

## Why Am I Being Charged? A Q&A Breakdown of Fees Agencies Charge for Maryland PIA Requests

June 18, 2018

Maryland Public Information Act (PIA) fees are governed by [section 4-206 of the PIA](#). An agency is allowed to charge a reasonable fee for the search for and preparation of requested records.

### **Q. What is a reasonable fee?**

**A.** A “reasonable fee” is not a specific amount. Fees can range from \$20 to thousands of dollars. It’s all about the request. The more complicated or nonspecific a request, the more likely that the fees will be higher because the agency will have to devote more staff time and resources to provide a complete response.

An agency must provide the first two hours of work for free, but after that they may calculate and charge the prorated salaries of the employees involved in searching for, preparing, and reviewing the records. The bottom line? A “reasonable fee” means the fee must be tied to the agency’s actual costs in responding to the request.

### **Q. What about flat-fees? How is a flat fee tied to actual costs?**

**A.** Sometimes, agencies may charge a flat fee for a specific record or set of records, such as a case file. Also, agencies may charge a flat fee for making copies, such as 15 cents per page. This practice is allowed as long as the price per record or copy bears a reasonable relationship to the actual cost of producing the record or making the copies. In short, any flat fee must still be related to the agency’s actual costs, and cannot be set artificially high simply to deter PIA requests.

### **Q. But what about a fee waiver? Does the agency have any leeway to waive fees?**

**A.** Under [section 4-206 of the PIA](#), an agency is obligated to consider a fee waiver request, be it a request supported by an [Affidavit of Indigency](#), or a request on other grounds. However, the agency has broad discretion to determine whether or not it is in the public interest to grant the waiver request. Although the agency has broad discretion to deny a waiver request, it must be able to show that its decision was not arbitrary or capricious, but was instead based upon a consideration of the applicant’s ability to pay and other relevant public interest factors.

### **Q. What if I still don’t think the fee is reasonable, i.e., tied to actual agency costs?**

**A.** The Ombudsman is available for mediation if you would like to dispute the reasonableness of a fee. Or, in cases of fees exceeding \$350, you can submit a complaint to the PIA Compliance Board.

The Ombudsman’s mediation process is voluntary, and attempts to get the parties to agree to a reasonable solution. The Ombudsman does not have authority to decide or compel any party to do anything. For example, the Ombudsman cannot compel an agency to reconsider a fee waiver request even if the requestor has proven his/her indigency. Rather, the Ombudsman tries to help the parties reach a voluntary agreement. All information provided to the Ombudsman as part of the mediation process is maintained in confidence, and can only be disclosed to another with advance written permission of the parties. **For more information on the mediation process or to submit a request for mediation, email [pia.ombuds@oag.state.md.us](mailto:pia.ombuds@oag.state.md.us).**

The PIA Compliance Board hears complaints involving an agency's imposition of fees for a PIA request. Specifically, a requester who is assessed a fee of more than \$350, and who believes that the fee is unreasonable may file a complaint with the Board. The agency will have an opportunity to respond to the complaint, after which the Board may hold an informal conference to hear from both the requester and the agency. The Board will issue a written opinion and, if the Board finds that the custodian charged an unreasonable fee, may order the custodian to reduce the fee to a reasonable amount or refund the excessive portion of a fee that was paid.

The Board cannot hear complaints that involve fees less than \$350, or that arise out of an agency's handling of a PIA request, including the denial of a fee waiver request. To file a complaint with the Board, you may **email the board at [piaopengov@oag.state.md.us](mailto:piaopengov@oag.state.md.us)**, or consult the information on the **board's**

**website: <http://www.marylandattorneygeneral.gov/Pages/OpenGov/piacb.aspx>**. While there, you can also find information on the Board's procedures, meeting notices, minutes, and opinions.

*~This post is based on an article written by the Public Access Ombudsman's office for the Office of the Public Defender. See the article at [http://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2018/06/OPD.PC\\_Spring2018.pdf](http://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2018/06/OPD.PC_Spring2018.pdf).*