

## **APPENDIX**

### **REPORT OF THE PUBLIC ACCESS OMBUDSMAN**

The General Assembly created the Office of the Public Access Ombudsman through the same statute that created the Public Information Act Compliance Board (“Board”). The Ombudsman’s duties involve making reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records under the PIA, including issues involving exemptions, redactions, failure to respond timely, overly broad requests, fee waivers, and repetitive or redundant requests. *See* § 4-1B-04 of the General Provisions Article of the Maryland Code.

This report describes the Ombudsman’s principal activities during the first 8 months of 2019, and includes a summary statistical overview and description of PIA mediations, trainings, and outreach by the Ombudsman’s Office during this period.

#### **ACTIVITIES OF THE OMBUDSMAN**

The Attorney General appointed Lisa Kershner as the first Public Access Ombudsman on March 3, 2016, and the Ombudsman’s Office began operations on March 30, 2016. During 2016 and 2017, the Office was largely occupied with start-up tasks necessary to establish the program, completion of the H.B. 1105 investigation of the Howard County Public School System’s compliance with the PIA (completed in December 2016), handling a significant backlog of mediation matters, and responding to requests for PIA training and assistance.

During 2018 and 2019, the Ombudsman’s Office continued to develop and improve program mediation and training services as well as PIA resources available to requestors and agencies. Some projects the Office has undertaken and/or concluded so far in 2019 include the following:

- **Adoption of Interpretive Regulations:** In 2019, the Office of the Ombudsman adopted interpretive regulations that describe the practices, policies, and tools used by the Ombudsman to fulfill her statutory mandate to make “reasonable efforts” to resolve PIA disputes between agencies and requestors. The regulations, which can be found at <https://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2019/06/Regs061719.pdf>, make the Ombudsman’s process more transparent to users, and have enabled the program to operate more efficiently.
- **Stakeholder Survey:** From January through March, 2019, the Ombudsman conducted a survey of all stakeholders with whom the Office has worked since

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inception in order to obtain feedback concerning the program’s performance and suggestions for improvement. The Office received 189 responses, including 113 from individual and organizational requestors, and 76 from state and local agencies. Takeaways from the survey were published in the Ombudsman’s Blog, “Open Matters”, available at <https://news.maryland.gov/mpiaombuds/2019/03/15/sunshine/>. Survey results will be further discussed in the Board and Ombudsman’s forthcoming Joint Report to be issued by December 31, 2019.<sup>1</sup>

- **New Mediation Database:** In 2019, the Ombudsman’s Office developed and began using a relational database to more efficiently track mediation matters, including issues presented, the length of time matters remain open, and outcomes. The database not only enhances the Office’s ability to issue regular statistical reports about program activities, such as the statistical report found at the conclusion of this Appendix, but also will prove invaluable in extracting data pertinent to the Joint Report and recommendations to be issued by the Board and Ombudsman by the end of the year.

**PROGRAM EVALUATION**

The Ombudsman receives requests for assistance from a wide variety of requestors and, with increasing frequency, from agencies. The program is informal and voluntary, involves diverse participants, and covers a wide range of issues. The information needs, motivation, capacities, and resources of the requestors and agencies affect the mediation process and outcomes. Consequently, since inception, the Office has worked to strengthen and enhance the factors that increase timely and effective communication between all parties, and to respond to new issues and matters as they arise.

**Trends Observed in Mediation Metrics**

The bullets below highlight trends extracted from the Ombudsman’s caseload, comprised of PIA mediation and “help desk” matters, *i.e.*, general PIA-related inquiries. Additional information about the Ombudsman’s caseload can be found in the statistical report at the end of this Appendix.

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<sup>1</sup> The Joint Report to be issued by the Board and Office of the Public Access Ombudsman by December 31, 2019, was requested by the Chairmen of the Senate Budget and Taxation Committee and House Appropriations Committee in their Joint Report on the Capital Budget for Fiscal Year 2020. This joint project of the Board and Ombudsman is more fully described in the Board’s Fourth Annual Report at pages 8-9.

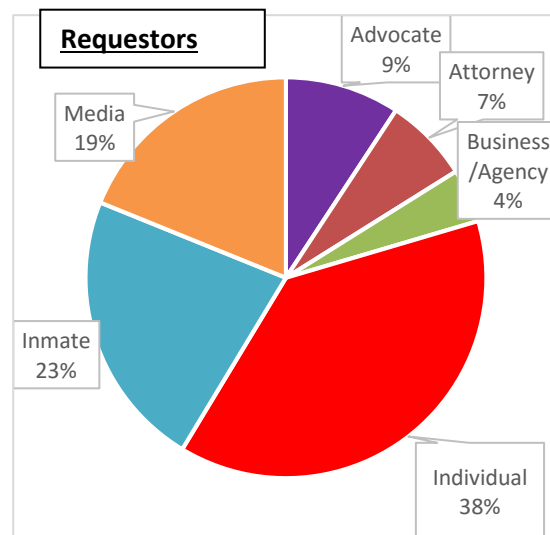
Appendix

- **Total mediation and “help desk” matters.** Since inception, the Office has received more than 1,250 PIA mediation and “help desk” requests—an average of almost 31 requests for assistance per month. The total number of matters per year has been steadily increasing, with a large jump in 2019. During the first 8 months of 2019, the Office has received 381 help desk and/or mediation requests—an average of 48 per month. See the table below.

Requests for Assistance	2016 <i>(9 months)</i>	2017	2018	2019 <i>(8 Months)</i>	Total
Mediation	178	242	235	200	825
“Help Desk”	32	68	171	181	429
Total	210	310	406	381	1254
Average Per Month	23	26	34	48	31 (avg.)

- **Length of time to respond.** Since the inception of the program, the Ombudsman generally has resolved about 60% of all matters within 6 weeks or less. In 2019 to date, that percent is even higher: about 78% of all mediations were resolved within 6 weeks, and nearly 50% were resolved within three weeks, notwithstanding an increased caseload. The Office attributes this increased efficiency to the implementation of programmatic processes as described above, as well as consistent effort and attention given to training and outreach.
- **Types of Disputes** (*as reported by requestor*). Since inception, about 63% of the Ombudsman’s caseload has involved either exemption issues; partial, incomplete, or nonresponsive responses by agencies (PIN); or no response by agencies (MIA). The trend in 2019 is similar, with about 65% of the caseload involving one of those issues. The detailed breakdown is presented in the report at the end of this Appendix.

- **Type of requestors.** A majority of the requests for Ombudsman assistance and mediation come from requestors, that is, those who make requests under the PIA, as opposed to agency custodians. Consistently since inception, non-incarcerated individuals have made up about 38% of requestors, incarcerated individuals comprise about 23%, and almost 39% are “occupational requestors”, a category that includes media, attorneys, businesses, and advocates.



**Appendix**

- **Outreach and Training.** The Ombudsman has seen a steady increase in requests for PIA mediation and “help-desk” assistance since the Office’s inception in 2016. The Office attributes this increase in large part to the Ombudsman’s outreach and training initiatives. On average, the Office conducts 1-2 PIA trainings per month around the State. Some of the highlights of these activities are included in the statistical reports at the end of this Appendix (“Outreach 2019 &2018”)

**LEGISLATIVE RECOMMENDATIONS**

Recommendations for improvements to PIA performance and compliance will be discussed in the forthcoming Joint Report of the Board and Ombudsman to be issued by December 31, 2019. See discussion in the Board’s Fourth Annual report at pages 8-9.

**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 Office.

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 ([piaombuds.maryland.gov](http://piaombuds.maryland.gov)) and on Twitter (@MPIA\_Ombuds).

Respectfully submitted,  
*Lisa A. Kershner*  
Public Access Ombudsman  
September 2019

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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—First 8 Months  
January to August 31, 2019



**2019**  
1<sup>st</sup> 8 Months Report

**381** in first 8 mo. of 2019  
+ 200 -Mediation requests  
+ 181+ -Other/"help-desk" inquiries

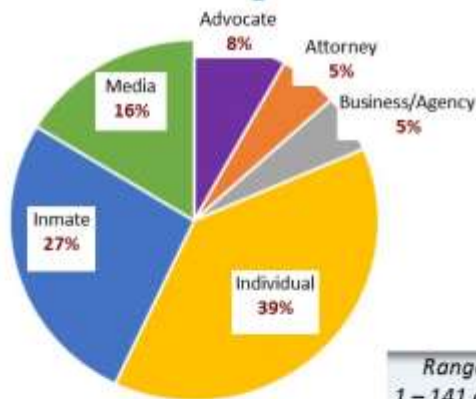
**The Big Picture: Mediation saves money**  
Early resolution of disputes saves time and resources and increases public knowledge and awareness of the PIA process. For example, mediation is entirely voluntary, confidential, and in many cases doesn't require an attorney.

Total Mediation Cases 2019	
Carry over from prior years	20
New/Incoming cases in 2019	200
<b>Total Number of Mediation cases</b>	<b>220</b>
Mediation cases currently open	39
Total Mediation cases Closed	181

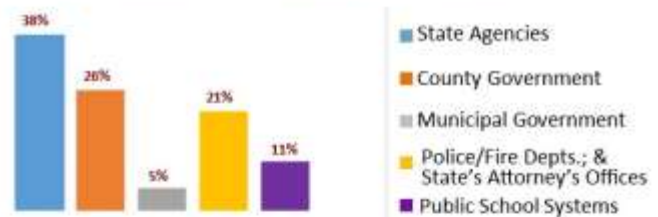
## The Agencies

101 unique agencies participated in mediation matters with the PIA Ombudsman in the first eight months of 2019. Agency jurisdictions include state level, 15 different counties and Baltimore City, and 7 municipalities.

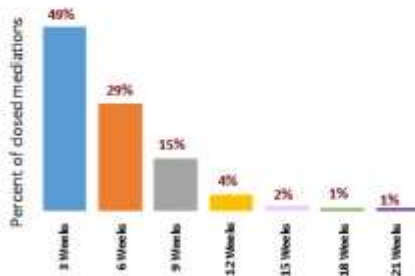
## The Requestors



## What Agencies are Participating in Mediation?

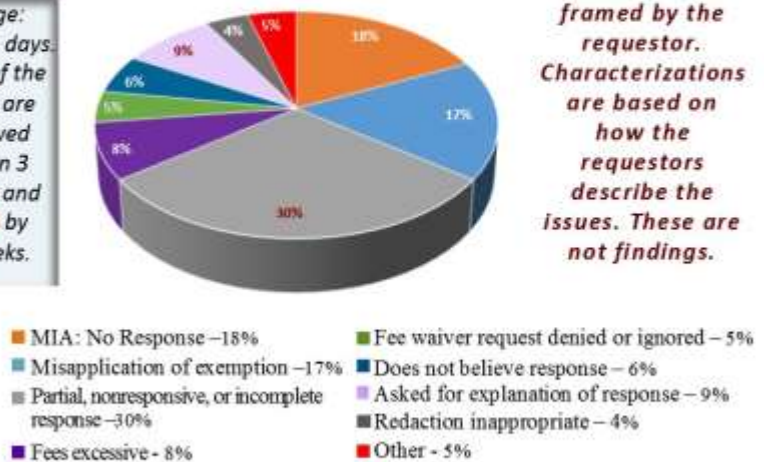


## How Long does Mediation Take?



Range: 1 – 141 days  
49% of the cases are resolved within 3 weeks and 78% 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.

MPIA Ombudsman  
on Twitter  
@MPIA\_Ombuds

## Public Access Ombudsman Annual Report 2019 - 1<sup>st</sup> 8 Months

### 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 PLACB 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

- **Check out the Agenda For Rules Committee Meeting on Sept. 5th** –Item 5 on agenda is consideration of proposed changes to rules governing access to Judicial Records. 08/30/19
- 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
- Also a link to the Open Meetings Compliance Board Annual Meeting. Just in case you are interested. 08/29/19
- **Transparency In the News.** Maryland judges aren't always named in court records, Baltimoresun.com. 8/21/19

## Outreach 2019 & 18

### Presentations, Workshops, Trainings, and Other Outreach

2019 (January 1, to August 31, 2019)

- PIACB Annual Meeting Presentation on PIA Research Report, August 19
- Maryland Association of Counties, 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
- Conducted Stakeholder Survey Online and via Post, February –March 2019
- Town of Boonsboro, February 7

2018—4<sup>th</sup> Quarter

- Maryland Association of Counties, November 14
- Office Of the Public Defender, Nov. 8
- Goucher College, October 23
- MDDC Press Assoc., *Public records requests in the current political climate*, October 23, hosted by Morgan State University, Global School of Journalism
- Maryland General Assembly, Joint Committee on Legislation, Information Technology & Open Government, October 3

### Publications

- *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 Program - Summary Report, Program Operations** Since Inception, March 30, 2016 - March 31, 2019
- *Fee Estimates, Flat Fees and Waiver of Fees.* Office of the Public Defender, Post Conviction Newsletter, Spring 2018
- **Ombudsman comments to the Office of the Attorney General for its Report of the Office of the Attorney General on the Implementation of the Public Information Act.** September 22, 2017
- **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

### PIA "Help Desk"

- The office of the Ombudsman receives daily requests regarding a number of PIA matters.

## RESOURCES/LINKS

- **PIA Manual 14<sup>th</sup> Edition:** [http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA\\_manual\\_printable.pdf](http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf). Including: List of Public Record Custodians: Appendix "I"; 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.
- **Records Management Guide:** [http://msa.maryland.gov/msa/intromsa/html/record\\_mgmt/pdf/nagara/making\\_mgmtsuccess.pdf](http://msa.maryland.gov/msa/intromsa/html/record_mgmt/pdf/nagara/making_mgmtsuccess.pdf)
- **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>

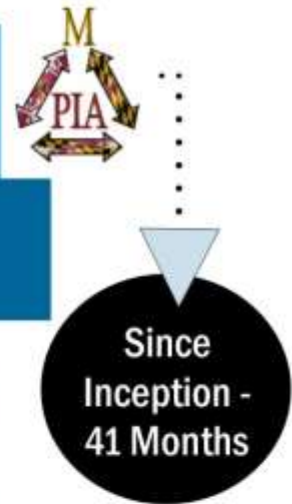


Appendix

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

# Public Access Ombudsman

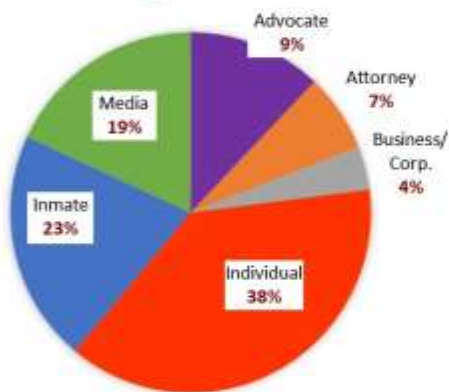
Since Inception (34 mo.)  
 March 30, 2016 — August 31, 2019



**1254** since March 30, 2016  
 • 825 - Mediation requests  
 • 429+ - 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.

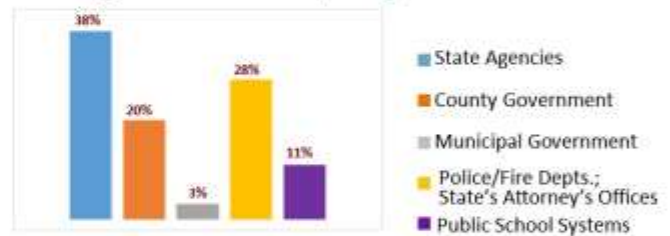
## The Requestors



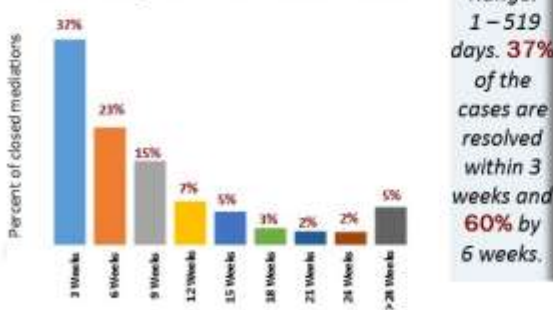
## The Agencies

233 unique agencies participated in mediation matters with the PIA Ombudsman since the beginning of the program. Agency jurisdictions are state level, 20 different counties, 21 municipalities, and Baltimore City.

### What Agencies are Participating in Mediation?

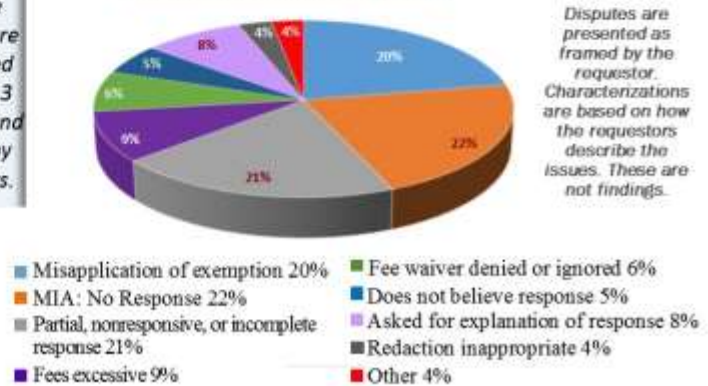


### How Long does Mediation Take?



Range: 1 – 519 days. 37% of the cases are resolved within 3 weeks and 60% 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.

Mediation March '16 – August 2019	
New/Incoming cases between 3/31/16 – 8/31/19	825
Closed as of 8/31/19	795

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



## Public Access Ombudsman *Since Inception, March 30, 2016—August 31, 2019*

MPIA Ombudsman  
on Twitter  
@MPIA\_Ombuds

### 2019 Legislation & Court Opinions

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

### 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*
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- *Proactive Disclosure Saves Time and Money, and It's the Law, 1/28/19*
- *PIA TECHNOLOGY SOLUTIONS: Maryland Insurance Administration's PIA Web-Portal, 11/20/18*

### RESOURCES/LINKS

- ♦ **MD Office of the Attorney General—PIA Manual 14<sup>th</sup> Edition:** [http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA\\_manual\\_printable.pdf](http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf)  
*All of the resources below can be found in the PIA Manual.*
  - List of Public Record Custodians: Appendix "J"
  - Overview of the Public Information Act: Appendix "I"
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- ♦ **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:** <http://news.maryland.gov/mpiaombuds/request-mediation/>
- ♦ **DC Office of Open Government:** <https://www.open-dc.gov/office-open-government>

### Outreach 2019 & 2018

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#### 2018—4<sup>th</sup> Quarter

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- Oregon Public Records Advocate, October 22
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- **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

#### PIA "Help Desk"

The office of the Ombudsman receives daily requests regarding a number of PIA matters, including:

- Questions about PIA process;
- Misdirected requests to Ombudsman are referred to the correct custodian; and
- Referrals to other resources, e.g., PIA Compliance Board Fee Issues.



Ombudsman