

Proactive Disclosure Saves Time and Money, and It's the Law

January 28, 2019

The central purpose of the Public Information Act ("PIA") is to provide access to information about the affairs of government. To achieve this, the PIA requires agencies to disclose public records—that aren't otherwise exempt—"with the least cost and least delay to the person or governmental unit that requests the inspection." Md. Code, General Provisions Art. ("GP"), § 4-103 (b).

In furtherance of this goal, the PIA establishes a series of deadlines ensuring that agencies respond to a request "promptly, but not more than 30 days after receiving the application." GP § 4-203. And if an agency expects that it can't fully respond within 10 working days, it must issue an initial "10 day letter" that provides, among other required information, "the reason for the delay." *Id.*

How can busy agency staff consistently meet these deadlines while also making sure that they adequately search for responsive records, and review those records for the sensitive information protected by the PIA? We think that at least part of the answer lies in proactively disclosing certain basic information, a practice which not only can save agencies time and resources, but is actually required by the PIA.

Did you know that since 2015, the PIA requires every agency to designate an official PIA custodian and to post the contact information for that custodian on the agency's website? GP § 4-503(a). Did you also know that the PIA also requires every agency to designate and maintain a list of "readily available" records that are to be made available to anyone upon request? GP § 4-201(c).

Furthermore, state law also now requires agencies to designate an official "Records Manager" who is responsible for certain functions related to records management. State Gov't Art., § 10-610. Each of these measures is crucial in fulfilling the PIA's mandate, and the information below can assist agencies in complying.

Identify your PIA Contact.

- Designate a PIA coordinator or custodian of records, and make that person's contact information available on your website. If you don't have a website, make it available in a publicly accessible place. GP § 4-503(a)(3). That way, a requestor will know who to contact and the agency won't need to bounce the request around.
- Annually update this information, if necessary, and submit the information to the Office of the Attorney General ("OAG") by emailing piaopengov@oag.state.md.us. GP § 4-503(a)(f). The OAG keeps a list of all agency PIA contacts in [Appendix J](#) of the OAG's **PIA Manual**, and also here: <http://www.marylandattorneygeneral.gov/Pages/OpenGov/piamanual.aspx>. Make sure your agency's information is listed and current.

Identify Readily Available Documents.

- Designate the types of public records your agency can make available to anyone upon request. GP § 4-201(c)(1).
- Keep a list of these readily available records, preferably on your website. GP § 4-201(c)(2). That way, someone who wants a record on the list will know that they can expect a speedy

response, and agency staff will know that the record can be released without further expending time and resources. Try it! It really can save your agency time and money in the long run.

Establish a PIA Rapid Response System. Implementing the two requirements above will go a long way in helping you implement a rapid response system to PIA requests, and will facilitate your compliance with the PIA's deadlines. Additionally, your agency might consider the following tips to ensure a smooth and efficient PIA response system:

Designate an alternate/backup PIA coordinator. In the event that your designated PIA coordinator takes extended leave or has an unforeseen emergency, it's a good idea to have a back-up contact who is responsible for receiving and responding to PIA requests. Almost a quarter of the disputes that come across the Ombudsman's desk involve a requestor who has not received any response from the agency. An agency can easily prevent this problem if it has designated a PIA custodian at all times.

Hold Trainings. Hold regular trainings for the employees responsible for PIA responses. In the Ombudsman's experience, agencies that receive PIA trainings have fewer disputes with requestors.

Work closely with your designated records manager. The ability to retrieve documents is key to your PIA response, and there are rules about what documents you need to keep and those you need to dispose of. For example, do you have a records retention schedule? If so, do you know what it contains? Your PIA custodian should work closely with your records officer to make sure that the agency is best able to respond to PIA requests. For more information on records management, visit https://msa.maryland.gov/msa/intromsa/html/record_mgmt/welcome.html.

When in doubt, contact your attorney. Most agencies have access to an attorney who guides staff on legal issues. If you have a question about whether or not you can legally disclose a record or specific information in that record, you should ask your attorney. The Ombudsman has found that many mediations could have been avoided if the agency had gone to its attorney first with any questions.

Thank you for reading *Open Matters*. By following these tips for proactive response you can save time and resources for you and your co-workers. The Ombudsman's office wishes you a healthy and happy New Year and hopes this advice helps you in your work to efficiently and proactively respond to PIA requests.