

PIA Ombudsman Program – Impact of Covid-19 and Mediation Metrics, Part 1

September 27, 2021

On September 24, 2021, the Ombudsman submitted the annual report of her office, as an appendix to the PIACB 6th Annual Report, to the Legislature. Below is an excerpt that discusses lessons learned during the Covid-19 pandemic. Her entire report can be found on the [Board's website posting of its report](#) in Appendix C.

In March 2020, the Governor declared a state of emergency in Maryland due to the Covid pandemic, and it remained in effect throughout FY 2021. During this time, the Ombudsman program has operated almost entirely remotely, as have many of the state and local government offices with which the Ombudsman works to resolve PIA problems and disputes. The Ombudsman's data demonstrates that while there have been a number of shifts in the mediation caseload and length of time required to conclude mediations, the overall need for access to public records during the pandemic did not diminish.

Figure 1 below shows that the overall volume of the Ombudsman's caseload, consisting of requests for mediation and informal requests for assistance (referred to as "Help Desk" or "HD" matters), remained substantially the same in FY 2021 as compared to earlier periods.

Figure 1: Ombudsman Caseload & Closure Rate^[1]

Time Period	Carry over from prior year	New Mediation Matters	New HD Matters	Total New Matters	Mediations Closed*
FY 2021	46 from 2020	280	212	492	272 or 83%
FY 2020	19 from 2019	262	235	495	235 or 84%
CY 2019	19 from 2018	279	226	505	252 or 85%
CY 2018	25 from 2017	210	171	406	215 or 91%

CY 2017	63 from 2016	242	68	310	274 or 90%
---------	--------------------	-----	----	-----	------------

2016 (9 mos)	N/A	178	32	210	115 or 65%
--------------	-----	-----	----	-----	------------

Since Inception	N/A	1308	839	2147	1254 or 96%
-----------------	-----	------	-----	------	-------------

**Closure rate reflected in the “Mediations Closed” column is obtained by dividing the number of mediation matters closed by the total number of open mediations during the period, which includes both “New Mediations” and those carried over from the prior year.*

While the overall volume of incoming requests for mediation is largely unchanged from prior periods, the Ombudsman’s caseload reflects other shifts that are believed to be related to the pandemic. **Figure 2** below reflects a substantial increase in requests for mediation from professional and occupational users of the PIA, a group which includes press and media outlets, non-profit organizations, private attorneys and businesses, among others. As shown below, occupational program users comprised the majority (51%) of all incoming requests for PIA mediation during FY 2021 for the first time in the program’s history. By contrast, individuals using the PIA for purposes unrelated to their business or occupation comprised a substantial majority of the requests for mediation in all prior years.

Figure 2: Program Use – Individual – Occupational Users

Time Period	Individual	Professional Occupational User
FY 2021	49%	51%
FY 2020	72%	28%
CY 2019	69%	31%
CY 2018	66%	34%
CY 2017	64%	36%

CY 2016 (9 months)	55%	45%
Since Inception	60%	40%

Figure 3 reflects that there was also a shift in FY 2021 in the types of agencies participating in mediations. In prior years, both state and local agencies have tended to be more or less equally well-represented in the Ombudsman’s caseload; in FY 2021, however, there was a greater percentage of mediation requests involving state agencies (45%), and a corresponding reduction in matters involving local government (17%). The Ombudsman believes this shift may reflect a greater need for records from the state agencies leading the state’s response to the pandemic. Mediations involving PIA requests to other types of government bodies such as school districts, state’s attorneys’ offices, and other law enforcement agencies, which are captured as “Other” in **Figure 3**, remained substantial (37%), but largely comparable to the volume received in prior years.

Figure 3: Program Use – Agency Make-Up

Time Period	State	Local	Other*
FY 2021	45%	17%	37%
FY 2020	32%	31%	37%
CY 2019	35%	30%	35%
CY 2018	43%	31%	27%
CY 2017	31%	36%	33%
CY 2016 (9 months)	29%	28%	42%
Since Inception	38%	23%	29%

*Other = public school districts & law enforcement agencies

Figures 4 and 5 below document a shift in the type of issues submitted to the Ombudsman during FY 2021 and the substantial increase in the length of time required to conclude mediations. The Ombudsman’s data suggests that while most agencies attempted to respond to PIA requests during the state of emergency, many were unable to do so within the deadlines provided by the PIA, and they often required significant extensions of time to provide a complete or final substantive response. This is reflected in the substantial increase in the overall percentage of matters in which

the presenting issue was the lack of any response to a PIA request and/or the failure of an agency to issue a complete or final substantive response that included, where applicable, the actual production of disclosable public records.

Figure 4: Issues Presented for Mediation

Time Period	No/Incomplete Response	Other
FY 2021	65%	35%
FY 2020	54%	46%
CY 2019	51%	49%
CY 2018	35%	65%
CY 2017	37%	63%
CY 2016 (9 months)	53%	47%
Since Inception	50%	50%

Figure 5: Length of Time to Conclude Mediations

Time Period	3 Weeks	6 Weeks	9 Weeks	12 Weeks	12+ Weeks
FY 2021	19%	13%	11%	9%	48%
FY 2020	29%	22%	18%	11%	20%
CY 2019	44%	29%	16%	7%	4%
CY 2018	35%	25%	19%	8%	13%
CY 2017	31%	15%	12%	9%	33%

CY 2016 (9 months)	40%	23%	14%	9%	14%
Since Inception	33%	20%	14%	9%	24%

Unlike prior periods, during FY 2021, the problem of a missing or incomplete PIA response was the presenting issue in a substantial majority – nearly two thirds – of all matters submitted to the Ombudsman for mediation. In prior years, these types of problems have tended to be readily resolved once brought to the attention of a person with authority to address the matter; this often was not the case in FY 2021. Rather, during the state of emergency, these types of presenting problems tended to drag on, sometimes over very protracted periods, thereby contributing to an even greater backlog for responding agencies and for the Ombudsman.

The reasons for these problems appear to vary. Many IT departments have been heavily taxed by the necessity of supporting a remote workforce and the need to provide new services related to the pandemic or to retool existing services so that they could be safely provided. Agencies with limited electronic record management and retrieval capacities at the outset of the pandemic were at a particular disadvantage since, during the state of emergency, they had greater difficulty searching and accessing many of their hard-copy records. Some agencies had to re-deploy personnel to meet shifting needs or lost staff during the pandemic. It also appears likely that some agencies, particularly those at the heart of the state’s response to the pandemic, may also have received a heavy volume of requests that exceeded their capacity to respond.[2]

~This article was written by the Public Access Ombudsman for her blog *Open Matters*. Visit <https://news.maryland.gov/mpiaombuds/blog/> to see other articles posted by the Public Access Ombudsman’s Office.

[1] The Ombudsman does not track the length of time required to close “help desk” matters, which are requests for informal assistance or guidance that do not involve the actual mediation of a dispute. Most often, these requests are made in an effort to prevent a problem from arising and are typically addressed by the Ombudsman and staff very quickly.

[2] An emergency Order issued by the Governor on March 12, 2020, entitled *Extending Certain Licenses, Permits, Registrations, and Other Governmental Authorizations*, allowed agencies to reset deadlines the agency administered provided the agency followed certain procedures, including submitting the proposed extension to the Governor’s office, which then had 24 hours to object to the proposed extension. Absent objection from the Governor’s Office, the agency was then required to publish a notice of the extended deadline. This emergency measure was construed by the Governor’s Office of Legal Counsel to be applicable to PIA deadlines, among others. The Order is no longer in effect. The Ombudsman is aware of a number of instances in which a state agency or political subdivision followed the requisite process in order to extend otherwise applicable PIA deadlines.