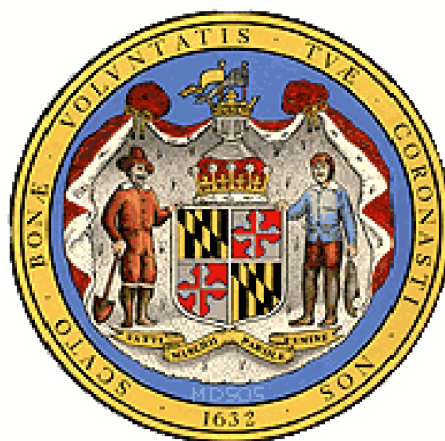


NINTH ANNUAL REPORT
OF THE
STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD



BOARD MEMBERS

SAREESH RAWAT, CHAIR
SAMUEL G. ENCARNACION
DEBRA LYNN GARDNER
QUINTON M. HERBERT
NIVEK M. JOHNSON

SEPTEMBER 30, 2024

WES MOORE
GOVERNOR

ARUNA MILLER
LT. GOVERNOR

MSAR #13017

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

The General Assembly established the State Public Information Act Compliance Board in 2015. Originally, the Board was given narrow jurisdiction to review only allegations that a custodian charged an unreasonable fee higher than \$350 under § 4-206 of the Public Information Act (“PIA”). However, in 2021, the General Assembly expanded the Board’s jurisdiction to empower the Board to also review and resolve denials of inspection, failures to respond to PIA requests within certain time limitations, and allegations by custodians that a PIA request or pattern of requests is “frivolous, vexatious, or in bad faith.” Md. Code Ann., Gen. Provisions (“GP”) § 4-1A-04; *see also* 2021 Md. Laws, ch. 658. Pursuant to GP § 4-1A-04(d), the Board submits this annual report for the period July 1, 2023, through June 30, 2024 (“FY 2024”).

As detailed in this report, FY 2024 was unique in several ways. The Board received an unprecedented 114 complaints, more than triple the number received in FY 2023. The Board also received its first complaint under GP § 4-1A-04(b), the provision that permits custodians to file complaints about alleged frivolous, vexatious, or bad faith PIA requests. This report contains a description of the Board’s activities during FY 2024, including information about the number and nature of complaints filed, and summaries of the Board’s decisions. The report also contains, as an appendix, the Public Access Ombudsman’s annual report. The law does not require the Ombudsman to submit an annual report, but the Board believes that such a report is useful to understand the current state of alternative dispute resolution under the PIA.

**I.
ACTIVITIES OF THE BOARD**

A. Responsibilities of the Board

In FY 2024, the duties of the Board included:

- Receiving, reviewing, and resolving complaints that a custodian: (1) denied inspection of public records in violation of the PIA; (2) failed to respond to a request for public records within the time limitations prescribed in GP § 4-203(a) or (d); or (3) charged an unreasonable fee higher than \$350;
- Receiving, reviewing, and resolving complaints that a requester’s PIA request or pattern of PIA requests is frivolous, vexatious, or in bad faith;

- Issuing written decisions as to whether a violation of the PIA occurred and, if so, ordering an appropriate remedy as provided by the PIA;
- Issuing written decisions as to whether a PIA request or pattern of requests is frivolous, vexatious, or in bad faith and, if so, ordering that the custodian may ignore the request or respond to a less burdensome version of the request;
- 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 five members of the Board:

- Samuel G. Encarnacion – citizen member – first term expires on 6/30/2025
- Debra Lynn Gardner – non-profit / open government / news media nominee; attorney member – first term expires on 6/30/2026
- Quinton M. Herbert – PIA knowledge / custodian / Maryland Association of Counties / Maryland Municipal League nominee – first term expires on 6/30/2027
- Nivek M. Johnson – citizen member; electronic records knowledge member – first term expires on 6/30/2025
- Sareesh Rawat – Chair; citizen member; attorney member – first term expires on 6/30/2027

At the end of FY 2024, two Board members' terms expired and two new members succeeded them. Michele Cohen's first term came to an end. Sareesh Rawat succeeded Ms. Cohen as a citizen / attorney member of the Board. Mr. Rawat is a Maryland-based federal government contracts attorney in private practice. He maintains a law office in Bethesda, Maryland. Deborah Moore-Carter's second term came to an end, after having served on the Board since its inception in 2015.¹ Quinton Herbert took Ms. Moore-Carter's place as the custodian member nominated by the Maryland Association of Counties and the Maryland Municipal League. Mr. Herbert serves as the Director and Chief Human Capital Officer for Baltimore City's Department of Human Resources. The Board thanks

¹ Ms. Moore-Carter was one of the original Board members, appointed to serve a term that expired on June 30, 2018. Ms. Moore-Carter was not reappointed until the 2023 legislative session, to serve the remainder of a term beginning on July 1, 2021. In the interim, Ms. Moore-Carter served in a hold-over capacity.

Ms. Cohen and Ms. Moore-Carter for their service and important contributions to the Board, and welcomes Mr. Rawat and Mr. Herbert to the Board.

The Board operated for the entire FY 2024 without a Chair. Reports issued by the Senate Executive Nominations Committee during the 2023 legislative session indicated that Nivek Johnson had been appointed Chair. However, the Governor's Appointments Officer later advised the Board that this was an error, and that the Governor had not yet appointed a Chair. In the event that a Chair was needed—e.g., to run an open meeting or an informal conference—the Board selected an acting-chair for that limited purpose. When selected as acting Chair, Board members, specifically Mr. Encarnacion and Mr. Johnson, stepped in to carry out the functions of the Chair admirably. The Board thanks them for their service in this role. Such service notwithstanding, the lack of a Chair made certain administrative tasks, e.g., deciding whether to request a copy of the public record for confidential Board review or responding to PIA requests for Board records,² more time-consuming and inefficient. On July 31, 2024, the Governor appointed Mr. Rawat to serve as Chair. The Board looks forward to operating more efficiently with this leadership in FY 2025.

The Attorney General's Office, specifically the Public Access Unit, provides the Board with the services of counsel and an administrator, posts the Board's decisions and other PIA-related materials on its website, and bears the incidental costs of administering the complaint and review process. Notably, Board staff also supports the Public Access Ombudsman as well. The Board appreciates the excellent and tireless service it has received from the Attorney General's Office in the performance of these tasks. Specifically, the Board thanks Spencer Dove, who serves as the Board's administrative officer, and Assistant Attorney General Sara Klemm, who serves as counsel to the Board. During FY 2024, the Attorney General's Office approved the hiring of a contractual administrative officer to help manage the substantial increase in administrative tasks that has resulted from the expansion of the Board's jurisdiction and its integration with the Ombudsman's program. The Board welcomed Kentiara Moore as its new administrator at the end of September and looks forward to working with her.

² The Board received a higher number of PIA requests than usual during FY 2024. Many of these requests came from requesters associated with PIACB 24-29, which was the first complaint submitted by a custodian under GP § 4-1A-04(b)—which allows custodians to file complaints regarding alleged frivolous, vexatious, or bad faith PIA requests—that the Board has reviewed. *See infra*, note 8. Of the sixty PIA requests the Board received, thirty-nine related to PIACB 24-29 and other complaints that grew from it.

The Board also extends its thanks to the Public Access Ombudsman, Lisa Kershner. The Ombudsman provides invaluable dispute resolution assistance to both PIA requesters and custodians. Far more often than not, the Ombudsman is able to resolve disputes through the mediation process, thus rendering Board review unnecessary, in cases that are successfully mediated.

B. Processes and procedures

Before complainants (i.e., PIA requesters or custodians) may file a complaint with the Board, they must attempt to resolve the dispute through the Public Access Ombudsman. Typically, the Ombudsman conducts dispute resolution through voluntary, confidential mediation. The parties have up to ninety days in which to try to resolve the dispute this way, although that deadline can be extended with mutual consent. Once a matter is closed, the Ombudsman must issue a written final determination stating whether the dispute is resolved or not resolved. *See* COMAR 14.37.02.11 (interpretive regulation governing final determinations). When a dispute is not resolved, and assuming the dispute is within the Board's jurisdiction, a complainant may file a complaint within 30 days of receiving the "not resolved" or "partially resolved" final determination. As noted above, disputes about denials of inspection, failures to respond to PIA requests, unreasonable fees higher than \$350, and alleged frivolous, vexatious, or bad faith PIA requests, fall within the Board's jurisdiction.

Most complaints are submitted by email to the Board's dedicated inbox, piaopengov@oag.state.md.us, although the Board does receive some complaints by regular mail. When a complaint is received, it is assigned a file number. Board counsel then makes an initial determination as to whether the complaint meets the statutory filing requirements—e.g., ensuring that the complaint was timely filed and that there is a final determination stating that the dispute was not resolved or partially resolved. In addition, Board counsel also reviews the complaint to make sure that the allegations fall within the Board's jurisdiction. In close cases, the Board errs on the side of reviewing a complaint. *See, e.g.*, PIACB 23-03 (Nov. 2, 2022) (reviewing complaint but ultimately deciding that the Board lacked jurisdiction to review an allegation challenging a custodian's proposed search method). If the complaint passes this initial review, the complaint and any attached material are forwarded to the relevant custodian (or, in the case of complaints about frivolous, vexatious, or bad faith PIA requests, the PIA requester) for a written response. The responding party has thirty days in which to submit its response. Typically, once the Board receives the response, it will provide the complainant an opportunity to file a reply within fifteen days. Note, however, that the time for the Board to issue its decision begins to run upon receipt of the response to the complaint, not the reply.

If the written submissions provide sufficient information for the Board to resolve the complaint, then the Board ordinarily issues a written decision within thirty days after receiving the response. If the Board believes it would benefit from hearing from the parties, it may hold an informal conference, *see* COMAR 14.02.04 (regulations governing informal conferences), in which case the Board's written decision must issue within thirty days after the informal conference. The Board may also request additional information if it is needed to resolve the complaint, including a descriptive index of the public records that were withheld or redacted, or copies of the disputed public records themselves.³ *See* COMAR 14.02.05 (regulations governing requests for additional information) and COMAR 14.02.06 (regulations governing the Board's treatment and handling of confidential records or information). If the Board requests additional information, then it must issue its written decision within thirty days after receiving that additional information. If the Board is unable to issue its decision within the time periods described above, the Board must state the reasons why in writing and issue a decision as soon as possible, but no later than 120 days after the complaint was filed.

Depending on the nature of the dispute alleged in the complaint, the Board has authority to order certain remedies if it finds a violation of the PIA. If the Board concludes that a custodian improperly withheld or redacted records, it must order the custodian to produce those records or remove the redactions. In some circumstances, the Board may also direct a custodian to conduct a new search and produce any non-exempt records that are located for inspection. When the Board finds that a custodian failed to respond to a PIA request within the applicable timelines, it must order the custodian to respond "promptly." In addition, the Board has discretion to order that the custodian waive all or part of the fee associated with that response, so long as the Board states the reasons why in its written decision. If the Board determines that a custodian has charged an unreasonable fee higher than \$350, it must order the custodian to reduce the fee to a reasonable amount and refund the difference, if applicable. Finally, if the Board determines that a PIA request or pattern of requests is frivolous, vexatious, or in bad faith, it may order that the custodian may ignore that request or any subsequent or future requests that are substantially the same as that request, or respond to a less burdensome version of the request.

Unless the Board's decision states that it is unable to resolve a complaint, an "applicant" (i.e., a PIA requester) or custodian may appeal the Board's decision to one of

³ If the custodian's response to the PIA request indicated that inspection was denied under GP § 4-301(a)(2)(ii) (denial because inspection would be contrary to a federal statute or regulation issued under the statute that has the force of law), then the custodian may not be required to produce the public records for Board review. GP § 4-1A-06(b)(3); *see also* COMAR 14.02.05.03A(1).

Maryland's circuit courts in accordance with GP § 4-362(a)(2). An appeal automatically stays the Board's decision pending the circuit court's decision. In addition, "a party who is aggrieved by a final judgment of a circuit court in a judicial review proceeding . . . may appeal to the Appellate Court of Maryland in the manner that law provides for appeal of civil cases." GP § 4-362(g).

C. Complaint and Decision Activities for FY 2024

1. Statistics

- New complaints submitted to the Board: 114
- Complaints dismissed without a decision: 30
 - Not within Board's jurisdiction: 12
 - Complainant did not attempt to resolve the dispute through the Public Access Ombudsman first: 18
- Written decisions issued during FY 2024: 77
 - Carryover from FY 2023 complaints: 6
 - Decisions requiring conference with the parties: 2⁴
 - Decisions requiring request for and review of confidential records or information: 7⁵
- Complaints submitted in FY 2024 and still pending on 7/1/24: 13
 - **PIACB 24-87*⁶**: Custodian Board of Professional Counselors and Therapists, wrongful denial allegation (decision issued Aug. 27, 2024)
 - **PIACB 24-93**: Custodian Montgomery County Police Department, wrongful denial allegation (decision issued Aug. 27, 2024)

⁴ See PIACB 24-05 (Nov. 1, 2023); PIACB 24-23 (Feb. 14, 2023).

⁵ See PIACB 24-02 (Nov. 8, 2023); PIACB 24-33 (Mar. 6, 2024); PIACB 24-53 (May 8, 2024); PIACB 24-56 (May 30, 2024); PIACB 24-60 (May 30, 2024); PIACB 24-73 (June 4, 2024); PIACB 24-83 (June 28, 2024).

⁶ As to the asterisk on this and other complaints, please see *infra*, note 8.

- **PIACB 24-96*:** Custodian Board of Professional Counselors and Therapists, failure to respond allegation (decision issued Aug. 27, 2024)
 - **PIACB 24-97:** Custodian Department of Public Safety and Correctional Services, failure to respond allegation (decision issued Aug. 13, 2024)
 - **PIACB 24-98*:** Custodian Baltimore Police Department, constructive denial allegation (decision issued Sept. 3, 2024)
 - **PIACB 24-100:** Custodian Anne Arundel County Office of Equity and Human Rights, wrongful denial allegation (decision issued Sept. 12, 2024)
 - **PIACB 24-104*:** Custodian Board of Professional Counselors and Therapists, wrongful denial allegation (decision issued Sept. 13, 2024)
 - **PIACB 24-106*:** Custodian/complainant Office of the Attorney General, frivolous, vexatious, and bad faith requests allegation (decision issued Sept. 26, 2024)
 - **PIACB 24-107*:** Custodian Board of Professional Counselors and Therapists, wrongful denial allegation (decision issued Sept. 13, 2024)
 - **PIACB 24-108*:** Custodian Office of the Attorney General, failure to respond allegation (decision issued Sept. 13, 2024)
 - **PIACB 24-111:** Custodian Carroll County Public Schools, wrongful denial allegation (decision issued Sept. 26, 2024)
 - **PIACB 24-112:** Custodian Alcohol, Tobacco, and Cannabis Commission, wrongful denial allegation (decision to issue by Oct. 18, 2024)
 - **PIACB 24-114*:** Custodian/complainant Department of Natural Resources, frivolous, vexatious, and bad faith requests allegation (decision to issue by Oct. 25, 2024)
- Breakdown of allegations in complaints:

- Denial of inspection (includes redactions and constructive denials): 60
- Failure to respond to PIA request: 39
- Unreasonable fees: 10
- Frivolous, vexatious, bad faith PIA requests: 3
- Other: 2
- Outcomes of written decisions:
 - No violation found: 26
 - Violation found: 29
 - Unable to resolve: 1
 - Dismissed as moot: 12
 - Dismissed at request of complainant: 2
 - Fee waiver ordered due to failure to respond: 4
 - Decision appealed to circuit court: 15

2. Complaints Dismissed without a Written Decision

Thirty complaints were dismissed without substantive review or a written decision. The primary problem with most of these complaints was the complainant's failure to first attempt to resolve the dispute through the Office of the Public Access Ombudsman as required by GP § 4-1A-05(a)(1). A handful of these complaints also alleged violations that are not within the Board's jurisdiction. Four complaints alleged violations by custodians who are part of the Maryland Judiciary, which neither the Ombudsman nor the Board are authorized to address. *See* Md. Rule 16-931. Two complaints were dismissed for failing to comply with GP § 4-1A-06(b)(5), which requires that a complaint be filed within thirty days of receipt of the Ombudsman's final determination. Unless otherwise noted, all complainants who had not first attempted mediation were referred to the Ombudsman.

- **PIACB 24-13:** Custodian was Prince George's County Fire & Emergency Medical Services; issue was failure to respond to a PIA request.

- **PIACB 24-15:** Custodian was the Queen Anne’s County Sheriff’s Office; issue was failure to respond to a PIA request.
- **PIACB 24-16:** Custodian was the Department of Natural Resources; issue was denial of inspection of public records.
- **PIACB 24-17:** Custodian was the Town of Centreville; issue was denial of inspection of public records.
- **PIACB 24-18*:** Custodian was the Office of the State’s Attorney for Baltimore City; issue was denial of inspection of public records.
- **PIACB 24-19*:** Custodian was the Maryland Judiciary; issue was failure to respond to a PIA request.
- **PIACB 24-20*:** Custodian was the Office of the State’s Attorney for Baltimore City; issue was denial of inspection of public records.
- **PIACB 24-22:** Custodian was Prince George’s County Public Schools; issue was failure to provide all responsive records.
- **PIACB 24-24:** Custodian was the Baltimore County Police Department; issue was a \$90 estimated fee.
- **PIACB 24-26:** Custodian was the Howard County Police Department; issue was failure to respond to a PIA request.
- **PIACB 24-49:** Custodian was the Clerk of the Circuit Court for Somerset County; issue was failure to respond to a PIA request. Matter was not referred to the Ombudsman because neither the Ombudsman nor the Board has jurisdiction over disputes about access to judicial records.
- **PIACB 24-54:** Custodian was the Office of the State’s Attorney for Howard County; issue related to “retroactive” aggregation of fees totaling \$120. Matter was not referred to the Ombudsman because the matter had already been through mediation; the Board lacks jurisdiction over disputes about fees \$350 or less.
- **PIACB 24-57:** Custodian was the Maryland Department of Health; issue appeared to relate to changes made to medical records and the delivery of medical care.

- **PIACB 24-59:** Custodian was the Department of Human Services; issue was incomplete response to a PIA request.
- **PIACB 24-61:** Custodians were the Baltimore Police Department and the Baltimore County Police Department; issue was failure to respond to a PIA request.
- **PIACB 24-71*:** Custodian was the Office of the State’s Attorney for Baltimore City; issue was denial of inspection of public records. Matter was not referred to the Ombudsman because the complainant had already attempted mediation and the Board complaint was not timely filed.
- **PIACB 24-79:** Custodian was the Town Council of New Market; issue was an alleged frivolous, vexatious, and bad faith PIA request.
- **PIACB 24-86:** Custodian was Prince George’s County Public Schools; issue was failure to respond to a PIA request.
- **PIACB 24-88:** Custodian was the Department of Public Safety & Correctional Services; issue was failure to provide all responsive records.
- **PIACB 24-89:** Custodian was the Office of the Public Defender; issue was failure to provide all responsive records.
- **PIACB 24-90:** Custodian was the Montgomery County Revenue Authority; issue was a \$2701.67 estimated fee and denial of a fee waiver. Matter was not referred to the Ombudsman because the complainant had already attempted mediation and the Board complaint was not timely filed.
- **PIACB 24-91:** Custodian was the Office of the State’s Attorney for Anne Arundel County; issue was a \$53 estimated fee.
- **PIACB 24-95:** Custodian was Anne Arundel County Police Department; issue was \$592.35 estimated fee.
- **PIACB 24-101:** Custodian was Frederick County Public Schools; issue was redaction of public records.
- **PIACB 24-102:** Custodian was the Department of Public Safety & Correctional Services; issue was failure to respond to a PIA request.

- **PIACB 24-103:** Custodian was the Appellate Court of Maryland; issue was denial of a fee waiver. Matter was not referred to the Ombudsman because neither the Ombudsman nor the Board has jurisdiction over disputes about access to judicial records.
- **PIACB 24-105:** Custodian was the Department of Public Safety & Correctional Services; issue was an incomplete response to a PIA request.
- **PIACB 24-109:** Custodian was the Circuit Court for Baltimore County; issue was denial of a fee waiver. Matter was not referred to the Ombudsman because neither the Ombudsman nor the Board has jurisdiction over disputes about access to judicial records.
- **PIACB 24-110:** Custodian was the Prince George’s County Office of Law; issue was denial of inspection of public records.
- **PIACB 24-113:** Custodians were the Baltimore Police Department and the Baltimore County Police Department; issue was incomplete response to a PIA request.

3. Complaints for which the Board Issued a Written Decision

When a complaint appears to be within the jurisdiction of the Board and ripe for review, the Board will issue a written decision. During FY 2024, the Board issued seventy-one decisions for complaints received in FY 2024. The Board also issued written decisions for the six complaints received, but not resolved, in FY 2023.

The Board’s decisions appear on the Office of the Attorney General’s website: <https://www.marylandattorneygeneral.gov/Pages/OpenGov/piaindex.aspx#InplviewHash9271b794-4b75-4046-be3e-d555c31cbb4e>. Summaries of the seventy-one written decisions issued for complaints filed in FY 2024, and the six decisions issued for complaints filed in FY 2023, appear in this report for ease of reference. The summaries are provided in order by complaint number, and not by the date that the decision issued. Where a Board decision has been appealed, information about the appeal is also included.

- **PIACB 23-25 (July 24, 2023)**

Custodian: Baltimore Police Department (“BPD”)

Issue: The complainant disputed a \$5,391.80 estimated fee charged by the BPD for records related to internal affairs investigations of four police officers. The BPD argued that the Board lacked jurisdiction because the complainant did not

allege that the fee was unreasonable and only challenged the BPD's denial of a fee waiver. The BPD also indicated, in response to the complaint, that it had reduced the estimated fee to \$1,616.80.

Decision: The Board construed the complaint liberally and found that it alleged that the BPD's fee was excessive. Thus, the Board had jurisdiction to review and resolve the complaint. The Board concluded that the reduced fee was reasonably related to the actual costs that the BPD could expect to incur, and was therefore reasonable under the PIA. The Board encouraged the BPD to reconsider its denial of the fee waiver.

- **PIACB 23-29 (Aug. 14, 2023)**

Custodian: Frederick County Sheriff's Office ("FCSO")

Issue: The complainant disputed the FCSO's denial of records on FCSO letterhead containing the words "machine gun" created during a certain timeframe. The FCSO cited several provisions in the PIA as grounds for the denial, including GP § 4-301(a)(2)(ii), which requires denial if inspection is "contrary to" federal law.

Decision: After closely reviewing the federal laws governing the confidentiality of firearms records, the Board concluded that nine of the responsive records—known as "law letters"—were not subject to those federal laws. Therefore, GP § 4-301(a)(2)(ii) did not preclude their disclosure. Thus, the Board found that the FCSO violated the PIA by denying inspection of the nine law letters and ordered that they be disclosed to the complainant.

- **PIACB 23-30 (July 18, 2023)**

Custodian: Maryland 529 / Office of the State Treasurer ("MD 529")

Issue: The complainant challenged MD 529's denial of a financial record related to the Maryland Prepaid College Trust, a program then administered by MD 529. MD 529 cited GP §§ 4-301, 4-343, and 4-344. MD 529 stated that the record was subject to the deliberative process privilege, and that disclosure would discourage the receipt of "full and frank advice."

Decision: While the complaint was pending, the State Treasurer, who had assumed responsibility for the administration of the Md 529 plans, elected to waive any privileges and produce the disputed financial record to the complainant. In light of that production, the Board dismissed the complaint as moot.

- **PIACB 23-31 (Sept. 6, 2023)**

Custodian: Baltimore City Board of Ethics (“BOE”)

Issue: The issue was the BOE’s redaction of donor names and street addresses from a list of donors to the Mosby 2021 Trust. The BOE cited GP § 4-336, which forbids disclosure of certain financial information of individuals. (Note that the same dispute about the same record was at issue in a second complaint, PIACB 24-01. The Board did not consolidate the cases, but issued the decisions on the same day.)

Decision: The Board found that the BOE violated the PIA and ordered that the donor list be produced in unredacted form. The Board rejected the BOE’s argument that the donations constituted “financial activity” under GP § 4-336. In reaching its conclusion, the Board found it important that the Mosby 2021 Trust was organized as a § 527 “political organization” under federal law. Thus, in the Board’s view, the donations were akin to campaign finance donations disclosable under State and federal law.

Appeal: The BOE appealed the Board’s decision to the Circuit Court for Baltimore City (case number 24-C-23-004122). The Board did not participate in the appeal. On March 15, 2024, the Court reversed the Board’s decision, finding that the Board erred as a matter of law when it concluded that GP § 4-336 did not apply. The Court’s opinion and order are appended to the Board’s decision posted on the Board’s website. The requester has appealed the Circuit Court’s decision to the Appellate Court of Maryland, as provided in GP § 4-362(g). The appeal, which was consolidated with the appeal of PIACB 24-01, is currently pending in that court (case number ACM-REG-0340-2024).

- **PIACB 23-32 (Oct. 6, 2023)**

Custodian: Department of Public Safety and Correctional Services (“DPSCS”)

Issue: The complainant, an inmate in a DPSCS correctional facility, requested records related to an Americans with Disabilities Act (“ADA”) audit of his facility that was conducted in 2021. DPSCS denied inspection, citing GP § 4-351(a)(3), the PIA’s discretionary exemption for records that contain “intelligence information or security procedures” of certain agencies, including State and local correctional facilities.

Decision: While the complaint was pending, DPSCS amended its response and produced redacted responsive records. The Board then requested that DPSCS

provide a descriptive index of the redacted records. DPSCS provided additional information, including the unredacted ADA audit report. After review, the Board concluded that DPSCS failed to justify the discretionary application of GP § 4-351(a)(3) because it made no arguments or assertions about why inspection would be “contrary to the public interest,” as required by GP § 4-343. The Board thus directed DPSCS to produce the responsive records to the complainant in full.

- **PIACB 23-33 (Oct. 5, 2023)**

Custodian: Washington County (“County”)

Issue: The complainant alleged that a \$7,602.95 estimated fee charged by the County to produce responsive sewer and water system agreements was unreasonable.

Decision: The Board found that the fee was unreasonable for several reasons. First, the County made an error in calculating the fee that resulted in the estimated fee being doubled. Second, the Board found that the County failed to justify having a highly paid division director perform half of the search work. Third, the Board found that time estimates were inflated given that most of the records being searched did not need to be scrutinized because they were not responsive—rather, the requester sought only the agreements themselves. The Board ordered that the estimated fee be reduced to \$758.16.

- **PIACB 24-01 (Sept. 6, 2023)**

Custodian: Baltimore City Board of Ethics (“BOE”)

Issue: The issue was the BOE’s redaction of donor names and street addresses from a list of donors to the Mosby 2021 Trust. The BOE cited GP § 4-336, which forbids disclosure of certain financial information of individuals. (Note that the same dispute about the same record was at issue in another complaint, PIACB 23-31. The Board did not consolidate the cases, but issued the decisions on the same day.)

Decision: The Board found that the BOE violated the PIA and ordered that the donor list be produced in unredacted form. The Board rejected the BOE’s argument that the donations constituted “financial activity” under GP § 4-336. In reaching its conclusion, the Board found it important that the Mosby 2021 Trust was organized as a § 527 “political organization” under federal law. Thus,

in the Board's view, the donations were akin to campaign finance donations disclosable under State and federal law.

Appeal: The BOE appealed the Board's decision to the Circuit Court for Baltimore City (case number 24-C-23-004416). The Board did not participate in the appeal. On March 15, 2024, the Court reversed the Board's decision, finding that the Board erred as a matter of law when it concluded that GP § 4-336 did not apply. The Court's opinion and order are appended to the Board's decision posted on the Board's website. The requester has appealed the Circuit Court's decision to the Appellate Court of Maryland, as provided in GP § 4-362(g). The appeal, which was consolidated with the appeal of PIACB 23-31, is currently pending in that court (case number ACM-REG-0340-2024).

- **PIACB 24-02 (Nov. 8, 2023)**

Custodian: Maryland Department of the Environment ("MDE")

Issue: The complainant requested records related to notices sent by MDE to property owners to notify them that a child residing at the address had elevated blood-lead levels. The records contained the "patient/guardian" address, the property owner's name, the property owner address, and the date the letter was mailed. MDE denied inspection, contending that (1) the records constituted medical records under Maryland's Confidentiality of Medical Records Act ("CMRA") and were thus exempt under GP § 4-301(a) and (2) disclosure would be contrary to the public interest under GP § 4-343.

Decision: The Board requested and reviewed copies of the records that MDE withheld. The Board found that MDE's denial of inspection violated the PIA and ordered disclosure of the full records. Noting that GP § 4-343 is not a "standalone" exemption, the Board found that the records did not fall within any of the provisions in Part IV of the PIA, which permit a custodian to deny inspection if it would be contrary to the public interest. The Board also concluded that the records were not medical records and did not contain medical information.

Appeal: MDE appealed the Board's decision to the Circuit Court for Baltimore City (case number 24-C-23-005180). The Board did not participate in the appeal. The Court held a hearing on July 17, 2024. The Court affirmed the Board's decision in an oral ruling from the bench.

- **PIACB 24-03 (Oct. 6, 2023)**

Custodian: Office of the State’s Attorney for Howard County (“HCSAO”)

Issue: The complainant alleged that a \$53,746 estimated fee charged by the HCSAO for production of “all documents, e-mail, phone logs, and electronic files” of a specific Assistant State’s Attorney from a period of about seventeen months was unreasonable. A preliminary search returned approximately 140,000 responsive emails.

Decision: The Board found that the HCSAO’s estimated fee was unreasonable in one respect, i.e., that the HCSAO intended to have a higher-compensated Deputy State’s Attorney complete all of the work of responding to the PIA request. Instead, the Board directed the HCSAO to assign administrative staff or junior attorneys to prepare the bulk of the response.

- **PIACB 24-04 (Oct. 5, 2023)**

Custodian: Baltimore County Board of Appeals (“BOA”)

Issue: The complainant challenged (1) redactions applied by the BOA to records related to a specific retirement case and (2), more broadly, the BOA’s removal of unredacted opinions addressing retirement-related disputes from its website. As to the records withheld in response to the complainant’s PIA request, the BOA cited GP § 4-312, which precludes release of individuals’ retirement records.

Decision: The Board concluded that it lacked jurisdiction to resolve the complainant’s broader allegation about the BOA’s website because it did not present a PIA-related issue. The BOA does not post opinions on its website pursuant to the PIA and nothing in the PIA precluded the BOA from removing or redacting them. The Board stayed resolution of the complainant’s narrower allegation regarding the records redacted in response to his PIA request because the Circuit Court for Baltimore County was reviewing the same records for the same PIA-related question in a lawsuit brought by the complainant prior to filing his complaint.⁷

⁷ See *In the Matter of Frederick Homan*, Case No. C-03-CV-21-002454 (Cir. Ct. Balt. County). On February 1, 2024, the Circuit Court issued a memorandum opinion in which it held that the retirement records exemption of the PIA must be interpreted narrowly and that Baltimore County improperly withheld some records in their entirety under the exemption. It appears, from the public online docket entries, that litigation is ongoing in the matter.

- **PIACB 24-05 (Nov. 1, 2023)**

Custodian: Anne Arundel County Public Schools (“AACPS”)

Issue: The complainant requested records reflecting certain information and data about student absences due to lack of transportation, including race and ethnicity data. AACPS responded that the PIA request asked AACPS to create new records, which is was not required to do, and that production of some of the student information requested would violate confidentiality mandates regarding student records.

Decision: The Board held an informal conference to get more information about AACPS’s databases and data capabilities. A majority of the Board found no violation of the PIA. The Board agreed that, due to the way that AACPS keeps and reports its data, producing the records sought in the complainant’s PIA request—which were requested in a form that ostensibly would not run afoul of confidentiality laws—would constitute the creation of new records. Board Member Debra Gardner disagreed with the majority of the Board’s conclusion, stating that she did not view the request as requiring the creation of new records.

- **PIACB 24-06 (Sept. 6, 2023)**

Custodian: Board of Education of Calvert County (“CCBOE”)

Issue: The complainant alleged that the CCBOE’s denial of his PIA request for a line item budget for the 2023-24 school year violated the PIA. The CCBOE contended that the executive and deliberative process privileges, as encompassed by GP § 4-301(a) and GP §§ 4-343 and 4-344, shielded the budgeted from disclosure

Decision: The Board found that, at the time that the complainant requested the budget, § 5-102(e)(1) of the Education Article required that the CCBOE provide the budget to the complainant. That specific disclosure provision prevailed over the exemptions in the PIA. Thus, the CCBOE’s denial of the PIA request violated the PIA.

- **PIACB 24-07 (Sept. 6, 2023)**

Custodian: Department of Public Safety and Correctional Services (“DPSCS”)

Issue: The complainant alleged that the DPSCS violated the PIA by failing to respond to his PIA request for records reflecting where inmates are released when they finish the incarcerable portions of their sentences.

Decision: DPSCS did not respond to the Board complaint, thus the Board was required to “decide the case on the facts before the Board.” GP § 4-1A-06(c). The Board found that DPSCS violated the PIA’s requirement that a custodian respond to a request “promptly, but not more than 30 days after receiving the [request].” GP § 4-203(a). The Board ordered DPSCS to respond within three business days of receipt of the Board’s decision and order, and to waive any fees associated with the response.

- **PIACB 24-08 (Sept. 28, 2023)**

Custodian: Wicomico County (“County”)

Issue: The complainant alleged that the County failed to produce all records responsive to his request for records related to the County’s investigation into and actions taken regarding flooding issues on his property. The County asserted that all responsive records were located and provided to the complainant.

Decision: The Board concluded that the County conducted a sufficient search for paper records responsive to the complainant’s PIA request. However, based on the submissions, it appeared that the County had not conducted a search for electronic records. The Board found that this failure rendered the search insufficient, given that the complainant requested email records. The Board directed the County to search its electronic records and produce any non-exempt responsive records it found.

- **PIACB 24-09 (Oct. 6, 2023)**

Custodian: Anne Arundel County Office of Central Services (“OCS”)

Issue: The complainant challenged the OCS’s redaction of records related to two contract bids, specifically redaction of unit pricing information. The OCS cited GP § 4-335 as authority for the redactions.

Decision: The Board concluded that the OCS did not meet its burden to demonstrate that GP § 4-335 applied to the redacted information. Though the Board recognized that a company’s unit pricing information could fall within the exemption, the exemption did not create a *per se* rule that all unit price

information must be withheld. The OCS relied primarily on a judge’s ruling that, in a different case involving different bid records, the information was subject to GP § 4-335. The OCS did not adequately demonstrate that the contractors for the bids at issue customarily and actually treated the unit pricing information as confidential.

- **PIACB 24-10 (Nov. 13, 2023)**

Custodian: City of Frederick (“City”)

Issue: The complainant challenged three estimated fees charged by the City—\$1,900, \$3,000, and \$370—to produce certain financial records related to Department of Housing and Human Services programs. The complainant contended that the fees were unreasonable.

Decision: The Board concluded that the fees were unreasonable to the extent that they contemplated that all of the response work would be performed during overtime hours. Because the City used this as a justification for assigning highly-paid, overtime-exempt staff to work on the response, the City’s estimated fees were unreasonable. The Board directed the City to provide revised fee estimates based on the lower hourly rates of non-exempt employees.

- **PIACB 24-11 (Oct. 20, 2023)**

Custodian: Somerset County Emergency Services (“SCES”)

Issue: The complainant requested records of 911 calls related to her address and name. SCES produced redacted records, and the complainant alleged that the redactions violated the PIA.

Decision: The SCES, in response to the Board complaint, produced new records with only the “names of the dispatchers involved” redacted. The SCES did not provide any legal authority for those redactions. Thus, the Board concluded that the redactions violated the PIA and directed the SCES to produce unredacted records to the complainant. In reaching this conclusion, the Board considered—even though the SCES did not argue it—whether any mandatory exemptions in the PIA might clearly apply to the redacted information. The Board determined that no such exemptions applied.

- **PIACB 24-12 (Oct. 30, 2023)**

Custodian: Office of the Chief Medical Examiner (“OCME”)

Issue: The complainant challenged the OCME’s contention that the Nutshell Studies of Unexplained Death—crime scene dioramas in the care of the OCME that are used in forensic investigative training—were not public records subject to the PIA.

Decision: A majority of the Board concluded that the three-dimensional dioramas themselves are not public records as defined in GP § 4-101(k). While the dioramas related to the transaction of the OCME’s public business, they did not constitute “documentary material” of the OCME. Rather, they were tools or objects used by the OMCE to carry out the educational aspect of its duties. The Board also concluded that, even if the dioramas were public records, GP § 4-201(b) allows a custodian to adopt reasonable rules and regulations to govern inspection and the OCME’s visitation policy was reasonable. Board Member Debra Gardner disagreed with the majority of the Board and took the position that the dioramas qualified as public records, but agreed that the OCME’s visitor policy was reasonable.

- **PIACB 24-14 (Nov. 14, 2023)**

Custodians: Montgomery County Council (“MCC”) & Office of the Montgomery County Executive (“OCE”)

Issue: The complainant requested records for the County Executive and each Councilmember that reflected the blocked accounts for each of the Councilmembers’ and the County Executive’s Twitter (now X) handles. The MCC and OCE produced the information as to the official handles, but denied inspection as to the personal accounts of the Council President and a Councilmember, and the campaign account of the County Executive. The MCC and OCE maintained that these were not public records.

Decision: After considering case law developed in the context of § 1983 actions and reviewing the content of the three Twitter accounts closely, the Board found no violation of the PIA. The Board concluded that the accounts of the Council President and Councilmember were personal and that there was not a close nexus between the members’ use of their social media pages and their official positions. The County Executive’s account was a campaign account used to promote himself and position himself for electoral success, and not to transact

public business. Thus, the accounts were not used as “instrumentalities” of the County government, and did not fall within the PIA’s definition of public record.

- **PIACB 24-21 (Nov. 15, 2023)**

Custodian: Department of Public Safety and Correctional Services (“DPSCS”)

Issue: The complainant alleged that DPSCS violated the PIA by failing to respond to her request for records related to inmate suicides.

Decision: DPSCS failed to respond to the Board complaint, thus the Board “decide[d] the case on the facts before the Board.” GP § 4-1A-06(c). The Board found that, though DPSCS and the complainant had engaged in some discussion about fees, DPSCS ultimately violated GP § 4-203(a) by failing to provide a response to the complainant’s PIA request “promptly” but no more than thirty days after receiving the request. The Board ordered DPSCS to respond within three business days of receipt of the Board’s decision and order and to waive any associated fees.

- **PIACB 24-23 (Feb. 14, 2024)**

Custodian: University of Maryland, College Park (“UMCP”)

Issue: The complainant alleged that two estimated fees (\$6,102.72 and \$6,057.22) charged by UMCP for production of certain email records of a postdoctoral research associate in UMCP’s Applied Research Lab for Intelligence and Security (“ARLIS”) were unreasonable.

Decision: The Board held an informal conference to get more information about UMCP’s anticipated process for responding to the complainant’s PIA request and, in particular, why UMCP believed that it would be necessary for a highly-paid attorney to perform nearly all of the work. The Board concluded that the estimated fees were unreasonable because they anticipated that the highly-paid attorney would do almost all of the work of preparing the responses. The Board reduced the estimated fees to \$3,553.53 and \$3,511.40, which were largely based upon a paralegal’s hourly salary. The Board directed UMCP to carefully track the amount of time each employee spent on the responses so that the final fees bear a reasonable relationship to actual costs.

- **PIACB 24-25 (Dec. 7, 2023)**

Custodian: Department of Labor – Office of Financial Regulation (“OFR”)

Issue: The complainant challenged the OFR’s denial, under GP §§ 4-335 and 4-336 (exemptions for confidential commercial or financial information and information about individuals’ finances, respectively), of data related to housing foreclosures.

Decision: The Board dismissed the complaint after the complainant and OFR reached a mutually agreeable resolution of their dispute while the complaint was pending.

- **PIACB 24-27^{*8} (Mar. 6, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant requested records of: (1) an “entry” (which the complainant stated was “false”) into a domestic violence unit file that stated that the complainant did not want to move forward with a case; (2) subpoenas that the complainant alleged were “counterfeit”; and (3) the “legal justification” for a particular ASA whom the complainant alleged had “inhibited” the complainant’s right to file a statement of charges or report a crime. The complainant challenged the BCSAO’s responses to these PIA requests, in which the BCSAO stated that it could not locate any responsive records.

Decision: The Board found no violation of the PIA. The BCSAO searched the records in its files associated with the case numbers provided by the complainant

⁸ PIACB 24-27, a complaint by James Alford, was the first in a series of complaints received by the Board that relate to PIA requests sent by Mr. Alford and other email accounts for a specific class of records—i.e., records that relate in some way to Mr. Alford’s legal entanglements with a man named Louis Leibowitz. At various points in 2022 and 2023, Mr. Alford and Mr. Leibowitz brought criminal charges against one another and sought peace and protective orders in the District Court of Maryland for Baltimore City. As we understand it, no convictions resulted from any of the criminal cases, a result with which Mr. Alford was apparently dissatisfied. Most of the Board complaints were filed against the BCSAO, though we also reviewed complaints against other agencies, including, e.g., the Board of Professional Counselors and Therapists (with whom Mr. Leibowitz is licensed) and the Baltimore Police Department (which produced police reports in connection with Mr. Alford’s various allegations). These complaints are responsible, to some extent, for the anomalous number of complaints that the Board received in FY 2024. As of the filing of this report, the Board has received fifty-five complaints that relate in some way to the matters between Mr. Alford and Mr. Leibowitz, including ten complaints filed in fiscal year 2025. Some of those complaints are still pending. The Board has marked these complaints with an asterisk in this report.

in his requests, which was where responsive records were likely to be found. Nothing in the many records provided by the complainant suggested that the record of the “entry” existed. Regarding the request for subpoena records, the PIA request tended to suggest that the complainant sought documents likely to be in the custody of the courts. Thus, the BCSAO’s response that it had no responsive records and suggestion that the complainant contact the courts was proper. Finally, the Board found the BCSAO’s response that it had no records showing that the ASA inhibited the complainant’s ability to file charges was reasonable in light of the nature of the request.

- **PIACB 24-28 (Jan. 5, 2024)**

Custodian: St. Mary’s County Sheriff’s Office (“SMCSO”)

Issue: The complainant alleged that the SMCSO failed to produce all records responsive to his PIA request for records related to an incident at a Target store, particularly video and audio footage. The SMCSO stated that it produced all responsive records, which included belated production of some body worn camera footage. The SMCO explained that, due to record retention policies, it no longer possessed the video and audio recordings the complainant sought.

Decision: The Board concluded that the SMCSO conducted a reasonable and diligent search for responsive records and thus its response to the complainant’s PIA request did not violate the PIA. The Board asked the SMCSO to provide more information about how it searched for video and audio footage. This additional information, coupled with a review of the SMCSO’s body worn camera footage retention policy—which the Board is not empowered to enforce—led the Board to find that the search was reasonable.

- **PIACB 24-29* (Mar. 29, 2024)**

Applicant: James Alford

Custodian / Complainant: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The BCSAO alleged that a pattern of more than seventy PIA requests that it had received from more than twenty different email accounts for records related to James Alford and his district court matters were frivolous, vexatious, and in bad faith.

Decision: This was the first complaint from a custodian that the Board received under GP § 4-1A-04(b). The Board reviewed an extensive record for the matter, which included more than thirty response letters issued by the BCSAO, hundreds of pages of email communications between the BCSAO and the PIA requesters, and responses to the BCSAO’s complaint from James Alford and the other email accounts identified in the complaint. Based on that record, the Board concluded that, although there was no direct evidence that James Alford was operating all of the email accounts himself, there was enough circumstantial evidence to conclude that he was and/or that he was coordinating the sending of the PIA requests with others. The Board found that the PIA requests were both vexatious and in bad faith because they were not truly concerned with seeking public records, but rather intended to harass and annoy the BCSAO. The Board also found bad faith in that there was a certain amount of deception present regarding the requesters’ true identities and connections. Consistent with GP § 4-1A-04(b)(3)(i) and COMAR 14.02.07.04D(2), the Board ordered that the BCSAO may ignore the requests identified in its complaint and any subsequent or future requests from the same or different accounts for “records related to James Alford, Louis Leibowitz, and the matters between them heard in the District Court of Maryland for Baltimore City from early 2022 through the end of 2023.”

Appeals: Two appeals of the Board’s decision were filed. One was filed in the Circuit Court for Anne Arundel County; the petitioner was William Hernandez. The Court transferred the case to the Circuit Court for Baltimore City (case number C-24-CV-24-000368). The second appeal was filed in the Circuit Court for Montgomery County; the petitioner was Matthew Miller. The Court transferred the case to the Circuit Court for Baltimore City (case number C-24-CV-24-001103) for consolidation with case ending in 368, although the cases were not consolidated in the City. On September 4, 2024, the Circuit Court affirmed the decision of the Board after a hearing held in case ending in 368. William Hernandez has appealed the matter to the Appellate Court of Maryland (case number ACM-REG-1398-2024).

- **PIACB 24-30 (Feb. 8, 2024)**

Custodian: City of New Carrollton (“City”)

Issue: The complainant alleged that the City violated the PIA by failing to respond to her PIA request for records related to an Internal Affairs Division investigation according to the timelines in the PIA.

Decision: The Board found that the City violated the GP § 4-203(a) by failing to respond to the complainant’s PIA request “promptly” but no more than thirty days after receiving her request. The Board ordered the City to respond within three business days of receiving the Board’s decision and order. Because the City had made no appreciable progress on its response while the matter was pending with the Ombudsman and our Board, the Board also ordered that any associated fees be waived.

- **PIACB 24-31* (Apr. 15, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request within the prescribed time limitations.

Decision: The Board found no violation of the PIA. Before the thirty days for responding had run, the BCSAO submitted the PIA request—which was one of the requests it alleged, in PIACB 24-29, was frivolous, vexatious, and in bad faith—to mediation through the Ombudsman. Thus, the BCSAO’s time for responding was tolled under GP § 4-203(d)(2).

- **PIACB 24-32* (Apr. 15, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request within the prescribed time limitations.

Decision: The Board found no violation of the PIA. Before the thirty days for responding had run, the BCSAO submitted the PIA request—which was one of the requests it alleged, in PIACB 24-29, was frivolous, vexatious, and in bad faith—to mediation through the Ombudsman. Thus, the BCSAO’s time for responding was tolled under GP § 4-203(d)(2).

- **PIACB 24-33 (Mar. 6, 2024)**

Custodian: Maryland Department of Human Services (“DHS”)

Issue: The complainant challenged redactions applied to an intake worksheet responsive to his PIA request for records of communications between DHS and a hospital related to the birth of his daughter and records related to a DHS investigation that followed those communications. DHS stated that § 1-202 of

the Human Services Article (“HS”), which governs the confidentiality of reports concerning child abuse or neglect, incorporated by GP § 4-301(a), required the redactions.

Decision: The Board reviewed an unredacted version of the intake report. After review, the Board found that DHS violated the PIA by applying redactions to the report more broadly than required by HS § 1-202. That provision required DHS to protect “the identity of the reporter or any other person whose life or safety is likely to be endangered by disclosing the information.” While some of the redacted information—including the report narrative—was tied to the identity of the reporting source, the Board concluded that much of the redacted information was not and ordered that it be disclosed to the complainant.

- **PIACB 24-34 (Apr. 1, 2024)**

Custodian: Prince George’s County Police Department (“PGPD”)

Issue: The complainant alleged that the PGPD failed to produce all records responsive to his request for disciplinary records of three PGPD detectives against whom the complainant had filed complaints in 2017.

Decision: The Board found that, by reading the complainant’s request for disciplinary records too narrowly, the PGPD conducted an insufficient search for records that failed to locate all responsive records, including records produced to the Board during the course of resolving the complaint. The Board directed the PGPD to determine whether additional disciplinary records existed and to produce them in a manner consistent with the PIA.

- **PIACB 24-35* (Apr. 15, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO constructively denied a PIA request for records related to subpoenas issued in connection with a specific case. The BCSAO responded that it had no responsive records.

Decision: The Board concluded that the BCSAO conducted a reasonable and adequate search for records and thus its response that it had no responsive records did not violate the PIA. The BCSAO addressed each element of the PIA request—which was in the form of questions—and provided information about who the likely custodian was, where applicable.

- **PIACB 24-36* (Apr. 15, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request within the prescribed time limitations.

Decision: The Board found no violation of the PIA. Before the thirty days for responding had run, the BCSAO submitted the PIA request—which was one of the requests it alleged, in PIACB 24-29, was frivolous, vexatious, and in bad faith—to mediation through the Ombudsman. Thus, the BCSAO’s time for responding was tolled under GP § 4-203(d)(2).

- **PIACB 24-37* (Apr. 15, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO constructively denied a PIA request by failing to respond to a PIA request within the prescribed time limitations.

Decision: The Board found no violation of the PIA. Before the thirty days for responding had run, the BCSAO submitted the PIA request—which was one of the requests it alleged, in PIACB 24-29, was frivolous, vexatious, and in bad faith—to mediation through the Ombudsman. Thus, the BCSAO’s time for responding was tolled under GP § 4-203(d)(2).

Appeal: The complainant appealed the Board’s decision to the Circuit Court for Anne Arundel County. The Court transferred the case to the Circuit Court for Baltimore City (case number C-24-CV-24-000830), where it is still pending. The Board is not participating in the appeal.

- **PIACB 24-38 (Feb. 8, 2024)**

Custodian: Washington County (“County”)

Issue: The complainant alleged that the County improperly denied his request for records relating to a cybersecurity incident.

Decision: The County provided a record related to the incident with its response to the complaint. After receiving the record, the complainant stated that the

record contained the information he was seeking and that his complaint could be withdrawn. The Board thus dismissed the complaint.

- **PIACB 24-39* (Apr. 15, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by improperly denying others’ PIA requests and unlawfully disclosing certain records.

Decision: The Board determined that it lacked jurisdiction to consider complaints about others’ PIA requests or wrongful disclosures, and thus dismissed the complaint.

- **PIACB 24-40* (Apr. 15, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request within the prescribed time limitations.

Decision: The Board found no violation of the PIA. Before the thirty days for responding had run, the BCSAO submitted the PIA request—which was one of the requests it alleged, in PIACB 24-29, was frivolous, vexatious, and in bad faith—to mediation through the Ombudsman. Thus, the BCSAO’s time for responding was tolled under GP § 4-203(d)(2).

- **PIACB 24-41 (Mar. 6, 2024)**

Custodian: Montgomery County Public Schools (“MCPS”)

Issue: The complainant requested records related to a construction project at a Montgomery County high school. MCPS produced some records, but the complainant alleged that MCPS failed to produce all responsive records.

Decision: After review of the records produced, as well as additional records that MCPS included with its response to the complaint, the Board determined that there were additional responsive records that MCPS had not produced. The Board determined that MCPS had read the PIA request too narrowly, and had therefore conducted an insufficient search. The Board directed MCPS to work with the complainant to produce all non-exempt records responsive to the natural language of his PIA request.

- **PIACB 24-42 (May 8, 2024)**

Custodian: Baltimore County Police Department (“BCPD”)

Issue: The complainant alleged that the BCPD improperly redacted the name and identifying information of a deceased sexual assault victim from police reports related to the assault, which occurred in 1978. The BCPD cited GP § 4-351(a)(1), the PIA’s discretionary exemption for investigative records, as authority for the redactions.

Decision: The Board reviewed the redacted records produced, which comprised thirty-seven pages and contained a significant amount of detail about the assault itself and the BCPD’s investigation. A majority of the Board concluded that the BCPD did not improperly exercise its discretion to redact the information. Though the privacy interests were diminished by the victim’s death and the age of the case, the Board found that the BCPD did not improperly determine that those interests outweighed the speculative public interest in disclosure of the name. Board Members Samuel Encarnacion and Debra Gardner disagreed with the Board’s conclusion, finding that the very weak privacy interests at stake could not outweigh the complainant’s legitimate public interest in furthering her accountability journalism.

- **PIACB 24-43* (Mar. 21, 2024)**

Custodian: Board of Professional Counselors and Therapists (“BPCT”)

Issue: The complainant alleged that the BPCT violated the PIA by failing to respond to a PIA request within the prescribed time limitations and by eventually improperly denying the PIA request.

Decision: The Board found that the BPCT violated GP § 4-203(a) by failing to respond to the PIA request “promptly” but no longer than thirty days after receiving the request. The Board also concluded that the response that the BPCT eventually issued did not violate the PIA. Rather, the BPCT responded to the question posed in the request and properly denied inspection of any responsive records under GP § 4-333, the PIA’s exemption for information about the licensing of an individual in an occupation or profession.

- **PIACB 24-44* (Apr. 15, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request within the prescribed time limitations.

Decision: The Board found no violation of the PIA. Before the thirty days for responding had run, the BCSAO submitted the PIA request—which was one of the requests it alleged, in PIACB 24-29, was frivolous, vexatious, and in bad faith—to mediation through the Ombudsman. Thus, the BCSAO’s time for responding was tolled under GP § 4-203(d)(2).

Appeal: The complainant appealed the Board’s decision to the Circuit Court for Baltimore County. The court transferred the case to the Circuit Court for Baltimore City (case number C-24-CV-24-001605), where it is still pending. The Board is not participating in the appeal.

- **PIACB 24-45 (Feb. 26, 2024)**

Custodian: Department of Public Safety and Correctional Services (“DPSCS”)

Issue: The complainant alleged that the DPSCS violated the PIA by failing to respond to his PIA requests within the prescribed time limitations.

Decision: The Board concluded that DPSCS violated GP § 4-203(a) because it failed to respond to the PIA requests “promptly,” but no longer than thirty days after receipt. DPSCS provided a response to one PIA request while the complaint was pending. The Board directed DPSCS to respond to the second request within three business days of receipt of the Board’s decision and order, and to waive any associated fees.

- **PIACB 24-46 (Mar. 13, 2024)**

Custodian: Maryland Department of Health – Behavioral Health Administration (“MDH-BHA”)

Issue: The complainant requested records related to a complaint he had filed with MDH-BHA. MDH-BHA produced records, but withheld an investigation report under the medical review committee privilege. The complainant alleged that MDH-BHA failed to produce all responsive records.

Decision: The Board found no violation of the PIA. The Board concluded that MDH-BHA conducted a reasonable and adequate search for responsive records that was based on the PIA request and information provided by the complainant.

The Board also determined that MDH-BHA sufficiently demonstrated that the medical review committee privilege applied to the investigative report, and thus it was properly withheld.

- **PIACB 24-47 (Mar. 19, 2024)**

Custodian: Harford County (“County”)

Issue: The complainant alleged that the County violated the PIA by refusing to search for email records responsive to the complainant’s request for communications related to a certain architecture and design firm. The County contended that, because the complainant—the Harford County Sheriff—had accused the County Executive of illegal wiretapping, it would not search County servers.

Decision: The Board concluded that the County improperly denied the complainant’s PIA request by refusing to search for responsive email records. The County was the proper custodian of potentially responsive records created or received by many County employees. The Board recognized that it was beyond the Board’s role to decide Wiretap Act violations, but noted that the Act has not been an apparent impediment to custodians’ access to email records. The Board ordered the County to conduct a good faith search and to disclose all non-exempt responsive email records.

Appeal: The County filed an appeal of the Board’s decision in the Circuit Court for Harford County (case number C-12-CV-24-000299), where it is still pending. The Board is not participating in the appeal.

- **PIACB 24-48* (Apr. 19, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by improperly denying a PIA request. The BCSAO’s response to the PIA request indicated that it had no responsive records.

Decision: The Board found no violation of the PIA. The BCSAO conducted a reasonable and adequate search for responsive records. The Board noted that the PIA request contained a fair amount of editorialization and implicit accusations of wrongdoing, and was phrased in question format.

- **PIACB 24-50* (Apr. 2, 2024)**

Custodian: Board of Professional Counselors and Therapists (“BPCT”)

Issue: The complainant alleged that the BPCT violated the PIA by failing to respond to a PIA request within the prescribed time limitations.

Decision: The Board found that the BPCT violated GP § 4-203(a) by failing to respond to the PIA request “promptly” but no more than thirty days after receiving the request. Because the BPCT issued its response to the PIA request with its response to the Board complaint, the Board ordered no further relief.

- **PIACB 24-51 (Mar. 14, 2024)**

Custodian: Montgomery County Department of Transportation (“MCDOT”)

Issue: The complainant alleged that MCDOT failed to provide all records responsive to his PIA request for records related to the county’s Ride On bus service.

Decision: The Board found no violation of the PIA based on the submissions, which provided a somewhat confusing history of the request and MCDOT’s response. Ultimately, it appeared to the Board that MCDOT adequately responded to the original PIA request, although the Board urged MCDOT to produce any additional non-exempt records that the complainant may be seeking.

Appeal: The complainant filed an appeal of the Board’s decision in the Circuit Court for Montgomery County (case number C-15-CV-24-001671), where it is still pending. The Board is not participating in the appeal.

- **PIACB 24-52* (Mar. 26, 2024)**

Custodian: Office of the Public Access Ombudsman⁹ (“Ombudsman”)

Issue: The complainant alleged that the Ombudsman improperly denied inspection of records related to the Ombudsman’s handling of two mediation

⁹ Because Board counsel is also counsel to the Public Access Ombudsman, the Office of the Attorney General assigned alternate counsel to advise and counsel the Board for this complaint and for PIACB 24-62, which was also a complaint against the Ombudsman.

matters. The Ombudsman cited GP §§ 4-101(k)(3) and 4-301(a) as grounds for the denial.

Decision: The Board concluded that the Ombudsman did not violate the PIA. The Board found that some records were properly withheld under the attorney-client privilege. The Board also determined that communications sent to the Ombudsman were not public records as defined by GP § 4-101(k)(3), and that responsive communications sent by the Ombudsman were “mediation communications” made confidential—and thus exempt under GP § 4-301(a)(1)—by the Maryland Mediation Confidentiality Act.

- **PIACB 24-53 (May 8, 2024)**

Custodian: Frederick County (“County”)

Issue: The complainant requested phone records for a telephone number assigned to a judge. The County provided a phone log with information about personal calls redacted. The County maintained that those personal phone calls were not public records as defined in the PIA

Decision: The Board found that some, but not all, of the information was improperly redacted. Guided by a decision of Maryland’s Supreme Court, the Board concluded that information about the frequency, duration, and cost of personal calls was a public record subject to disclosure under the PIA, but that information about the location and phone numbers was not. The Board ordered the County to disclose the phone log with redactions only to the location and phone number information. Board Member Samuel Encarnacion disagreed with the Board’s conclusion because, in his view, a government employee has no expectation of privacy in calls to and from a government phone line and the phone numbers related to personal calls are not part of the content of those calls.

- **PIACB 24-55 (Mar. 25, 2024)**

Custodian: Worcester County (“County”)

Issue: The complainant alleged that the County violated the PIA by denying inspection of recordings of phone calls of a specific inmate in the Worcester County Jail, which the County contended were not public records subject to the PIA.

Decision: The Board generally agreed with the County that phone calls between inmates and private third parties are ordinarily not public records as defined by GP § 4-101(k). However, the Board also concluded that, to the extent that the County possessed responsive calls that were retrieved and used by the State in the investigation and/or prosecution of crime, those calls were public records subject to the PIA which the County must produce, subject to any exemptions.

- **PIACB 24-56 (May 30, 2024)**

Custodian: Office of the Comptroller of Maryland (“Comptroller”)

Issue: The complainant requested records related to the recruitment and selection process for a specific position in the Comptroller’s office, to which she had applied. The Comptroller produced some records (some with redactions) and denied inspection of others, citing GP §§ 4-301, 4-343, and 4-344, which encompass the executive and deliberative process privileges. The complainant disputed the application of these exemptions and also challenged the Comptroller’s assertion that it had no responsive text message records.

Decision: Although not without some hesitation, the Board determined that the Comptroller did not violate the PIA. The Board requested both a descriptive index of the records withheld and the records themselves. Upon review of the records, the Board found that they contained pre-decisional, deliberative communications, and that the factual content was so intertwined with the deliberative material that redaction was not a feasible alternative. The Board also found that the Comptroller sufficiently explained why inspection of the records would be contrary to the public interest such that its application of GP §§ 4-343, 4-344 was not improper. In addition, the Board found that the Comptroller conducted a sufficient search for responsive text messages. Board Member Debra Gardner disagreed with the Board’s decision and expressed her view that the records were not eligible for withholding under the deliberative process privilege, which she believed to be overused and abused by custodians. Ms. Gardner also disagreed that the Comptroller conducted a sufficient search for text messages, stating her position that the Comptroller had an obligation to conduct an independent search of employees’ State-issued phones.

Appeal: The complainant filed an appeal of the Board’s decision in the Circuit Court for Anne Arundel County (case number C-02-CV-24-001358), where it is still pending. The Board is not participating in the appeal.

- **PIACB 24-58* (May 24, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by asserting that it had no records responsive to the PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB 24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal “automatically stays the decision of the Board pending the circuit court’s decision.” However, the Board reasoned that that provision did not prevent it from electing to remain consistent in its fact-finding and reasoning regarding the PIA request at issue. The Board noted that the circuit court’s opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

- **PIACB 24-60 (May 30, 2024)**

Custodian: Maryland Health Care Commission (“MHCC”)

Issue: The complainant alleged that the MHCC improperly redacted and denied inspection of records responsive to his PIA request for records related to a specific health information exchange. The complainant disputed the MHCC’s application of the attorney-client privilege and the PIA’s exemption for information about the security of an information system (GP § 4-338).

Decision: Though the Board found that the MHCC’s response to the request largely complied with the PIA, the Board determined that the MHCC improperly withheld a record of two email communications that were not subject to the attorney-client privilege. As to the other records withheld or redacted, the Board concluded that some were privileged attorney-client communications, some constituted information about the security of an information system subject to GP § 4-338’s mandatory exemption, and others were properly redacted under GP §§ 4-343, 4-344 as subject to the deliberative process privilege.

- **PIACB 24-62* (Apr. 12, 2024)**

Custodian: Office of the Public Access Ombudsman (“Ombudsman”)

Issue: The complainant alleged that the Ombudsman violated the PIA by denying inspection of records related to the Ombudsman’s handling of two mediation matters. The Ombudsman cited GP §§ 4-101(k)(3) and 4-301(a) as grounds for denial.

Decision: The Board determined that the Ombudsman did not violate the PIA because all of the responsive records constituted records or information submitted to the Ombudsman in connection with a mediation, and thus were not public records subject to the PIA.

Appeal: The complainant filed an appeal of the Board’s decision in the Circuit Court for Baltimore County (case number C-03-CV-24-001447). The Court initially dismissed the appeal for having been filed in the improper venue. However, the Court later vacated that order and transferred the matter to the Circuit Court for Baltimore City (case number C-24-CV-24-002651), where it is still pending. The Board is not participating in the appeal.

- **PIACB 24-63 (Apr. 11, 2024)**

Custodian: University of Maryland, College Park (“UMCP”)

Issue: The complainant challenged UMCP’s redaction of the names in University police reports related to an incident that occurred on campus. UMCP relied on GP § 4-351, the PIA’s discretionary exemption for records of police investigations, to justify the redactions.

Decision: The Board concluded that UMCP sufficiently demonstrated that disclosure of the names in the reports would constitute an unwarranted invasion of personal privacy and thus be contrary to the public interest. UMCP represented that one of the subjects named in the police reports was unequivocal in their desire to keep their name from being released. The Board also found that, in redacting only the names, UMCP released a lot of information about the underlying incidents. Therefore the Board found no violation of the PIA in UMCP’s application of GP § 4-351.

- **PIACB 24-64* (May 24, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by asserting that it had no records responsive to the PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB 24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal “automatically stays the decision of the Board pending the circuit court’s decision.” However, the Board reasoned that that provision did not prevent it from electing to remain consistent in its fact-finding and reasoning regarding the PIA request at issue. The Board noted that the circuit court’s opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

- **PIACB 24-65 (May 24, 2024)**

Custodian: Prince George’s County Fire & Emergency Services (“PGFEMS”)

Issue: The complainant challenged PGFEMS’s denial of two monthly reports that list the payments to current and former volunteer firefighters who are Length of Service Award Program (“LOSAP”) recipients. PGFEMS denied inspection under GP § 4-312 (retirement records), § 4-331 (information about public employees), and § 4-336 (financial information of an individual).

Decision: The Board concluded that GP § 4-336 precluded disclosure of the amounts of the benefits because the benefits constituted individual volunteers’ income. Because volunteer firefighters are not public employees, the Board concluded that GP § 4-331 did not apply. The Board did not resolve conclusively whether the monthly LOSAP reports were retirement records. However, the Board noted that GP § 4-312 requires a custodian, upon request, to state whether an individual receives a retirement or pension allowance, thus disclosure of the names of the LOSAP recipients would seem permissible. The Board directed PGFEMS to disclose the monthly reports with the benefit amounts redacted.

- **PIACB 24-66* (May 24, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by denying a PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB

24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal “automatically stays the decision of the Board pending the circuit court’s decision.” However, the Board reasoned that that provision did not prevent it from electing to remain consistent in its fact-finding and reasoning regarding the PIA request at issue. The Board noted that the circuit court’s opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

- **PIACB 24-67* (May 24, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by denying a PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB 24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal “automatically stays the decision of the Board pending the circuit court’s decision.” However, the Board reasoned that that provision did not prevent it from electing to remain consistent in its fact-finding and reasoning regarding the PIA request at issue. The Board noted that the circuit court’s opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

- **PIACB 24-68* (Apr. 2, 2024)**

Custodian: Board of Professional Counselors and Therapists (“BPCT”)

Issue: The complainant alleged that the BPCT violated the PIA by failing to respond to a PIA request within the prescribed time limitations.

Decision: The Board found that the BPCT violated GP § 4-203(a) by failing to grant or deny the request within the time limitations in the PIA. Because the BPCT issued a response to the PIA request and did not charge fees, the Board ordered no further relief.

- **PIACB 24-69* (Apr. 26, 2024)**

Custodian: Office of the State’s Attorney for Anne Arundel County (“AACSAO”)

Issue: The complainant alleged that the AACSAO violated the PIA by failing to respond to a PIA request within the prescribed time limitations.

Decision: The Board concluded that the AACSAO violated GP § 4-203(d). The Board found that the time for responding to the PIA request was extended with the complainant's consent, but the AACSAO issued its response to the PIA request more than sixty days after receiving the PIA request. The Board declined to exercise discretion to waive fees because the broader context showed that the AACSAO was responsive to the complainant and made efforts to comply with the PIA's provisions.

- **PIACB 24-70* (May 24, 2024)**

Custodian: Office of the State's Attorney for Baltimore City ("BCSAO")

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB 24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal "automatically stays the decision of the Board pending the circuit court's decision." However, the Board reasoned that that provision did not prevent it from electing to remain consistent in its fact-finding and reasoning regarding the PIA request at issue. The Board noted that the circuit court's opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

- **PIACB 24-72* (May 24, 2024)**

Custodian: Office of the State's Attorney for Baltimore City ("BCSAO")

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB 24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal "automatically stays the decision of the Board pending the circuit court's decision." However, the Board reasoned that that provision did not prevent it

from electing to remain consistent in its fact-finding and reasoning regarding the PIA request at issue. The Board noted that the circuit court's opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

Appeal: The complainant appealed the Board's decision to the Circuit Court for Baltimore City (case number C-24-CV-24-002077), where it is still pending.

- **PIACB 24-73 (June 4, 2024)**

Custodian: Howard County Public School System ("HCPSS")

Issue: The complainant challenged redactions that HCPSS applied to an executed contract between HCPSS and Zum, a company that provides student transportation services. HCPSS contended that the redactions were required under GP § 4-335, which exempts confidential commercial and financial information provided by or obtained from a person or governmental unit.

Decision: The Board determined that some of the information in the contract was improperly redacted. The Board found that the unit prices in the contract were subject to GP § 4-335 because they constituted financial information that the company actually and customarily kept private. However, after reviewing an unredacted version of the contract, the Board found that HCPSS had redacted more than just the unit prices, and that that information did not fall under GP § 4-335. The Board directed HCPSS to provide a copy of the executed contract with only the unit prices redacted.

- **PIACB 24-74* (May 24, 2024)**

Custodian: Office of the State's Attorney for Baltimore City ("BCSAO")

Issue: The complainant alleged that the BCSAO violated the PIA by denying a PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB 24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal "automatically stays the decision of the Board pending the circuit court's decision." However, the Board reasoned that that provision did not prevent it from electing to remain consistent in its fact-finding and reasoning regarding the

PIA request at issue. The Board noted that the circuit court's opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

Appeal: The complainant appealed the Board's decision to the Circuit Court for Baltimore County. The County Court transferred the matter to the Circuit Court for Baltimore City (case number C-24-CV-24-002668), where it is still pending.

- **PIACB 24-75* (May 24, 2024)**

Custodian: Office of the State's Attorney for Baltimore City ("BCSAO")

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB 24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal "automatically stays the decision of the Board pending the circuit court's decision." However, the Board reasoned that that provision did not prevent it from electing to remain consistent in its fact-finding and reasoning regarding the PIA request at issue. The Board noted that the circuit court's opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

- **PIACB 24-76* (May 22, 2024)**

Custodian: Board of Professional Counselors and Therapists ("BPCT")

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request within the time limitations in the PIA

Decision: The Board found that the BPCT violated GP § 4-203(a) by failing to grant or deny the request within the time limitations in the PIA. Because the BPCT issued a response to the PIA request and did not charge fees, the Board ordered no further relief.

- **PIACB 24-77* (May 24, 2024)**

Custodian: Office of the State's Attorney for Baltimore City ("BCSAO")

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB 24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal “automatically stays the decision of the Board pending the circuit court’s decision.” However, the Board reasoned that that provision did not prevent it from electing to remain consistent in its fact-finding and reasoning regarding the PIA request at issue. The Board noted that the circuit court’s opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

- **PIACB 24-78* (May 24, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by denying a PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB 24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal “automatically stays the decision of the Board pending the circuit court’s decision.” However, the Board reasoned that that provision did not prevent it from electing to remain consistent in its fact-finding and reasoning regarding the PIA request at issue. The Board noted that the circuit court’s opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

- **PIACB 24-80* (May 24, 2024)**

Custodian: Office of the State’s Attorney for Baltimore City (“BCSAO”)

Issue: The complainant alleged that the BCSAO violated the PIA by denying a PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB 24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal “automatically stays the decision of the Board pending the circuit court’s decision.” However, the Board reasoned that that provision did not prevent it from electing to remain consistent in its fact-finding and reasoning regarding the

PIA request at issue. The Board noted that the circuit court's opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

- **PIACB 24-81* (May 24, 2024)**

Custodian: Office of the State's Attorney for Baltimore City ("BCSAO")

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request.

Decision: The Board dismissed the complaint as mooted by its decision in PIACB 24-29, in which it concluded that the PIA request at issue in the complaint was vexatious and in bad faith. The Board acknowledged that PIACB 24-29 had been appealed and that GP § 4-1A-10(b)(2) provides that an appeal "automatically stays the decision of the Board pending the circuit court's decision." However, the Board reasoned that that provision did not prevent it from electing to remain consistent in its fact-finding and reasoning regarding the PIA request at issue. The Board noted that the circuit court's opinion will ultimately dictate whether and how the BCSAO responds to this PIA request.

- **PIACB 24-82* (May 22, 2024)**

Custodian: Baltimore Police Department ("BPD")

Issue: The complainant alleged that the BCSAO violated the PIA by failing to respond to a PIA request within the prescribed time limitations.

Decision: The Board concluded that the BPD violated GP § 4-203(a) by failing to grant or deny the PIA request within thirty days of receiving it. The Board directed the BPD to respond to the request promptly by providing a fee estimate based on either the parameters outlined by the BPD in its response to the complaint or by parameters provided by the complainant. Given the broader context of the complaint, the breadth of the PIA request, and the fact that BPD had outlined a specific manner of responding, the Board declined to exercise discretion to order that the BPD waive fees.

Appeal: The complainant appealed the Board's decision to the Circuit Court for Baltimore City (case number C-24-CV-24-000551), where it is still pending.

- **PIACB 24-83 (June 28, 2024)**

Custodian: Anne Arundel County Council ("AACC")

Issue: The complainant requested records of certain communications related to her candidacy for the position of legislative counsel to the AACC. The AACC produced some records, but redacted and withheld others, citing GP § 4-301(a)(1) (attorney-client privilege), § 4-311 (personnel records), and §§ 4-343, 4-344 (deliberative process privilege).

Decision: After reviewing the records that were withheld and unredacted versions of the records produced in redacted form, the Board concluded that the AACC properly withheld records under GP § 4-301(a)(1) as protected by the attorney-client privilege. For the remaining records, the Board determined that the AACC applied GP § 4-311 in an overbroad way. Rather than withholding records of email communications entirely, the AACC should redact the names of other candidates, thus removing the records from the ambit of GP § 4-311. The Board also determined that most of the communications were not eligible for withholding under the deliberative process privilege because they were post-decisional and/or factual in nature. For the few communications that were pre-decisional and deliberative, the Board found that the AACC failed to meet its burden to show that disclosure would be contrary to the public interest. The Board directed the AACC to produce the email records withheld under §§ 4-311, 4-343, and 4-344 to the complainant with redactions to the names and identifying information of other candidates.

- **PIACB 24-84* (Apr. 26, 2024)**

Custodian: State Public Information Act Compliance Board (“PIACB”)

Issue: The complainant alleged that the PIACB violated the PIA by denying a request for public records.

Decision: The Board issued a decision stating that it was unable to resolve the complaint because it cannot review challenges to the PIACB’s responses to PIA requests to the PIACB. *See* GP § 4-1A-07(c)(2)(i). The Board noted that the complainant may file a complaint for judicial review in circuit court under GP § 4-362(a)(1).

Appeal: A petition for judicial review was filed in the Circuit Court for Montgomery County (case number C-15-CV-24-002541). The petitioner was not the PIA applicant or complainant. The Board filed a motion to dismiss the petition. The Court consolidated the case with the appeal of PIACB 24-29 filed in Montgomery County and transferred the matters to the Circuit Court for

Baltimore City for consolidation with case number C-24-CV-24-000368. The appeal is still pending.

- **PIACB 24-85* (June 28, 2024)**

Custodian: Office of the Attorney General (“OAG”)

Issue: The complainant alleged that the OAG constructively denied a PIA request by responding that it had no responsive records.

Decision: The Board found no violation. The language of the PIA request accused OAG employees of unethical and criminal behavior without any foundation. The Board found that the OAG’s response that it had no records reflecting that behavior was reasonable.

Appeal: The complainant appealed the Board’s decision to the Circuit Court for Baltimore County (case number C-03-CV-24-002544), where it is still pending.

- **PIACB 24-92* (June 28, 2024)**

Custodian: Office of the Attorney General (“OAG”)

Issue: The complainant alleged that the OAG violated the PIA by failing to respond to a PIA request within statutory time limitations.

Decision: The Board found no violation because, under GP § 4-203(d), the time for responding to the PIA request was extended while the matter was pending with the Ombudsman and Board. The complainant contacted the Ombudsman less than thirty days after sending the PIA request. In addition, less than a week after receiving the PIA request, the OAG contacted the Ombudsman for assistance regarding the PIA request (and others), which it alleged were frivolous, vexatious, and in bad faith.

- **PIACB 24-94 (June 24, 2024)**

Custodian: Maryland State Board of Dental Examiners (“MSBDE”)

Issue: The complainant challenged the MSBDE’s denial of her PIA request for correspondence related to complaints that she filed against a dentist. The MSBDE cited GP § 4-333, the PIA’s exemption for professional and occupational licensing records, as authority for the denial.

Decision: The Board found no violation of the PIA. Under GP § 4-333, the MSBDE was required to deny inspection of information about the licensing of the dentist, and the requested correspondence constituted such information. Further, the responsive correspondence did not fall within any of the categories of information that the MSBDE was required to disclose under subsection (b). While the letters related to disciplinary matters, they did not constitute orders or findings resulting from “formal disciplinary actions” as provided in GP § 4-333(b)(7).

- **PIACB 24-99 (June 14, 2024)**

Custodian: Office of the State’s Attorney for Baltimore County (“BCoSAO”)

Issue: The complainant alleged that the BCoSAO violated the PIA by failing to locate any records responsive to his PIA request for records related to his 1987 criminal case. The BCoSAO maintained that it was unable to locate records after a thorough search.

Decision: The Board concluded that the BCoSAO conducted a reasonable and adequate search for responsive records and therefore did not violate the PIA. The BCoSAO searched in four different locations, including two filing systems for digital records, boxes of homicide cases located in its offices, and an offsite storage facility for closed cases. Ultimately, the BCoSAO conducted a good faith search focused on where records were likely to be found.

II.

RECOMMENDATIONS FOR IMPROVEMENTS TO THE PIA

Section 4-1A-04(c)(3) of the General Provisions Article charges the Board with “mak[ing] recommendations to the General Assembly for improvements to [the PIA].” The Board’s annual report must contain recommendations for “any improvements to [the PIA.]” GP § 4-1A-04(d)(2)(iv).

The Board voted to make two specific recommendations in its annual report for FY 2023: (1) that additional staff, including a Deputy Ombudsman and an administrator, be provided to support the Ombudsman and the Public Access Unit of the Office of the Attorney General; and (2) that the General Assembly amend § 4-1A-04(a) of the PIA to authorize the Board to review a custodian’s denial of a request for a fee waiver. Since those recommendations, the Office of the Attorney General has been involved in addressing the staffing issues and is working with the Public Access Unit to get the needed

resources. In light of the increased caseloads of both the Ombudsman and the Board, the Board continues to have concerns that the current staff of three (counsel and two administrators) will ultimately be insufficient to support the operations of the Public Access Unit. No action has been taken with regard to the Board's second recommendation that its jurisdiction be expanded to include fee waiver denials.

The notice for the Board's FY 2024 annual meeting asked those who have recommendations for the Board to consider to submit the recommendations to the Board prior to the annual meeting. The Board received four proposed recommendations, all from the MDDC Press Association. Those recommendations were:

- Expand PIA Compliance Board jurisdiction over fee waivers
- Adopt federal FOIA language to greatly reduce discretion on public interest fee waivers
- Create a mandatory indigent fee waiver process
- Standardize payment of fees, including prepayment of fees

After discussion of these recommendations at its August 20, 2024, annual meeting,¹⁰ the Board voted to make three specific recommendations in its FY 2024 annual report. Those recommendations are as follows:

Recommendation 1: That the General Assembly amend GP § 4-1A-04(a) of the PIA to expand the Board's jurisdiction to include authority to review a custodian's denial of a request for a fee waiver under GP § 4-206(e).

Board Member Debra Gardner moved this recommendation again this year, noting that it had been adopted as recommendation in last year's annual report. Board Member Samuel Encarnacion expressed agreement with the recommendation, stating that it is "consistent with the mission of the statute" to ensure access to public records without undue cost.

¹⁰ To view the meeting, please visit the Board's "Meetings & Minutes" page: https://www.marylandattorneygeneral.gov/Pages/OpenGov/piacb_meetings.aspx (last visited Sept. 30, 2024).

A majority (4-1) of the Board voted to adopt this recommendation. Ms. Gardner, Mr. Encarnacion, Mr. Johnson, and Mr. Herbert voted in favor of the recommendation; Chair Rawat voted against the recommendation.¹¹

Recommendation 2: That the General Assembly amend GP § 4-206(e) of the PIA to include language similar to that found in the federal Freedom of Information Act (“FOIA”) provision that governs fees. *See* 5 U.S.C.A. § 552(4)(a)(A)(iii). That provision requires that records be “furnished without any charge or at a charge below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” The incorporation of similar language into GP § 4-206(e) of the PIA would greatly reduce a custodian’s discretion to deny a public interest fee waiver when one is properly requested.

Board Member Debra Gardner moved this recommendation. Ms. Gardner explained that the PIA affords custodians a tremendous amount of discretion to grant or deny requests for fee waivers, while under FOIA public interest fee waivers are mandatory if a certain standard is met. The Supreme Court of Maryland has held that this difference between the PIA and FOIA supports interpreting the PIA to provide custodians with a great deal of discretion to decide their own “relevant factors” when determining whether to grant or deny a public interest fee waiver request. Ms. Gardner also noted that research has shown that a majority of requests for public interest fee waivers are denied in Maryland, while only two percent of FOIA requests involve a fee. Through incorporation of language similar to FOIA, Maryland might still have a discretionary standard but the PIA would provide better guidance about what must be considered and public interest fee waiver denials would be more susceptible to review in appellate courts.

A majority (3-2) of the Board voted to adopt this recommendation. Ms. Gardner, Mr. Encarnacion, and Mr. Johnson voted in favor of the recommendation; Chair Rawat and Mr. Herbert voted against the recommendation.

¹¹ The Board Chair explained his vote against this recommendation at the Board’s follow-up meeting on September 27, 2024. To view that meeting, please visit the Board’s “Meetings & Minutes” page: https://www.marylandattorneygeneral.gov/Pages/OpenGov/piacb_meetings.aspx (last visited Sept. 30, 2024).

Recommendation 3: That the General Assembly amend GP § 4-206(e) to create and indigent fee waiver process that is tied to nationally recognized standards of indigency and that requires a waiver be granted in cases of indigency absent extraordinary circumstances.

Board Member Debra Gardner moved this recommendation. Ms. Gardner explained that, if a custodian has discretion to deny a request for a fee waiver based on indigency where there is a sworn affidavit that is not questioned, this operates as an absolute bar to poor people gaining access to public records and is entirely inconsistent with the purpose and intent of the PIA. Ms. Gardner stated that it is all too common for custodians to deny indigency fee waiver requests without explanation or to simply ignore them. Though the Ombudsman's caseload data might not contain a large number of disputes related to indigency-based fee waiver denials, without Board jurisdiction over fee waivers and a mandatory indigency fee waiver process, poor people in Maryland will be essentially shut out of access to public records.

A majority (3-2) of the Board voted to adopt this recommendation. Ms. Gardner, Mr. Encarnacion, and Mr. Herbert voted in favor of the recommendation; Chair Rawat and Mr. Johnson abstained from voting.

Appendix A.
REPORT FROM THE
PUBLIC ACCESS
OMBUDSMAN

APPENDIX A
REPORT OF THE PUBLIC ACCESS OMBUDSMAN
FY 2024

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 PIA disputes such as: disputes involving exemptions; the failure of a custodian to issue a timely response; fee disputes; 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 training on request. These and other activities are published in summary reports that are posted to the Ombudsman’s website, <https://piaombuds.maryland.gov>. This report describes the Ombudsman’s activities from July 1, 2023, through June 30, 2024 (“FY 2024”). For context, comparative data concerning prior periods is provided in the tables below. Additional information about Ombudsman program activities is provided in the attachments to this report at Appendix A, page 60 through 64.

ACTIVITIES OF THE OMBUDSMAN

Lisa Kershner was appointed by the Attorney General as Maryland’s first Public Access Ombudsman and has served in that role since the program first opened its doors in 2016. By statute, the Ombudsman is housed within the Office of the Attorney General (“OAG”) and is supported by the same OAG staff that support the PIACB. S. Spencer Dove serves as the program’s Administrative Officer and Assistant Attorney General Sara Klemm serves as legal counsel. The OAG also recently authorized the hiring of a second administrator, a critical position that has been filled by Kentiara Moore. 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

Since inception, the Ombudsman has tracked certain information about the program’s operations, including caseload volume, time required to bring mediations to closure, types of disputes submitted for mediation, and types of requesters and agencies participating in mediation. FY 2024 is the second full year of operation under the changes made by Chapter 658 of the 2021 Acts of the Maryland General Assembly (referred to as “H.B. 183” which was titled the “Equitable Access to Records Act”). These changes integrated the work of the Ombudsman and PIACB by expanding the jurisdiction of the Board to include the authority to review and decide complaints about the denial of access to records (and certain other issues) if mediation through the Ombudsman fails to resolve the dispute. The changes also included new requirements that

mediations be completed within 90 days absent agreement to extend the deadline, as well as a new requirement that the Ombudsman issue a “Final Determination” that summarizes the dispute and its outcome in mediation.

The Board and Ombudsman in their joint report recommending these changes projected the likely impact of their recommendations on caseloads and staffing needs.¹ The Ombudsman is now able to report, based on two full years of data, that the projected impacts are largely borne out. Specifically, since H.B. 183 went into effect on July 1, 2022, the expected need for two additional staff to effectively manage the additional tasks, increased caseload and other changes made by H.B. 183 is apparent.

As discussed in this report, the combined impact of a substantial increase in requests for Ombudsman mediation and other assistance together with the additional tasks entailed by H.B. 183, without the addition of staff to increase program capacity, has resulted in increasingly lengthy queues for program users and a diminished capacity to timely address requests for mediation or to engage in discretionary activities, such as PIA trainings. In fact, at the start of FY 2025, for the first time in the program’s history, the Ombudsman was forced to put all new training requests on hold in order to devote all staff time to the chronic backlog of requests for mediation.

In other respects, however, program metrics during FY 2024 reflect a great deal of consistency with prior years, including in the make-up of program users, the level of participation in mediation, the types of PIA disputes presented for mediation and other requests for PIA assistance received by the program. These and other trends are elaborated in our discussion of program metrics below.

¹ Office of the Public Access Ombudsman and State Public Information Act Compliance Board. (December 27, 2019). *Final Report on the Public Information Act*. https://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIACB/122719_Final_Report_on_the_PIA.pdf.

Program Metrics

Figure 1: Ombudsman Caseload & Closure Rate					
Time Period	Carry-Over from Prior Year	New Mediation Matters	New HD Matters	Total New Matters	Mediations Closed²
FY 2024	53	299	337	636	273 or 78%
FY 2023	28	275	251	526	250 or 83%
FY 2022	52	215	168	383	239 or 90%
Since Inception	N/A	2055	1592	3647	1976 or 96%

Figure 1 shows the overall volume of the Ombudsman’s caseload, consisting of both requests for mediation and informal requests for assistance (referred to as “Help Desk” or “HD” matters) in FY 2024. As reflected by this data, the program received the largest number of new requests for mediation (299) and help desk matters (337) in the program’s history. In addition to the combined 636 new matters received in FY 2024 – which amounts to 110 more new matters than were received during FY 2023 – the program also carried over a larger number of pending mediations (53) at the outset of FY 2024 than was the case at the outset of FY 2023 (28)³.

On a month-to-month basis during FY 2024, the number of matters carried over also increased, averaging 60 mediations carried-over per month as compared to an average of 42 mediations carried-over per month during FY 2023. Because longer mediation queues and wait periods reduce the utility of mediation as an efficient and timely remedy to resolve PIA disputes, it is troubling that there was an even larger number of matters carried over at the start of FY 2025 (79) with an average of 79 matters carried over during the first three months of the new fiscal year.

If unchecked, this trend will result in increasingly long wait periods for program users seeking mediation, and a compounding of the effects long wait periods have on user experience and program effectiveness. Specifically, PIA disputes will continue to fester while protracted and stale disputes become more difficult or impossible to resolve efficiently. Unresolved disputes can be expected to proliferate and become more complicated as frustrated requesters resort to submitting clusters of related requests in pursuit of the records and the information they seek. Ultimately, the compounding effect of these consequences will substantially reduce the viability of Ombudsman mediation as an effective means to address PIA disputes.

These effects can already be seen in the data we report for FY 2024, which, in addition to the sharp increase in caseload, also reflects persistently longer mediation queues, and generally

² Closure rate reflected in the “Mediations Closed” column is obtained by dividing the number of mediations 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.

³ In our FY 2023 report we noted that the relatively small number of carry-over mediations going into FY 2023 was an important factor enabling the program to handle new requests for mediation on a timely basis. By the same token, the substantially larger number of mediations carried over at the outset of FY 2024 combined with the increased number of new requests for mediation throughout the year, substantially increased the wait period for program users during FY 2024.

longer periods during which mediations remain pending before being brought to conclusion, factors which we believe have contributed to an increased percentage of mediations – 36% – closed as “unresolved” or “partially resolved” as reflected in the Final Determination issued at the conclusion of each mediation. Indeed, as we discuss regarding **Figure 5** (“Length of Time to Conclude Mediations”), *infra*, the program was required to extend the statutory 90-day period allowed to complete mediations in approximately 17% of matters and overall, as reflected in **Figure 6** (“Outcome of Mediations”), closed only 50% of mediations as fully resolved, down from 67% in FY 2023.

For these reasons, the Ombudsman has prioritized and is working with the OAG to add the staff capacity needed to mitigate the consequences of a significantly larger caseload and additional requirements applicable to Ombudsman mediations.

Time Period	Individual	Professional Occupational User
FY 2024	72%	28%
FY 2023	64%	36%
FY 2022	81%	19%
Since Inception	65%	35%

For a full breakdown of program users, please see the Ombudsman’s Annual and “Since Inception” Statistical Reports included as a supplement to this report.

Figure 2 reflects the types of requesters using the Ombudsman program and **Figure 3** reflects the agencies participating in mediation during FY 2024. Most requesters this year, as in all previous years except for FY 2021, were individuals seeking assistance for purposes unrelated to their business or occupation. At the same time, as in prior years, the Ombudsman continued to work with a diverse group of professional and occupational users, including press and media outlets, non-profit organizations, private attorneys, businesses, and others.

Time Period	State	Local*	Other**
FY 2024	28%	28%	44%
FY 2023	27%	27%	45%
FY 2022	30%	24%	46%
Since Inception	34%	25%	41%

**Includes regional, county, and municipal agencies.
**Includes public school districts, higher education institutions, law enforcement agencies (police, fire, and state’s attorneys’ offices), and agency-initiated mediations with requesters*

Figure 3 reflects the type of agencies participating in mediation during FY 2024, and, overall, reflects that there was a continued high rate of agency consent to mediation (89%) with 143 unique agencies participating in mediations.⁴ In all previous years, with the exception of FY 2021, state and local agencies have been approximately equally represented in the Ombudsman’s caseload. FY 2024 was consistent with prior years as reflected by the equal participation by state (28%) and local

(28%) agencies. PIA requests made to public school districts, higher education institutions, and

⁴ In most instances in which mediation was declined (7%), a mandatory exemption or other dispute in which the agency for some other reason had no flexibility was involved. In the remaining 4% of matters, our office did not obtain an agency response to a request to mediate a PIA dispute because the dispute presented for mediation became moot due to outside factors or the mediation request was withdrawn.

law enforcement agencies (*i.e.*, police, fire and state’s attorneys’ offices), which are captured as “Other” in **Figure 3**, comprise a combined 44% of all agencies participating in mediation, reflecting the continued strong public interest in educational affairs (particularly K-12 public schools) and law enforcement activities.

Figure 4 shows the relative percentage of disputes submitted for mediation involving either “no response” to a PIA request, or a partial, incomplete, or non-responsive agency response – collectively referred to as “MIA/PIN” matters – as compared to all other types of PIA disputes submitted for mediation. A further break-down of the types of issues submitted for mediation including the application of exemptions (43%), excessive fees (11%) or the denial or failure to respond to a fee waiver request (4%) is provided in the summary attachment to this report. See Appendix A, page 60.

In FY 2024, 46 of 108, or approximately 41%, of all MIAs were successfully resolved as HD matters without the matter progressing to an actual mediation. As a result, these types of disputes continued to decrease as a percentage of the Ombudsman’s caseload even though their frequency as the reason for requesting program assistance did not diminish overall.⁵ The Office is continuing efforts to reduce the level of “MIA/PINs” through training and outreach activities within its capacity. Generally, however, the Ombudsman believes that the improvements in efficiency the program can achieve by refining or adjusting procedures around the opening and management of mediation files *versus* the handling of HD matters that do not result in the immediate opening of a mediation file have already been achieved. Thus, the Office does not believe that there are any additional significant efficiencies that can be achieved by these means alone.

Figure 4: Disputes Presented for Mediation		
Time Period	MIA/PIN	Other
FY 2024	34%	66%
FY 2023	44%	56%
FY 2022	52%	48%
Since Inception	45%	55%
<i>For a full breakdown of each PIA dispute, please see the Ombudsman’s Annual and “Since Inception” Statistical Reports included as a supplement to this report.</i>		

Figure 5: Length of Time to Conclude Mediations					
Time Period	3 Weeks	6 Weeks	9 Weeks	12 Weeks	12+ Weeks
FY 2024	15%	12%	17%	21%	36%
FY 2023	27%	21%	23%	16%	18%
FY 2022	18%	16%	17%	11%	38%
Since Inception	28%	18%	16%	12%	27%

Figure 5 illustrates the challenges experienced in FY 2024 in concluding mediations on a timely basis, and in bringing mediations to conclusion within the statutory 90-day (*i.e.*, 12 week)

⁵ MIAs can often be handled efficiently as HD matters because once a PIA request is made, a written PIA response is required. See GP § 4-203(b)(1) and (c)(1). This case management procedure maximizes program capacity by ensuring that the Ombudsman is not engaged until there is a specific substantive PIA issue or dispute to be addressed. It is not uncommon, however, for a matter that begins as an MIA to progress to a matter requiring mediation once the agency issues its written response.

deadline. The increase in the time to conclude mediations has been impacted by multiple factors, with several key factors deserving mention:

- The program received a record number of new mediation requests and also carried over a record number of mediations from FY 2023 into FY 2024; this trend is also reflected in the program’s month-to-month carry-over throughout FY 2024 which has directly impacted the length of time program users are required to wait to begin mediation. Of concern, the trend of an increasing number of carry-over matters continued into the beginning of FY 2025 and remained higher than in all previous years during the first three months of FY 2025.
- The integration of the mediation remedy available through the Ombudsman and the decisional remedy available via complaint to the Board requires increased precision and documentation of the PIA issue or dispute presented for mediation at both the intake and closure phases of each mediation matter.
- The program already has maximized – and our program metrics already reflect – the efficiencies that can be achieved through the streamlined protocols and procedures that we developed, implemented and reported in FY 2022 and 2023.

We conclude that while the program has maximized efficiencies within its existing staff capacity, this success will not prevent a compounding of the consequences we have discussed resulting from the sharp increase in pending mediations and the resulting increase in wait times experienced by an increasing number of program users. Because the utility of PIA mediation is closely tied to the Ombudsman’s ability to address disputes sooner rather than later, the program’s overall success and effectiveness in fulfilling the legislative intent underlying its creation depends upon the Ombudsman’s ability to bring parties together promptly in a constructive conversation.

Figure 6: Outcome of Mediations					
Time Period	Resolved	Unresolved	Partially Resolved	Did Not Pursue	Terminated
FY 2024	50%	28%	8%	9%	5%
FY 2023	67%	19%	3%	8%	3%

Figure 6 captures the outcome of PIA mediations as recorded in the “Final Determination” that now must be issued at the conclusion of each mediation. Typically, the Final Determination reflects one of the following dispute outcomes:

1. “Resolved” (*i.e.*, matter is fully resolved);
2. “Unresolved” (*i.e.*, matter is entirely unresolved);
3. “Partially Resolved” (*i.e.*, one or more but not all discrete issues presented within a dispute are resolved);
4. “Did Not Pursue” (*i.e.*, the request for mediation was withdrawn or abandoned by the party initiating the mediation); or
5. “Terminated” (*i.e.*, by the Ombudsman in circumstances where one or both parties fail to engage with the process or fail to abide by the written standards of conduct applicable to the mediation).

Figure 6 reflects that FY 2024 mediation outcomes in certain respects exceed the parameters initially projected by the Ombudsman and Board in 2019 but are within or close to

those parameters in others. Specifically, the Board and Ombudsman projected that approximately 25% of PIA mediations (between 50 and 60 per year) would be closed as “unresolved” or “partially resolved” and that about 50% of Board-eligible matters closed with these outcomes likely would proceed to Board review. The percentage of matters closed by the Ombudsman as “unresolved” and “partially resolved” in FY 2023 came close to these projections, totaling 22%. In FY 2024, the percentage rose to 36%, or a total of 98 mediations closed as “unresolved” or “partially resolved”⁶. Of these 98 mediations, 43 resulted in complaints being filed with the Board which is consistent with the Ombudsman and Board 2019 projections. As the integrated ADR process for PIA disputes instituted by H.B. 183 enters its third year of operation, we expect outcomes to continue trending as reflected by this data and to remain approximately consistent with the original 2019 projections regarding the number and percentage of disputes progressing to the Board for review and decision.

Outreach & Training

The Ombudsman regularly receives requests for PIA training and other assistance from both requesters and custodial agencies. During FY 2024, the Office on request conducted 12 PIA trainings and presentations, an average of 1 training per month. The majority of these were conducted in-person at the request of the host agency or jurisdiction and consisted of an overview of the PIA, with emphasis on the types of issues most frequently encountered by the agency or constituency. Trainings conducted by the Ombudsman and staff are listed in the statistical report included at Appendix A, pages 60 through 64.

In FY 2023, the Office launched a new training program referred to as “Brown Bag Lunch Trainings.” These trainings were held online during the lunch hour on a quarterly basis. Each Brown Bag training focused on select PIA topics of interest allowing the participants to take a deeper dive into topics that present recurring issues or problems. Each session was open to both requesters and custodians, thereby allowing and providing an informal and convenient forum for attendees to hear and learn from the other party’s experience and concerns. The trainings conducted in this format to date have covered:

1. “PIA 101” – November 16, 2022 (189 attendees).
2. “Deliberative Process & Discretionary Exemptions” – April 20, 2023 (138 attendees).
3. “Making an Effective PIA Request” – July 19, 2023 (73 attendees).
4. “Protecting Personal Information & Anonymizing Data” – March 6, 2024 (103 attendees).

To maximize the reach of each “Brown Bag” session, the Ombudsman records and posts each video on the Office’s [YouTube Channel](#). In addition to the “Brown Bag” series, the Office continues to conduct trainings upon request by specific agencies or groups. These trainings are

⁶ Not all matters closed as “unresolved” and “partially resolved” involve issues within the Board’s jurisdiction. Further, it is the Board, not the Ombudsman, that determines whether the Board actually has jurisdiction over a complaint that it receives. Lastly, the Office received 69 mediation requests which are not included in the reported mediation metrics. Of these 69 requests, 65 were closed under COMAR 14.37.02.07C (mediation not attempted due to conflict of interest) and 4 were closed under COMAR 14.37.02.05 (mediation declined because request was repetitive). Many of these 69 matters are reflected in the Board’s 114 complaints received during FY 2024.

also recorded, but the recordings are circulated only to the individual attendees together with the written material used for that training. This approach has enabled the Office to provide engaging and in-depth information about the PIA while providing trainings focused on the needs, experiences, and interests of particular agencies and groups.

The Ombudsman plans to update trainings and related materials to include the growing body of PIACB decisions, many of which deal with issues and exemptions that come up repeatedly in the Ombudsman's mediation caseload. While trainings are currently on hold due to the demands of the mediation queue, we look forward to exploring additional topics such as the following as soon as our caseload and program capacity allow:

- Updates to the PIA law and proposed changes.
- Board decisions since July 1, 2022.
- Frequently cited PIA exemptions such as GP §§ 4-335 ("Trade Secrets; Confidential Information"), 4-336 ("Financial Information") and 4-351("Investigations Intelligence Information; Security Procedures").

All of the Ombudsman's training and outreach initiatives will continue to depend on program capacity considering increases in mediation requests and limited program resources.

Looking Forward: FY 2025

For the reasons detailed in this report, the addition of staff to address both the backlog in the mediation queue as well as the overall increase in the number of mediation and other requests for assistance the program receives is the top priority for FY 2025.

In 2019, the Board and Ombudsman projected that implementation of their joint recommendations, as reflected ultimately by the changes made by H.B. 183, would require the addition of two new staff, one of whom would have to be an attorney and the other, either an administrator or paralegal. The 2019 joint report explained the expected need for this added capacity by reference to the new requirements of H.B. 183 applicable to Ombudsman mediations (principally, the requirement that a Final Determination be issued for each mediation and that mediations be concluded within 90 days) and the Board's expanded jurisdiction, which would increase the Board's caseload. The projections made by the Board and Ombudsman, in 2019, including the projected need for additional staff, are now apparent. The OAG recently hired a contractual administrator to support the Ombudsman and Board, bringing the total number of staff, including counsel, to three. The Ombudsman is grateful for the additional support but continues to believe that current staff levels ultimately will not meet the program demands.

Because the addition of needed staff is the only means to prevent the continual compounding of the types of problems detailed in this report, the Ombudsman must continue to prioritize this need as critical to the program's effectiveness and ability to fulfill the legislature's purpose in creating the Ombudsman and Board remedies for PIA disputes.

CONCLUSION

The Ombudsman wishes to again thank the Attorney General for his support of the Ombudsman program and the consistently outstanding staff support the OAG has provided to the program. 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 Spencer Dove, Sara Klemm, and Kentiara Moore who tirelessly support the Office of the Public Access Ombudsman, as well as OAG intern, Catherine Bauer, graduate student in conflict resolution, who provided valuable assistance to the Ombudsman during FY 2024.

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 via Twitter @MPIA_Ombuds.

Respectfully submitted,
Lisa Kershner
Public Access Ombudsman
September 2024

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 2024 - Annual Report
 July 1, 2023 to June 30, 2024



Annual Report FY 2024

636 2024

- ◆ 299 - Mediation requests
- ◆ 337 - 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.

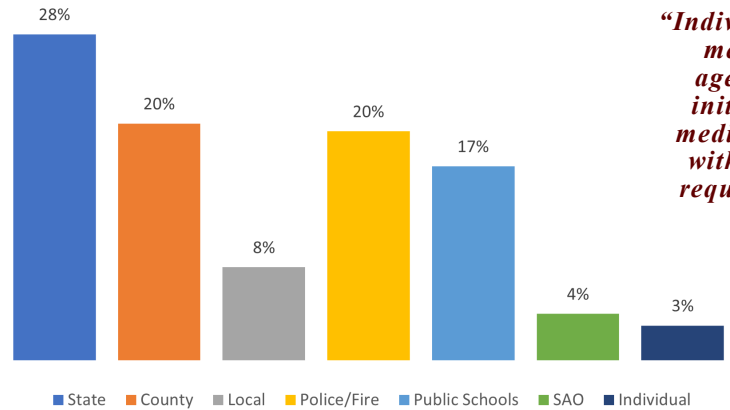
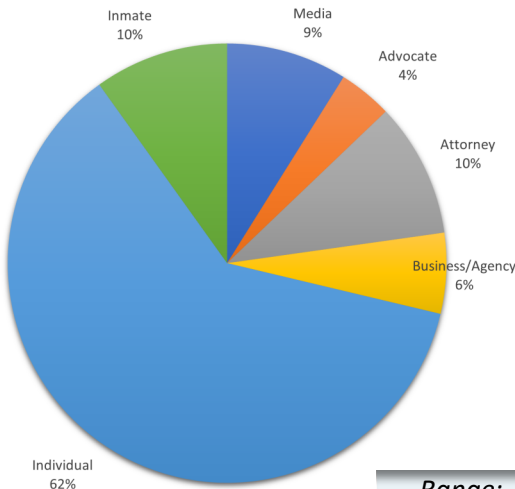
Total Mediation Cases, as of June 30, 2024	
Carry over from FY 2023	53
New/Incoming cases in FY 2024	299
Total Number of Mediation cases	352
Total Mediation cases Closed FY 2024	273
Mediation cases carried over to FY 2024	79

The Agencies

143 unique agencies participated in mediation matters with the PIA Ombudsman in Fiscal Year 2024, including agencies at the state, county, and municipal levels.

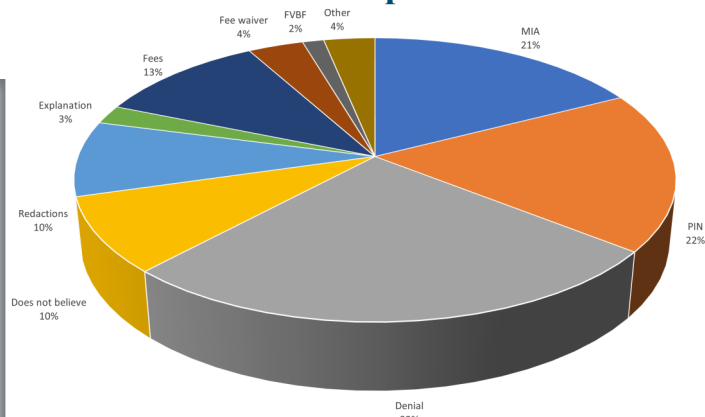
The Requesters

Requesters: Professional/Occupational requesters make up **28%** of requests for assistance, and all individuals make up **72%**.



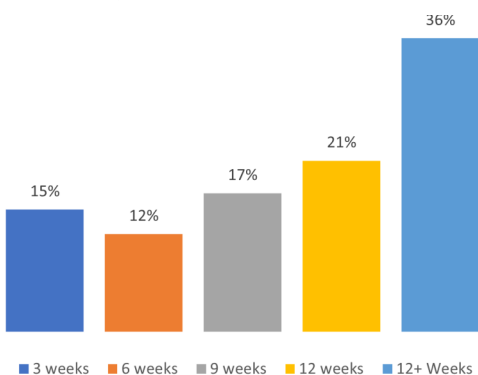
"Individuals" means agency-initiated mediations with PIA requesters

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 – 186 days.
15% of the cases are closed within 3 weeks and **83%** by 90 days.

- Misapplication of exemption - 42%
- Redaction inappropriate - 10%
- Entire record withheld - 32%
- MIA: No Response - 21%
- Partial, nonresponsive, or incomplete response - 22%
- Fees excessive - 13%
- Fee waiver request denied or ignored - 4%
- Does not believe response - 10%
- Asked for explanation of response - 3%
- Other - 4%
- Frivolous, Vexatious, Bad Faith Request - 3%

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<http://piaombuds.maryland.gov>

**MPIA Ombudsman
on Twitter**
@MPIA_Ombuds

2024 Legislative Session

[Click here to see all bills tagged “Public Information” in the 2024 Session](#)

PIACB Decisions

As of July 1, 2022, the PIA Compliance Board’s jurisdiction was expanded to now allow it to review and resolve complaints not resolved in mediation pertaining to:

- A records custodian has denied inspection of a public record;
- A records custodian has charged an unreasonable fee higher than \$350 for public records;
- A records custodian has failed to respond to a request for public records; and
- A PIA applicant's request is “frivolous, vexatious, or in bad faith”

Between FY 2023 and FY 2024, the Board issued a total of 95 decisions. Board decisions are readily available to the public online.

[Click here to access all of the PIA Compliance Board’s decisions](#)

RESOURCES/LINKS

ALL TITLES BELOW ARE HYPERLINKED

- ◆ [Public Access Ombudsman’s Website \(request mediation\)](#)
- ◆ Public Access Ombudsman’s Interpretive Regulations
- ◆ [PIA Manual](#) – 18th Edition, October 2023
- ◆ [Maryland State Archives](#) – a resource for custodian record management and retention practices
- ◆ [Office of Government Information Services \(OGIS-FOIA\)](#)
- ◆ [Federal FOIA](#)

Outreach FY 2024

July 1, 2023 – June 30, 2024

Presentations, Workshops, Trainings, and Other Outreach

The Office of the Public Access Ombudsman conducted both in-person and virtual trainings and presentations .

- Brown Bag Series #3 – *Making an Effective PIA Request*, July 19, 2023
- Prince George’s County Government PIA Representatives, *MPIA: A Comprehensive Overview* – October 12, 2023
- Maryland Municipal Attorneys Luncheon – November 9, 2023
- Maryland Association of Counties Winter Conference – *MPIA: A Comprehensive Overview* – December 6, 2023
- Queen Anne’s County Law Enforcement, *MPIA: A Comprehensive Overview* – December 14, 2023
- Department of Public Safety & Correctional Services, *MPIA: A Comprehensive Overview* – December 19, 2023
- Governor’s Office of Community Initiatives, *MPIA: A Comprehensive Overview* – January 30, 2024
- Worcester County Government, *MPIA: A Comprehensive Overview* – February 29, 2024
- Brown Bag Series #4 – *Protecting Personal Information & Anonymizing Data*, March 6, 2024
- Frederick County Sheriff’s Office, *MPIA: A Comprehensive Overview* – March 20, 2024
- Maryland Association of Counties Attorney Luncheon, *PIA Alternative Dispute Resolution Processes* – May 16, 2024
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Select Publications

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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
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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, 2024



99 Months
Since
Inception

3647 March 30, 2016

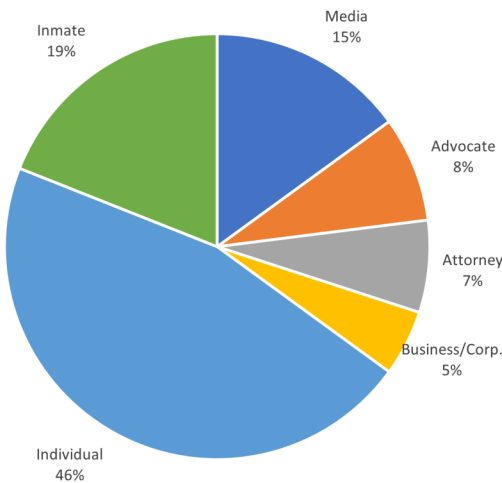
- ♦ 2055 - Mediation requests
- ♦ 1592 - Other / "help-desk" inquiries

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

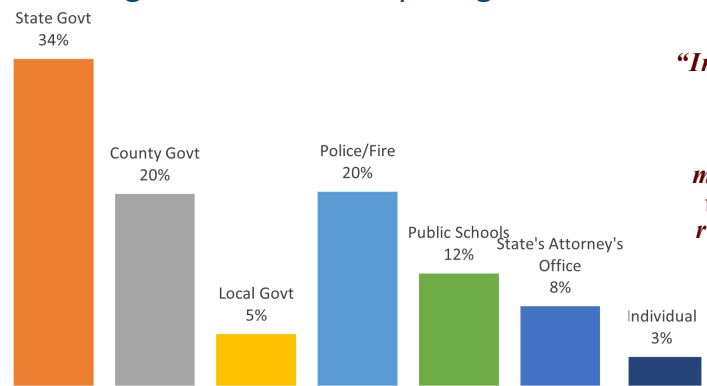
Aggregated Requesters: Professional/Occupational categories make up 35% of requests for assistance and all individuals make up 65%.



The Agencies

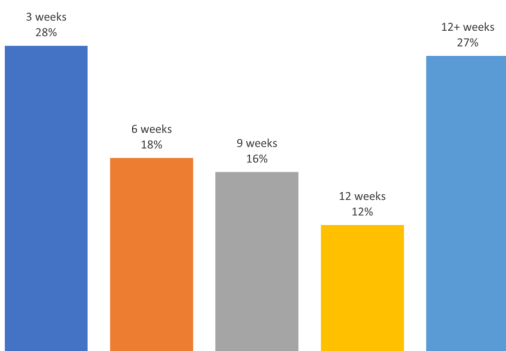
Approximately 390 unique agencies participated in mediation matters with the PIA Ombudsman since the beginning of the program, including agencies at the state, county and local levels.

What Agencies are Participating in Mediation?



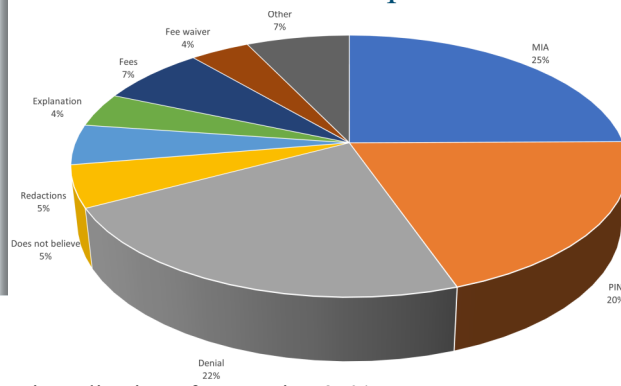
"Individuals" means agency-initiated mediations with PIA requesters

How Long Does Mediation Take?



28% of Ombudsman matters are closed within 3 weeks and **74%** 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, 2024	
New/Incoming Cases between 3/30/16–6/30/24	2055
Closed as of 6/30/24	1976

- Misapplication of exemption 27%
- Denial 22%
- Fees excessive 7%
- Redaction inappropriate 5%
- Entire record withheld 22%
- Fee waiver denied or ignored 4%
- MIA: No Response 25%
- Does not believe response 5%
- Partial, nonresponsive, or incomplete response 20%
- Asked for explanation of response 4%
- Other 7%

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Twitter & YouTube: @MPIA_Ombuds

Ombudsman's Website:

<http://piaombuds.maryland.gov>

**MPIA Ombudsman
on Twitter**
@MPIA_Ombuds

2024 Legislative Session

[Click here to see all bills tagged “Public Information” in the 2024 Session](#)

PIACB Decisions

As of July 1, 2022, the PIA Compliance Board’s jurisdiction was expanded to now allow it to review and resolve complaints not resolved in mediation pertaining to:

- A records custodian has denied inspection of a public record;
- A records custodian has charged an unreasonable fee higher than \$350 for public records;
- A records custodian has failed to respond to a request for public records; and
- A PIA applicant's request is “frivolous, vexatious, or in bad faith”

Between FY 2023 and FY 2024, the Board issued a total of 95 decisions. Board decisions are readily available to the public online.

[Click here to access all of the PIA Compliance Board’s decisions](#)

RESOURCES/LINKS

ALL TITLES BELOW ARE HYPERLINKED

- ◆ [Public Access Ombudsman’s Website \(request mediation\)](#)
- ◆ Public Access Ombudsman’s Interpretive Regulations
- ◆ [PIA Manual](#) – 18th Edition, October 2023
- ◆ [Maryland State Archives](#) – a resource for custodian record management and retention practices
- ◆ [Office of Government Information Services \(OGIS-FOIA\)](#)
- ◆ [Federal FOIA](#)

Outreach FY 2024

July 1, 2023 – June 30, 2024

Presentations, Workshops, Trainings, and Other Outreach

The Office of the Public Access Ombudsman conducted both in-person and virtual trainings and presentations .

- Brown Bag Series #3 – *Making an Effective PIA Request*, July 19, 2023
- Prince George’s County Government PIA Representatives, *MPIA: A Comprehensive Overview* – October 12, 2023
- Maryland Municipal Attorneys Luncheon – November 9, 2023
- Maryland Association of Counties Winter Conference – *MPIA: A Comprehensive Overview* – December 6, 2023
- Queen Anne’s County Law Enforcement, *MPIA: A Comprehensive Overview* – December 14, 2023
- Department of Public Safety & Correctional Services, *MPIA: A Comprehensive Overview* – December 19, 2023
- Governor’s Office of Community Initiatives, *MPIA: A Comprehensive Overview* – January 30, 2024
- Worcester County Government, *MPIA: A Comprehensive Overview* – February 29, 2024
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