

Guidance to Governmental Custodians Regarding PIA Timelines during the COVID-19 Crisis

March 23, 2020

Q. Does the Public Access Ombudsman have any guidance for State and local governmental custodians about dealing with PIA requests and PIA deadlines in the current COVID-19 crisis?

A. Although we can't say for sure, under the novel circumstances facing many State and local agencies, it is possible a court, if faced with a challenge to a particular agency's untimely PIA response, would interpret the statewide declaration of a state of emergency—and the attendant staffing and operational limitations—as providing leeway with regard to PIA timelines.

Of course, an agency should still make good faith efforts to respond to all PIA requests, and should respond promptly to those that can be handled readily and/or remotely. To the extent practicable, agencies should evaluate each incoming or pending request in order to respond as fully and promptly as it can and explain to the requestor its inability to respond more completely or within statutory timeframes when necessary and as needed.

HERE ARE SOME PRACTICAL IDEAS YOU MIGHT CONSIDER.

1. **Develop a standard initial PIA response concerning COVID-related limitations on your ability to respond** (e.g., via “auto-reply” and/or regular mail) that apprises the requestor of the limitations affecting your ability to respond and/or to fulfill PIA requests immediately, or, depending on the request, within the statutory deadlines.
2. **Let the requestor know that your agency will respond with additional information as quickly as possible, and that it will make every effort to contact them within the statutory deadline to provide a more complete assessment of when and/or how the agency anticipates it will be able to provide a full and final response including the production of disclosable records that are requested.** This lets the requestor know you are considering each request on a case by case basis and are attempting to do all in your power to answer each request as fully as possible and as quickly as possible subject to the very unusual and mandatory restrictions to which agency operations are subject.
3. **To the extent that your agency anticipates it can't respond fully to a request within the statutory deadline, explain the reasons this is so, taking into account the nature and scope of the particular request.** When necessary, ask the requestor for an extension of time to respond until _____ (fill in date or time period in which you hope or expect to be able to provide more information, or describe the contingencies which will determine when that will be). **Example:** You could ask for an extension of at least 30 days following the return to full (or at least more robust) operations and staffing.
4. **Provide standard information on remedies**, such as mediation by the Public Access Ombudsman, PIA Compliance Board review for allegedly unreasonable fees over \$350, and judicial review. The Public Access Ombudsman's Office is trying to conduct regular business remotely and will be happy to contact requestors as much as practicable. **Make yourself available to discuss with the Ombudsman specific PIA**

requests. Schedule a call by emailing lkershner@oag.state.md.us or pia.ombuds@oag.state.md.us.

Consider posting some or all of the above information to your agency's website or otherwise proactively communicating such information to people and/or groups or businesses you think may want to communicate with you about PIA matters in the coming weeks or months.

The Public Access Ombudsman's Office is open but staff currently are working entirely remotely. You can reach the Office of the Public Access Ombudsman by email to our dedicated mailbox pia.ombuds@oag.state.md.us or directly to lkershner@oag.state.md.us. Although we may not be able to respond immediately, we will make every effort to respond as quickly as possible.