

Ombudsman and members of the PIA Compliance Board unanimously support HB 502 / SB 590

February 14, 2020

This year marks the 50th anniversary of the Maryland Public Information Act. The “PIA” guarantees governmental transparency by requiring State and local government agencies, upon request, to allow for the inspection of their records “with the least cost and least delay,” subject to certain exceptions for confidentiality, privacy, and privilege.

Public records have changed a lot in 50 years, as government at all levels transitions into the digital age. But the core right guaranteed by the PIA — the right of citizens to know what their government is up to — has not.

In an effort to better secure this right, the General Assembly, in 2015, created two independent options for resolving PIA disputes without the need to go through the expensive, time-consuming, and often complex court process.

The first option is the Office of the Public Access Ombudsman; the Ombudsman tries to resolve all kinds of PIA disputes, but can only do so on a voluntary and non-enforceable basis. The second option is the PIA Compliance Board, an administrative board that can review and issue a decision on a PIA dispute, but only if the dispute is about a fee greater than \$350.

After four years of operation, it is clear that neither of these options is working as well as it could. On one hand, the Ombudsman has wide jurisdiction to mediate all kinds of PIA disputes — from late responses and improperly withheld records, to unreasonably broad and repetitive requests — but lacks any remedy for the many disputes she cannot resolve through mediation alone.

On the other hand, the PIA Compliance Board receives only a handful of complaints each year that fall within its extremely narrow fee jurisdiction, leaving the disputes that can’t be resolved through mediation with no remedy at all, short of a court lawsuit.

The ombudsman and board examined the scope of this problem in a December 2019 joint report, and concluded that the best solution would be to expand the jurisdiction of the board to review and decide all the kinds of PIA disputes that cannot be resolved through the ombudsman’s mediation process.

Analyzing the ombudsman’s caseload over the last four years, the report estimated that the board could be expected to receive around 60 additional disputes each year, about half of which would involve an agency’s denial or partial denial of a request.

Importantly, the report also concluded that agencies sometimes need relief from requestors who make unduly burdensome or repetitive requests, so the board should be authorized to review and provide relief for those kinds of disputes, too. Regardless of the dispute, the board’s decision would always be subject to judicial review, as it is now.

House Bill 502, cross-filed as Senate Bill 590, implements these recommendations, along with other important updates to bring the PIA into the 21st century. The bill, which has bi-partisan sponsorship, provides an efficient and user-friendly remedy for citizens and government agencies

where none currently exists, and does so by building on the two existing PIA dispute-resolution programs.

It enhances the ombudsman's mediation process by giving parties a meaningful incentive to cooperate so as to avoid board review, while simultaneously enabling that review for disputes that are in real need of a binding decision. Ultimately, the bill creates more equitable access, ensures transparency, and will help restore public trust in state and local government.

The ombudsman and members of the PIA Compliance Board unanimously support HB 502 / SB 590, and thank all of the bill's sponsors and stakeholders who are working together to ensure its passage.

Lisa Kershner is the Maryland public access ombudsman. John "Butch" West is chair of the Maryland Public Information Act Compliance Board.