

2018 Recommendations to the General Assembly

November 1, 2018

Each fall, the PIA Compliance Board (PIACB) submits a report to the General Assembly that includes information about its activities and recommendations for improvements to the Public Information Act (“PIA”). In 2018, the PIACB submitted its third Annual Report, and for the second consecutive year invited the Public Access Ombudsman to provide a report on the activities and recommendations of that Office. Below is a summary of the Ombudsman’s recommendations for legislative changes to the PIA based on her mediation work and outreach activities.

Expand the PIACB jurisdiction to include review of fee waiver denials

Many of the complaints received by the PIACB and the Ombudsman involve an agency’s denial of a request for a PIA fee waiver. This issue is not currently within the jurisdiction of the PIACB, and it often forwards these disputes to the Ombudsman for possible mediation assistance. Although the Ombudsman can request that an agency reverse its waiver denial and/or reduce its fee, she does not have enforcement authority and cannot require an agency to reconsider its position. The Ombudsman is recommending that the PIACB is particularly suited to address fee waiver denials, because it is already charged with reviewing the reasonableness of fees, and the two issues are often closely entwined. Moreover, the Ombudsman believes that expanding the PIACB’s jurisdiction to include review of fee waiver denials would provide the public with an efficient extra-judicial mechanism to resolve all PIA fee-related disputes.

Entitle indigent inmates to own case files

A significant portion of the Ombudsman’s mediation caseload involves inmates who are seeking their case files from law enforcement agencies but who cannot afford the agency’s fee. The Ombudsman agrees with the PIACB’s recommendation that an indigent inmate should be entitled to records in their own case file free of charge, and that amending the PIA to grant a one-time fee-waiver could achieve that result.

However, the Ombudsman also recommends that the Legislature consider amending the post-conviction and/or criminal discovery laws to give inmates access to their own case files without resorting to the PIA process. The Ombudsman frequently works with law enforcement agencies that are on the receiving end of such PIA requests. She has perceived that dealing with post-conviction requests for criminal case files through a discovery-like process, and not through the PIA process, could alleviate some of the burdens associated with these requests, for both inmate requesters and responding agencies.

Thank you!

The Ombudsman thanks the PIACB for providing a forum for sharing her experience and offering suggestions for improvement.

Visit <https://news.maryland.gov/mpiaombuds/paoresources/#pub> for access to the entire report.