

Appendix A.
REPORT FROM THE
PUBLIC ACCESS
OMBUDSMAN

APPENDIX A REPORT OF THE PUBLIC ACCESS OMBUDSMAN FY 2022

The General Assembly created the Office of the Public Access Ombudsman (“Office” or “Ombudsman”) in 2015 in the same law that created the Public Information Act Compliance Board (“Board” or “PIACB”). *See* 2015 Md. Laws, ch. 135.

The Ombudsman’s primary duty is to make reasonable attempts to resolve disputes between records custodians and applicants seeking public records under the Maryland Public Information Act (“PIA” or “Act”). Typically, the Ombudsman accomplishes this through voluntary, non-binding and confidential mediation. The Ombudsman has broad authority to try to resolve a wide variety of disputes that arise under the PIA, including: disputes involving exemptions; the failure of a custodian to respond in a timely way; fee waivers; and repetitive, overly broad, and alleged vexatious requests. *See* Md. Code Ann., Gen. Prov. (“GP”) § 4-1B-04; COMAR 14.37.02.

In addition to mediating PIA disputes, the Ombudsman also regularly provides informal assistance, resource material, and PIA trainings on request. These and other activities are published in summary reports that are periodically posted to the Ombudsman’s website, <https://piaombuds.maryland.gov>.

This report describes the Ombudsman’s activities from July 1, 2021, through June 30, 2022 (“FY 2022”). For context, comparative data concerning prior periods is provided in the tables below. Additional information about Ombudsman program activities during FY 2022 and since inception is included at the end of this report.

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 Ombudsman is housed within the Office of the Attorney General (“OAG”) and is supported by the same staff that support the PIACB. The program’s first Administrative Officer, Janice Clark, left the program in October 2021. The Ombudsman thanks Ms. Clark for her invaluable service, and is pleased to welcome Spencer Dove, who joined the program in this role starting in late December 2021. Assistant Attorney General Sara Klemm continues to serve as program counsel. The Ombudsman thanks the OAG and staff for their exceptional support, skill, and professionalism throughout the year. The Ombudsman could not operate effectively without their support.

Program Operations & Mediation Metrics: During FY 2022, the Ombudsman program continued to operate largely remotely, as have many of the State and local agencies with which the Ombudsman works. However, the Ombudsman’s current caseload data, discussed below, suggests that certain impacts of the COVID-19 pandemic began to abate during FY 2022.

Figure 1 below shows the overall volume of the Ombudsman’s caseload, consisting of requests for mediation and informal requests for assistance (referred to as “help-desk” or “HD” matters).

Time Period	Carry-Over from Prior Year	New Mediation Matters	New HD Matters	Total New Matters	Mediations Closed ¹
FY 2022	52	215	168	383	239 or 90%
FY 2021	49	235	212	447	232 or 82%
FY 2020	19	262	235	497	232 or 83%
Since Inception	N/A	1481	1004	2485	1453 or 98%

The substantial increase in carry-over matters at the start of FY 2021 and FY 2022 is one of the impacts resulting from the COVID-19 pandemic and accompanying State of Emergency that was in effect throughout Maryland from March 2020 until August 15, 2021. The number of carry-over matters, both month-to-month and year-to-year, is closely tracked because it impacts the length of the queue for the Ombudsman’s services and, thus, the length of time required to bring a request for dispute resolution to closure. These factors, in turn, impact the efficiency with which mediations can proceed as well as the likelihood of successful outcomes. Thus, during FY 2022, the Ombudsman prioritized closing those matters that had been pending for a protracted period alongside new matters in an effort to reduce the queue and overall length of time needed to bring mediations to closure. This effort reduced the number of carry-over mediations entering FY 2023 to 28, a number which is much closer to pre-pandemic levels.

Figure 2 below broadly reflects the types of requesters using the Ombudsman program. The substantial majority this year, as in all previous years except for FY 2021, encompassed individual requesters seeking assistance for purposes unrelated to their business or occupation. At the same time, the Ombudsman continued to work with a diverse, albeit smaller, group of professional and occupational users, including press and media outlets, non-profit organizations, private attorneys, businesses, and others. As shown below, while occupational program users comprised the majority (51%) of all incoming requests for PIA mediation during FY 2021, that proportion dropped to 19% in FY 2022, a figure that, while still lower than FY 2020, is more in-line with previous years of reported data.

Time Period	Individual	Professional Occupational User
FY 2022	81%	19%
FY 2021	49%	51%
FY 2020	72%	28%
Since Inception	62%	38%

Figure 3 reflects the type of agencies participating in mediation during FY 2022. In previous years, both State and local agencies have tended to be more-or-less equally represented in the Ombudsman’s caseload. In FY 2021, however, there was a greater percentage of mediation requests involving State agencies (45%), and a corresponding reduction in matters involving local government (17%). As we reported last year, this shift may have reflected a greater interest in and

¹ Closure rate reflected in the “Mediations Closed” column is obtained by dividing the number of mediation matters closed by the total number of open mediations during the period, which includes both “New Mediations” and those carried over from the prior year. “Help-desk” matters are not reflected in this statistic because they are generally closed quickly, usually within 24 to 48 hours.

need for records from those State agencies leading Maryland’s response to the pandemic. FY 2022 saw movement toward a relatively equal level of participation by state and local agencies. That said, requests made to public school districts and law enforcement agencies – which are captured in the category “Other” – comprised a substantial and somewhat increased portion of the Ombudsman’s caseload, reflecting continued strong public interest in K-12 public schools and the activities of law enforcement agencies.

Figure 3: Program Use – Agency Make-Up

Time Period	State	Local	Other*
FY 2022	30%	24%	46%
FY 2021	45%	17%	37%
FY 2020	32%	31%	37%
Since Inception	37%	24%	39%

**Other = public school districts & law enforcement agencies*

Figures 4 and 5 below document the types of issues submitted to the Ombudsman during FY 2022 as well as the length of time required to conclude mediations.

Figure 4: Issues Presented for Mediation

Time Period	No/ Incomplete Response	Other
FY 2022	52%	48%
FY 2021	65%	35%
FY 2020	54%	46%
Since Inception	47%	53%

Figure 5: Length of Time to Conclude Mediations

Time Period	3 Weeks	6 Weeks	9 Weeks	12 Weeks	12+ Weeks
FY 2022	18%	16%	17%	11%	38%
FY 2021	19%	13%	11%	9%	48%
FY 2020	29%	22%	18%	11%	20%
Since Inception	30%	18%	15%	9%	28%

The data is consistent with the Ombudsman’s sense that the prevalence of problems, such as missing, long delayed or incomplete PIA responses, which were observed during the State of Emergency are beginning to abate. Figure 4 shows that in FY 2022 there was a reduction in the proportion of mediations involving a missing or incomplete PIA response as compared to FY 2021. Consistent with this trend, Figure 5 illustrates that during FY 2022, a greater percentage of PIA mediations were concluded in 9 weeks or less, while the need for more than 12 weeks to resolve a PIA dispute through mediation declined.

As we reported last year, during FY 2021 the problem of a missing or incomplete PIA response was the presenting issue in a substantial majority – nearly two thirds – of all matters submitted to the Ombudsman for mediation. While these types of problems tended to be readily resolved once brought to the attention of the custodian prior to FY 2021, this often was not the case in FY 2021. Rather, these types of presenting problems tended to drag on, sometimes over very protracted periods, thereby contributing to an even greater backlog for both responding agencies and for the Ombudsman. Taken together, Figures 4 and 5 show that these issues which predominated FY 2021 are slowly abating in FY 2022. Greater detail for these two charts can be found in the Ombudsman’s statistical reports which are included at the end of this report.

Outreach & Training: The Ombudsman regularly receives requests for trainings and other assistance (“help-desk” matters) from both requesters and custodial agencies. The volume of these matters is reflected in the attached statistical reports included at the end of this report. Prior

to the COVID-19 pandemic, the Ombudsman regularly conducted in-person trainings on request. Since March 2020, however, the Ombudsman has conducted group trainings and presentations entirely remotely, a trend the Ombudsman expects to continue so long as the COVID-19 community transmission rate in Maryland remains high. In the meantime, the Office is reviewing strategies to expand the Ombudsman's footprint around the State while building awareness of the Office by harnessing social media and other internet-based tools.

Implementation of H.B. 183: The most exciting changes coming to the Office of the Public Access Ombudsman arise from H.B. 183 going into effect on July 1, 2022. For background, H.B. 183 expanded the jurisdiction of the PIACB while instituting an integrated PIA complaint dispute resolution process that includes the Ombudsman. Before a dispute may be filed as a complaint with the Board (assuming the Board has jurisdiction), a requester or custodian must attempt to first resolve the PIA dispute through the Ombudsman.² The Ombudsman must now bring disputes submitted for resolution to conclusion within 90 days unless the parties mutually agree in writing to an extension. At the conclusion of the process, the Ombudsman is also now required to issue a final determination that identifies the issues presented, and states whether the dispute was resolved, unresolved, or partially resolved.

During FY 2022, the Office made substantial efforts to ensure the smooth and seamless implementation of these changes. These efforts, undertaken by the Ombudsman and staff, include the following:

- Enhancing current case management systems for the Ombudsman to ensure proper tracking and reporting.
- Updating the Ombudsman's records retention schedules to include additional records that H.B. 183 now requires (e.g., final determinations).
- Developing and/or updating communications and publications related to the mediation process.
- Overhauling the Ombudsman's website and publishing the Ombudsman's Policy of Proactive Disclosure.
- Updating office protocols needed to implement H.B. 183.
- Disseminating educational materials and informational one-pagers to stakeholders and program users so that they were prepared for the law to take effect on July 1, 2022. Examples (Mediation Process One-Pager and "What's Changed?" One-Pager) are included at the end of this report.

While the impact of H.B. 183 is only just beginning to be realized in these first few months of FY 2023, the new requirements, including the 90-day timeframe for completing mediations, are expected to make the Ombudsman program more efficient and effective.

Looking Forward to FY 2023, the Ombudsman will continue to engage with stakeholders in order to identify opportunities for growth and improvement, as well as to better carry out the new law. Such engagement includes tracking and evaluating the new law's impact on the Ombudsman program with respect to caseload volumes, the length of time required to bring matters to conclusion, the actual outcomes or dispositions of mediations, and the experience of

² Despite the Board's expanded jurisdiction, the Ombudsman continues to have authority to address a wider variety of PIA-related disputes than the Board.

program users with the process as a whole. The Ombudsman also anticipates revising and adding to the Office's interpretive regulations to reflect changes in protocols needed to implement H.B. 183.

CONCLUSION

The Ombudsman wishes to thank the Attorney General for appointing her to this important position. In addition, the Ombudsman extends her thanks to the Board for providing this forum for sharing information about the Ombudsman program. Finally, the Ombudsman wishes to again thank the dedicated staff of the Office of the Attorney General – Spencer Dove and Sara Klemm – who tirelessly support the Office of the Public Access Ombudsman, as well as OAG law clerk, Andre Beasley, who provided valuable assistance to the Ombudsman during the Summer 2022 term regarding the handling of multiple mediation matters.

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 Kershner
Public Access Ombudsman
September 2022

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

Mediation Metric Report of the Public Access Ombudsman

FY 2022 - Annual Report
 July 1, 2021 to June 30, 2022



**Annual Report
 FY 2022**

383 FY 2022

- ◆ 215 -Mediation requests
- ◆ 168 -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.

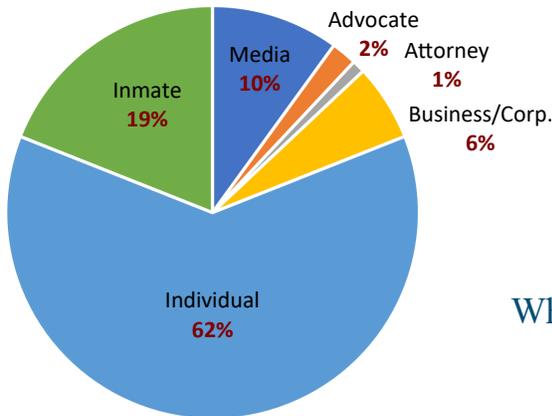
Total Mediation Cases, as of June 30, 2022	
Carry over from FY 2021	52
New/Incoming cases in FY2022	215
Total Number of Mediation cases	267
Total Mediation cases Closed FY 2022	239
Mediation cases carried over to FY 2023	28

The Agencies

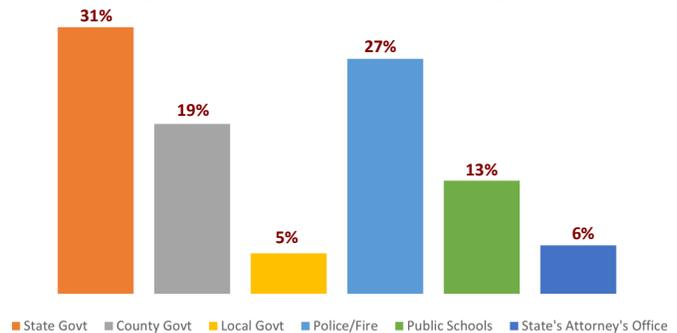
48 unique agencies participated in mediation matters with the PIA Ombudsman in Fiscal Year 2022, including agencies at the state, county, and municipal levels.

The Requesters

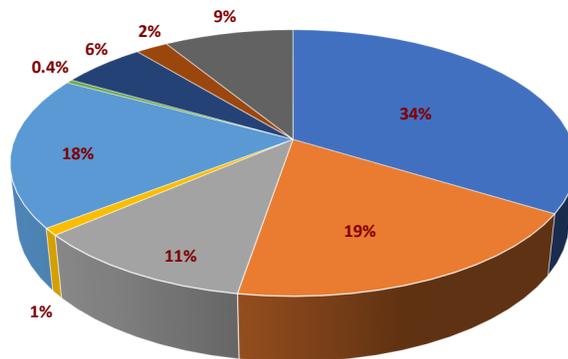
Requesters:
 Professional/Occupational requesters make up **19%** of requests for assistance, and all individuals make up **81%**.



What Agencies are Participating in Mediation?

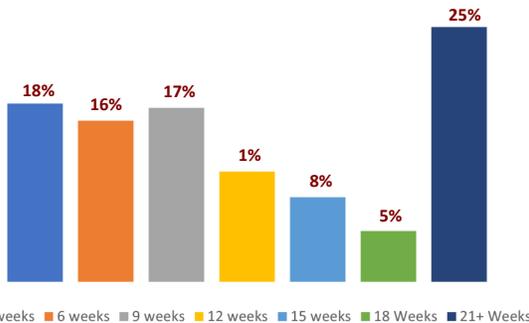


What are the PIA disputes?



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

How Long Does Mediation Take?



Range:
 1 – 455 days.
18% of the cases are closed within 3 weeks and **64%** by 90 days.

- Misapplication of exemption - 29%
- Redaction inappropriate - 18%
- Entire record withheld - 11%
- MIA: No Response - 34%
- Partial, nonresponsive, or incomplete response - 19%

- Fees excessive - 6%
- Fee waiver request denied or ignored - 2%
- Does not believe response - 1%
- Asked for explanation of response - 0.4%
- Other - 9%

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Ombudsman's Website:

<http://piaombuds.maryland.gov>

**MPIA Ombudsman
on Twitter
@MPIA_Ombuds**

2022 Legislative Session

During the 2022 Legislative Session, six bills were introduced that impacted the PIA. Of these six, two bills were of great interest to the Office of the Public Access Ombudsman. The first, **Senate Bill 31**, set forth the circumstances under which a custodian of records, in accordance with the PIA, must deny or allow inspection of recordings from a body-worn camera worn by a law enforcement officer. This bill had been previously introduced. After passing the Senate, the House of Delegates did not take any further action on this bill. The second, **Senate Bill 777**, established the Task Force to Study Public Information Act Requests Made to Law Enforcement. The task force is charged with reviewing and studying (1) the costs charged by law enforcement agencies in relation to the disclosure of records under the PIA; (2) procedures applied by law enforcement agencies in the disclosure of records requested under the PIA, and (3) the status and operation of the PIA Compliance Board. The Office of the Attorney General was tasked with providing staff to the task force. This bill took effect on June 1, 2022. Both of these bills reflect the growing public attention in activities of law enforcement officers and agencies in recent years.

Additional analysis of 2022 Legislative Changes to the PIA can be found on the Ombudsman's Blog, *Open Matters* at news.maryland.gov/mpiaombuds/blog.

FY 2022 Open Matters: Blog of the Public Access Ombudsman

- **PIA Ombudsman program—Impact of Covid-19 and Mediation Metrics. Part 2**. Open Matters Blog, posted October 12, 2021.
- **PIA Ombudsman Program - Impact of Covid-19 and Mediation Metrics. Part 1**. Open Matters Blog, posted September 27, 2021.

RESOURCES/LINKS

- ◆ **MD Office of the Attorney General—PIA Manual 17th Edition:** http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf. The PIA Manual includes Appendix J a List of Public Record Custodians.
- ◆ **Maryland 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>
- ◆ **Virginia Freedom of Information Advisory Council:** <http://foiacouncil.dls.virginia.gov/foiacouncil.htm>

Outreach FY 2022

July 1, 2021 – June 30, 2022

Presentations, Workshops, Trainings, and Other Outreach

Due to the COVID-19 pandemic, the Public Access Ombudsman's Office conducted all trainings and presentations by remote means.

- Maryland Municipal League 2021 Virtual Summer Conference, *MPIA Overview*, virtual briefing in partnership with Judge David Carey. July 19, 2021.
- PIA Compliance Board, Ombudsman program update/summary. August 26, 2021.
- Carroll County State's Attorney's Office, *MPIA: A Comprehensive Overview*, October 28, 2021.
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Select Publications

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- **What's New? A comparison of the process for PIA dispute resolution before and after July 1, 2022.**
- **Mediation Process Flow-Chart**



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, 2022



75 Months
Since
Inception

2485 March 30, 2016

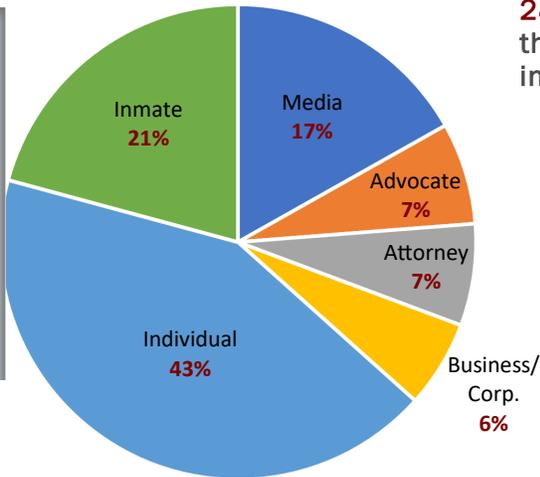
- ◆ 1481 - Mediation requests
- ◆ 1004 - Other / "help-desk" inquiries

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 Requesters

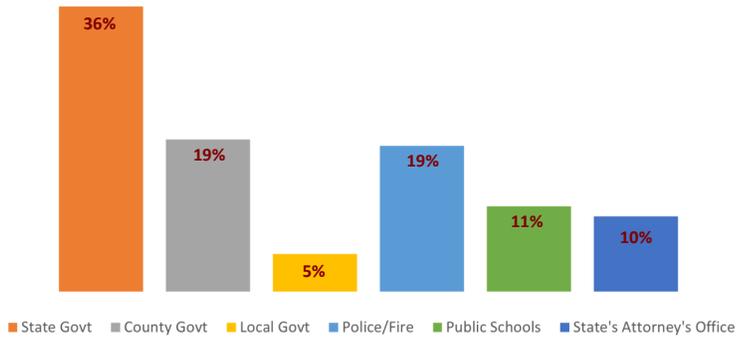
Aggregated Requesters: Professional/Occupational categories make up 36% of requests for assistance and all individuals make up 64%.



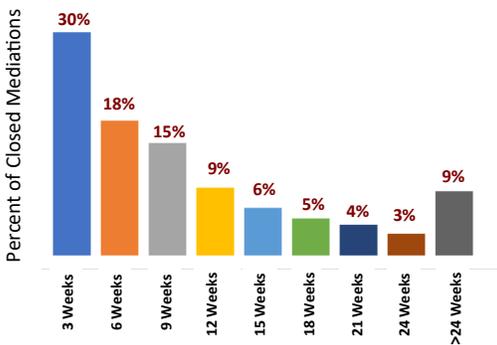
The Agencies

285 unique agencies participated in mediation matters with the PIA Ombudsman since the beginning of the program, including agencies at the state, county and local levels.

What Agencies are Participating in Mediation?

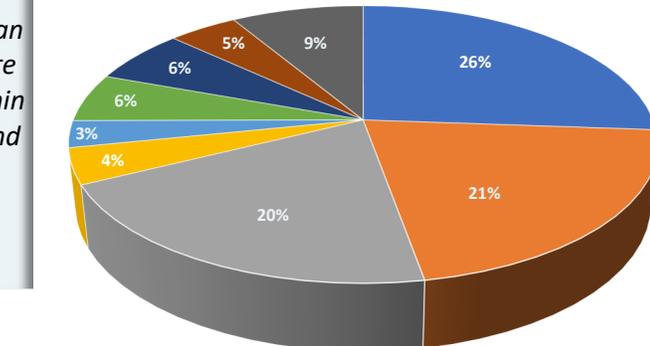


How Long Does Mediation Take?



30% of Ombudsman matters are closed within 3 weeks and **75%** by 90 days.

What are the PIA disputes?



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

Mediations March 30, 2016 – June 30, 2022	
New/Incoming Cases between 3/30/16–6/30/22	1481
Closed as of 6/30/22	1453

- Misapplication of exemption 23%
- Redaction inappropriate 3%
- Entire record withheld 20%
- MIA: No Response 26%
- Partial, nonresponsive, or incomplete response 21%
- Fees excessive 6%
- Fee waiver denied or ignored 5%
- Does not believe response 4%
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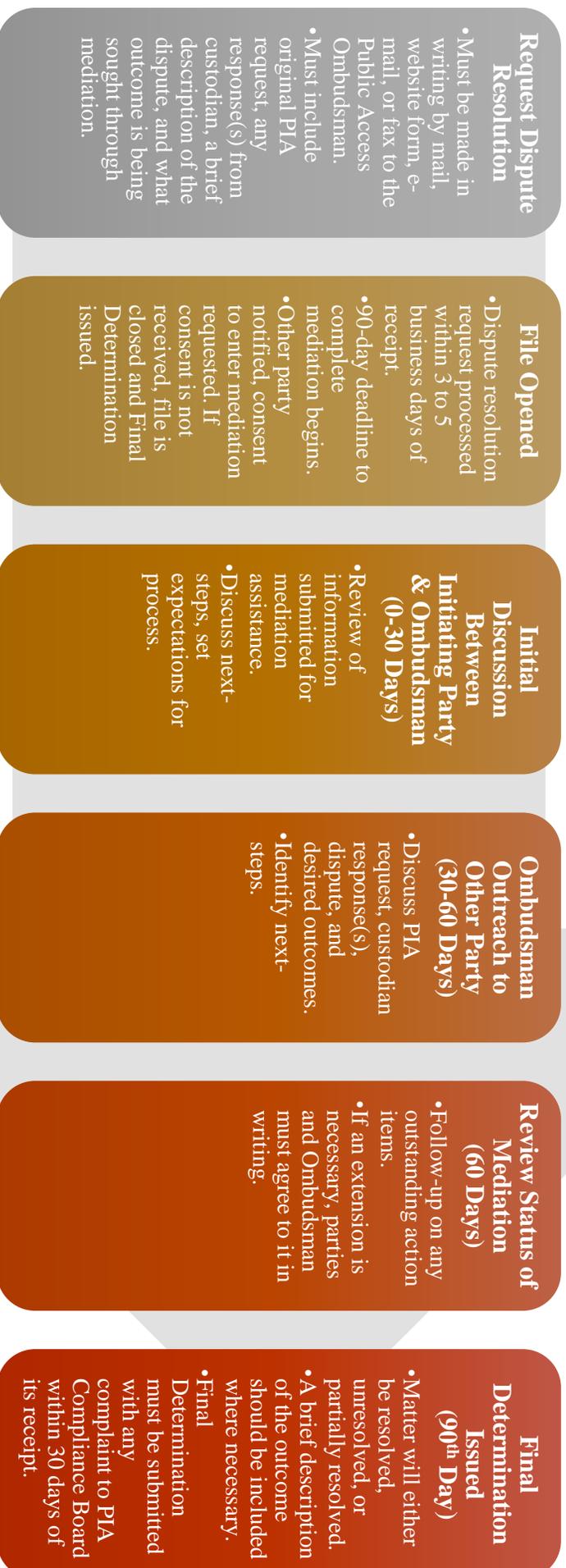
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- **Mediation Process Flow-Chart**



PUBLIC ACCESS OMBUDSMAN MEDIATION PROCESS QUICK GUIDE



The processing times outlined here serve as benchmarks for both the Ombudsman and program users to set expectations. The speed with which a mediation can be conducted depends on a number of factors, including the nature/complexity of the PLA dispute, the responsiveness of the parties, and the number of requests pending in the Ombudsman's queue, as examples.

LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lt. Governor



LISA A. KERSHNER
Public Access Ombudsman

STATE OF MARYLAND
OFFICE OF THE
PUBLIC ACCESS OMBUDSMAN

WHAT'S CHANGED?

[Chapter 658](#) of the 2021 Acts of the Maryland General Assembly takes effect on July 1, 2022. This new law expands the jurisdiction of the PIA Compliance Board while instituting an integrated PIA complaint dispute resolution process that includes the Public Access Ombudsman. While the mediation process with the Ombudsman largely remains the same, there are some differences of which you should take note. Here are some of the key changes taking effect under the new law:

Before	After
Files with the Ombudsman can remain open for an indefinite period of time.	Files with the Ombudsman must be closed and a Final Determination issued within 90 days, unless parties agree to an extension in writing.
Upon conclusion of a mediation, the Ombudsman closes the file.	Upon conclusion of a mediation, the Ombudsman prepares and issues a Final Determination to the parties in order to close the file.
A file can be opened with the Ombudsman and a complaint can be submitted to the PIA Compliance Board at the same time.	Mediation must first be attempted with the Ombudsman for all PIA disputes and a Final Determination issued before the Board can review a complaint.
The PIA Compliance Board can only hear complaints involving unreasonable fees in excess of \$350.	The PIA Compliance Board will have the authority to hear disputes about denial of inspection of a public record; charging unreasonable fees higher than \$350; a failure to respond to a request for a public record within certain statutory time limits; and frivolous, vexatious, or bad faith requests.