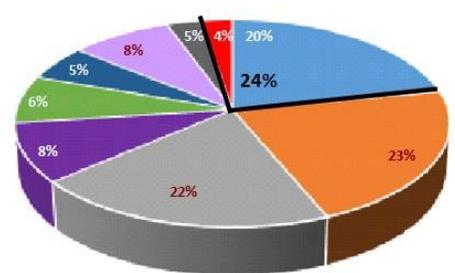


How Long does Mediation Take?



36% of the cases are closed within 3 weeks and 57% by 6 weeks.

What are the PIA disputes?



Disputes are presented as framed by the requestor. Characterizations are based on how the requestors describe the issues. These are not findings.

Mediations	
March 30, 2016 – June 30, 2020	
New/Incoming cases between 3/30/16—6/30/20	1022
Closed as of 6/30/20	972

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Ombudsman's Website:
<http://piaombuds.maryland.gov>

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MARYLAND PUBLIC INFORMATION ACT (PIA)
The public's right to information about government activities lies at the heart of a democratic government.

Public Access Ombudsman

2019 Annual Report—12Months
 January to December 31, 2019



**2019
 12 Month
 Report**

505 in 2019

- 279 -Mediation requests
- 226 -Other/"help-desk" inquiries

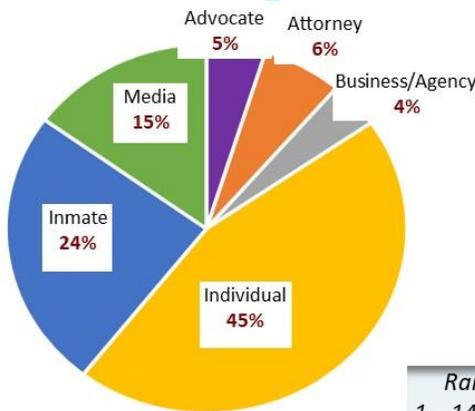
The Big Picture: Mediation saves money
Early resolution of disputes saves time and resources and increases public knowledge and awareness of the PIA process. For example, mediation is entirely voluntary, confidential, and in many cases doesn't require an attorney.

Total Mediation Cases 2019	
Carry over from prior years	19
New/Incoming cases in 2019	279
Total Number of Mediation cases	298
Mediation cases currently open	46
Total Mediation cases Closed	252

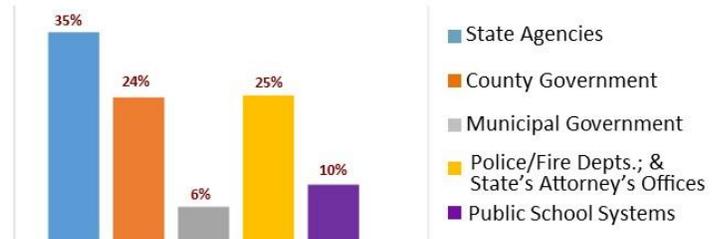
The Agencies

130 unique agencies participated in mediation matters with the PIA Ombudsman in 2019. Agency jurisdictions include state level, **15** different counties and Baltimore City, and **12** municipalities.

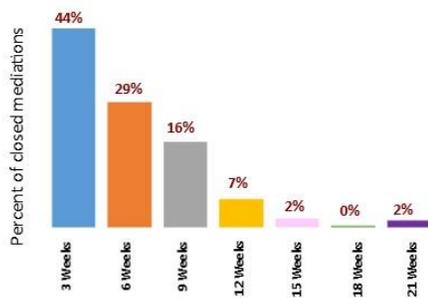
The Requestors



What Agencies are Participating in Mediation?

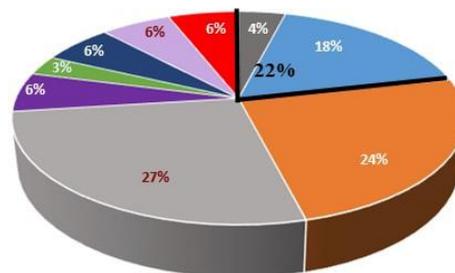


How Long does Mediation Take?



Range: 1 – 141 days.
44% of the cases are closed within 3 weeks and **73%** by 6 weeks.

What are the PIA disputes?



Disputes are presented as framed by the requestor. Characterizations are based on how the requestors describe the issues. These are not findings.

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@MPIA_Ombuds

Public Access Ombudsman *Annual Report 2019*

Legislation & Court Opinions

- **SB 5** (2019) requires notification to “person-in-interest” when certain 911 records requested.

Ombudsman’s Blog — *Open Matters*

- **Highlights From The PIA Compliance Board’s Opinions.** 8/14/19
- **Ombudsman and PIACB Seeking Comments on Research Project.** 8/1/19
- **Where Are My Records?** 7/12/19
- **Assessing Fees for PIA Requests.** 7/03/19
- **Public Access Ombudsman Adopts Regulations.** 6/18/19
- **Tips for Agency Transparency in the PIA Process.** 4/15/19
- **Proposed Regulations Noticed – Ombudsman Operations.** 3/29/19
- **Let the Sun Shine In: Maryland Public Access Ombudsman Program.** 3/15/19
- **Proactive Disclosure Saves Time and Money, and It’s the Law.** 1/28/19

Ombudsman’s Selected Tweets — 2019

- ♦ **Maryland public records board needs teeth.** Opinion The Baltimore Sun. 11/13/19.
- ♦ **Stewards of Maryland’s public records law seek greater authority to adjudicate disputes** The Baltimore Sun. 11/6/19.
- ♦ **Should charter schools be subject to open-record laws?** The Washington Post. 10/9/19.
- ♦ **Maryland agencies lack consistent policies, struggle to comply with public records requests, surveys show.** The Baltimore Sun. 10/8/19
- ♦ **Did you miss the PIACB Annual Meeting.** No worries. Here is a link to the audio. It’s like you were there. 08/29/19

Outreach 2019

Presentations, Workshops, Trainings, and Other Outreach

2019

- PIA Compliance Board, Discussion of PIA Research Report, December 17
- PIA Compliance Board, Discussion of Preliminary Findings for PIA Research Report, November 5
- Maryland Association of Counties, County Attorneys, November 13
- Maryland Association of Counties, Winter Conference, November 20
- Wicomico County Public Schools, October 17
- Maryland State Bar Association, October 25
- Local Government Insurance Trust, October 31
- Veterans of Jessup Correctional Institution, September 25
- Maryland Municipal Clerks Association, September 19
- Open Government Advocacy Network meeting hosted by the ACLU, September 19
- PIACB Annual Meeting Presentation on PIA Research Report, August 19
- Maryland Association of Counties, Summer Conference, August 14
- Veterans of Jessup Correctional Institution, July 10
- Bowie Police Department, June 11
- Harford Co. State’s Attorney’s Office, June 7
- MDDC Press Association, May 10
- Prince George’s County Law Office. April 25
- Wicomico County State’s Attorney’s Office, April 5
- Stakeholder Survey, Online and via Post, February –March 2019
- Town of Boonsboro. February 7

Select Publications

- **Final Report on the Public Information Act.** Submitted by the PIA Compliance Board and the Public Access Ombudsman and pursuant to Committee Narrative in the Report on the Fiscal 2020 State Operating Budget and the State Capital Budget. December 27, 2019
- **Report on the Public Information Act: Preliminary Findings and Recommendations.** Submitted by the PIA Compliance Board and the Public Access Ombudsman. November 6, 2019
- **Where Are My Records?** Office of the Public Defender, Post Conviction Newsletter, Summer 2019
- **Public Access Ombudsman’s Interpretive Regulations:** <https://tinyurl.com/y2cuqp55>, June 2019
- **Ombudsman comments, included as an Appendix to the 2019 Annual Report of the PIA Compliance Board.** September 2019
- **HB 1105 Report: Ombudsman’s Report Concerning the Howard County Public School System’s Handling of Requests Under the Public Information Act.** December 30, 2016

RESOURCES/LINKS

- ♦ **PIA Manual 14th Edition:** http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf. Including: List of Public Record Custodians: Appendix “J”; and Overview of the Public Information Act: Appendix “I”
- ♦ **MD State Archives:** <http://msa.maryland.gov> is a resource for custodians’ record management and retention practices.
- ♦ **Federal FOIA (Freedom of Information Act):** <https://www.foia.gov/>
- ♦ **PUBLIC ACCESS OMBUDSMAN**
* **Request for Mediation Form:** <https://news.maryland.gov/mpiaombuds/request-mediation>
* **Interpretive Regulations:** <https://tinyurl.com/y2cuqp55>



MARYLAND PUBLIC INFORMATION ACT (PIA)
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Mediation Metric Report of the Public Access Ombudsman

2020 - Semi-Annual Report
 January 1 to June 30, 2020



6 Month Report 2020

232 6 months of 2020

- 115 -Mediation requests
- 117 -Other/"help-desk" inquiries

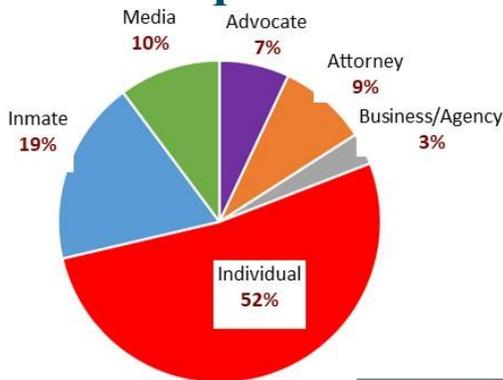
The Big Picture: Mediation Matters!
 Early resolution of disputes saves time and resources and increases public knowledge and awareness of the PIA process. Mediation is entirely voluntary, confidential, and in many cases doesn't require an attorney.

Total Mediation Cases, as of June 30, 2020	
Carry over from 2019	46
New/Incoming cases in 2020	116
Total Number of Mediation cases	161
Mediation cases currently open	50
Total Mediation cases Closed	112

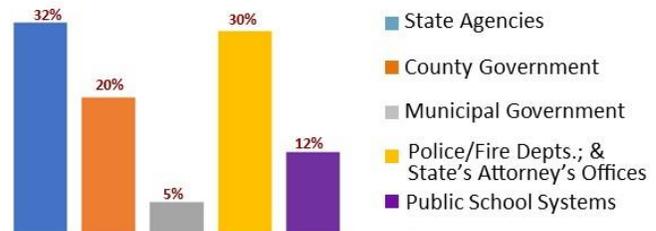
The Agencies

90 unique agencies participated in mediation matters with the PIA Ombudsman in the first six months of 2020. Agency jurisdictions include state level, **14** different counties and Baltimore City, and **10** municipalities.

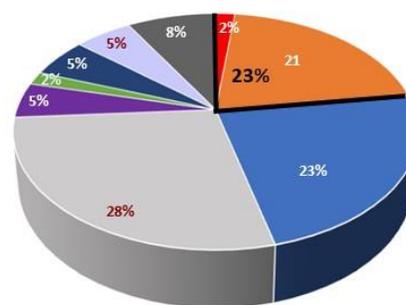
The Requestors



What Agencies are Participating in Mediation?

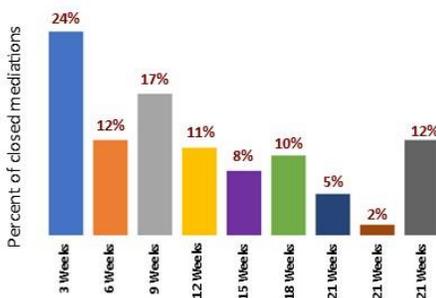


What are the PIA disputes?



Disputes are presented as framed by the requestor. Characterizations are based on how the requestors describe the issues. These are not findings.

How Long does Mediation Take?



Range: 1 – 324 days.
24% of the cases are closed within 3 weeks and **37%** by 6 weeks.

- Redaction inappropriate – 2%
- Entire record withheld – 21%
- MIA: No Response – 23%
- Partial, nonresponsive, or incomplete response – 28%
- Fees excessive - 5%
- Fee waiver request denied or ignored – 2%
- Does not believe response – 5%
- Asked for explanation of response – 5%
- Other - 8%

Lisa Kershner

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Ombudsman's Website:

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Public Access Ombudsman 2020, 2nd Quarter Report

**MPIA Ombudsman
on Twitter**
@MPIA_Ombuds

2020 Legislative Session

The only bill fully endorsed by the Public Access Ombudsman and PIA Compliance Board is HB 502/SB590. Legislative session was shortened due to COVID-19 State of Emergency and Pandemic. All bills were 'Adjourned Sine Die'.

- **HB 502/SB 590** Public Information Act - Revisions. Based on the Ombudsman's and PIA Compliance Board's report on the PIA published December 31, 2019.
- **HB 42/SB 67** Public Information Act - Applications for Inspection - Responses and Time Limits
- **HB 372** Public Information Act - Required Denials for Specific Information - Sociological Information
- **HB 380/SB 193** Public Information Act - Denial of Part of a Public Record - Investigations by Inspectors General
- **HB 401/SB 758** Public Information Act - Remote Access, Fee Complaints, Fee Waivers, and Inspection of Judicial Records (Open Government, Better Government Act)
- **HB717/SB 514** Public Information Act - Required Denials - Distribution Lists

Open Matters-Blog of the Public Access Ombudsman

- **New Court Rules Govern Access to Judicial Records.** 7/29/20
- **What Criminal Records Can I Get Under the PIA?** 07/09/20
- **Update on Agency PIA Practices during the Pandemic.** 5/28/20
- **Importance of Accurate PIA Custodian Contact Information.** 04/06/2020
- **Guidance to Governmental Custodians Regarding PIA Timelines during the COVID-19 Crisis.** 03/23/2020
- **Ombudsman and members of the PIA Compliance Board unanimously support HB 502 / SB 590.** 02/14/2020
- **Records Management and the Public Information Act.** 01/07/2020

Outreach 2020 & 2019 June – Dec.

Presentations, Workshops, Trainings, and Other Outreach 2020

Due to the COVID-19 State of Emergency the Public Access Ombudsman's Office canceled three scheduled in-person trainings in the first quarter of 2020. The Ombudsman's Office can provide virtual or online training upon request.

- PIACB Annual Meeting Presentation, July 29

2019: June - December

- PIA Compliance Board, Discussion of PIA Research Report, December 17
- PIA Compliance Board, Discussion of PIA Research Report. Preliminary Findings, Nov. 5
- Maryland Association of Counties, County Attorneys, November 13
- Maryland Association of Counties, Winter Conference, November 20
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- Harford Co. State's Attorney's Office, June 7

Select Publications

- **Final Report on the Public Information Act.** Submitted by the PIA Compliance Board and the Public Access Ombudsman and pursuant to Committee Narrative in the Report on the Fiscal 2020 State Operating Budget and the State Capital Budget. December 27, 2019
- **Report on the Public Information Act: Preliminary Findings and Recommendations.** Submitted by the PIA Compliance Board and the Public Access Ombudsman. November 6, 2019
- **Where Are My Records?** Office of the Public Defender, Post Conviction Newsletter, Summer 2019
- **Public Access Ombudsman's Interpretive Regulations:** <https://tinyurl.com/y2cuqp55>, June 2019
- **Ombudsman comments, included as an Appendix to the 2019 Annual Report of the PIA Compliance Board.** September 2019
- **HB 1105 Report: Ombudsman's Report Concerning the Howard County Public School System's Handling of Requests Under the Public Information Act.** December 30, 2016

RESOURCES/LINKS

- ♦ **MD Office of the Attorney General—PIA Manual 14th Edition:** http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf
The PIA Manual includes Appendix J a List of Public Record Custodians.
- ♦ **MD State Archives:** <http://msa.maryland.gov> is a resource for custodians' record management and retention practices.
- ♦ **Office of Government Information Services (OGIS – FOIA)** <https://www.archives.gov/ogis>
- ♦ **Federal FOIA (Freedom of Information Act) :** <https://www.foia.gov/>
- ♦ **PUBLIC ACCESS OMBUDSMAN**
* **Request for Mediation Form:** <https://news.maryland.gov/mpiaombuds/request-mediation>
* **Interpretive Regulations:** <https://tinyurl.com/y2cuqp55>
- ♦ **DC Office of Open Government:** <https://www.open-dc.gov/office-open-government>



LAWRENCE J. HOGAN, JR.
Governor

BOYD K. RUTHERFORD
Lt. Governor



**STATE OF MARYLAND
OFFICE OF THE
PUBLIC ACCESS OMBUDSMAN**



LISA A. KERSHNER
Public Access Ombudsman

TESTIMONY IN SUPPORT OF HB 502

February 11, 2020

Health and Government Operations Committee

Dear Chair Pendergrass, Vice Chair Pena-Melnyk, and Members of the Committee:

I am Maryland's first Public Access Ombudsman ("Ombudsman"), a position I have held since March 2016.² In this position, I have witnessed the importance of State and local government agencies in the lives of citizens, and the importance of compliance with the Public Information Act ("PIA") for building trust and confidence in those agencies. I also regularly see the destructive effects of protracted or unresolved PIA disputes on both requestors and agency personnel—effects that erode public trust in governmental transparency, and sap agency morale and productivity.

House Bill 502, which tracks the recommendations made jointly by my Office and the PIA Compliance Board ("Board") in our *Final Report on the PIA*, published in December 2019, addresses these problems by providing for expanded Board authority to review and decide PIA disputes that cannot be resolved through voluntary mediation with the Ombudsman. The Bill also requires agencies to track and self-report basic information about their PIA caseload, and to develop realistic policies for proactive records disclosure.

These measures will strengthen the PIA overall, promote increased agency efficiency and transparency, enable the Ombudsman and Board to operate in an effective and complimentary fashion, and provide a much needed and cost-effective administrative review and decisional remedy for disputes and issues that cannot be resolved by Ombudsman mediation alone.

As further background, the Legislature in 2015 created the current Board and Ombudsman programs, authorizing the Board, on the one hand, to review and decide only those complaints about the reasonableness of PIA fees that exceed \$350, and on the other, directing the Ombudsman to make "reasonable attempts" to resolve a broad range of PIA disputes, but only on a voluntary and non-binding basis.

Now, after nearly four years of operation, several deficiencies in the current system are clear:

1. A significant and consistent number of PIA disputes across State and local agencies cannot be resolved by the Ombudsman's efforts alone; as reflected in the *Final Report*, roughly a

² For the Committee's information, I attach a statistical summary of the Ombudsman program since inception.

Public Access Ombudsman, Lisa Kershner

TESTIMONY IN SUPPORT OF HB 502

Page 2 of 2

quarter of my caseload—or about 60 matters per year—are likely in need of the proposed Board remedy;

2. The current Board and its staff are underutilized due to the Board's extremely limited jurisdiction; while the Ombudsman program has handled some 903 mediation requests through December 31, 2019, the Board has received only 31 complaints within its narrow jurisdiction;
3. The natural synergy that should exist between the Ombudsman and Board due to their complimentary processes and aims is almost completely lacking; the Board lacks jurisdiction to review and decide the vast majority of PIA disputes, and thus does not provide an incentive for parties to engage meaningfully with the Ombudsman or prioritize PIA compliance; and
4. The Ombudsman program and Board, as currently configured, are falling far short of their real potential to provide meaningful and accessible remedies for PIA disputes in a cost-effective manner.

In contrast, HB 502, if enacted, will benefit all PIA stakeholders by:

- 1) Preserving and enhancing the benefits of the current Ombudsman program without altering its character as a purely voluntary, informal, confidential, and non-binding process of facilitated dispute resolution;
- 2) Providing a comprehensive and accessible dispute resolution remedy for both requestors and agencies where none presently exists, without altering existing judicial remedies;
- 3) Facilitating the further development and articulation of the PIA through written Board decisions; and
- 4) Maximizing public resources by enabling the Board and Ombudsman to interact in a fully complimentary and synergistic fashion, while at the same time utilizing both programs and staff to their fullest potential.

For all of these reasons, I urge the Committee to issue a favorable report on HB 502.

Respectfully submitted,



Lisa Kershner
Public Access Ombudsman