

Where Are My Records?

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~This article was submitted by the Office of the Public Access Ombudsman to the Office of the Public Defender [Post Conviction Newsletter – Summer 2019](#).

Tips from the Public Access Ombudsman’s Office

The Office of the Public Access Ombudsman receives many requests from incarcerated persons who are trying to obtain materials pertaining to their underlying criminal case. They often have contacted several agencies—including local police departments, state’s attorney’s offices, and the court where the case was tried—seeking “all records” pertaining to a particular case.

While the Public Information Act (“PIA”) allows this type of “global” request for case records, it may be frustrating for both the requestor and the agency. These types of requests can be time-consuming and labor-intensive for the agency, possibly leading to high fee estimates and lengthy waiting times for the requestor, because the agency has to retrieve old files and review the entire record for privileged or confidential material.

This article provides tips and guidance for making more efficient requests for case records from law enforcement agencies, hopefully reducing the frustration on both sides.

Tips

- **Specify the particular document or type of document you want from the case file** (see examples of records, below). If at all possible, don’t request the entire case file.
- **Always include your full name, case number, year (or date) of trial, and disposition.** Provide as much information as you can.
- **Write “PIA Request” at the top of your letter/request and on the outside of the envelope.**
- **Check with your attorney first—they may have the records you want.** If your trial attorney was an Assistant Public Defender, or was assigned by the Office of the Public Defender (OPD), you can submit a PIA request to the OPD and obtain your case records without charge.
- **Be patient.** Especially if you are requesting records from an older file or a file which is large or complex, it may take time for the agency to locate, retrieve, and prepare your records.

Common Case Records Chart

The chart below indicates common types of records in a criminal case file, and the agencies that are likely to have them. Of course, this list is not exhaustive. As you can see, more than one agency may have the same type of record, **but these agencies’ files are not necessarily identical**. In general, investigative files are in the custody of the police department. Those investigative records that are relevant to the prosecution of your case and trial also will likely be in the trial file of the State’s Attorney’s Office. Your trial attorney may also have copies of investigative case records, particularly if the record(s) was used at trial by either side. By contrast, the court will only have

those records filed with the court or issued by the court—the court generally does **not** retain physical evidence or documentary exhibits offered or admitted at trial.

Examples of Records	Police Department	State's Attorney	Your Attorney	Court*
Trial transcripts ** (if proceedings were transcribed)		X	X	X
Court filings and orders		X	X	X
Plea agreements		X	X	
Offense and/or Incident reports	X	X	X	
Lab reports	X	X	X	
Crime scene photographs	X	X	X	
Statements of co-defendants	X	X	X	
Witness statements	X	X	X	
Chain of custody documentation	X Evidence Unit			
Telephone (investigative) records	X			
Case overview / Media releases	X			
Investigative correspondence	X			

Suspect information	x			
Property sheets	x			
Elimination prints / Teletypes and cancellations	x			
Polygraph reports/C.V.S.A. exam	x			
Medical Examiner's report/photos	x			

** Generally, the courts are not subject to the PIA, but instead have adopted court rules that govern access to court and judicial records. (Md. Rules 16-901, et. seq.). For records in a court file, you may contact the Administrative Judge of the court that handled the case. For records having to do with the administration of the judicial branch, including courts, you may contact the Administrative Office of the Courts. The Ombudsman is not able to mediate matters with the courts.*

*** Trial transcripts may also be in the possession of the Office of the Attorney General, or your appellate counsel, if an appeal was taken.*

Just because an agency has a record doesn't mean that the record is always disclosable. Agencies have many records that may not be disclosable under the PIA, for example, grand jury transcripts, search warrants, personal information of witnesses, and other types of privileged or confidential material.

PIA Remedies

If you still have problems getting the records you want, there is help, including the Public Access Ombudsman, the PIA Compliance Board (fees only), and Civil Court action.

- **Public Access Ombudsman (Ombudsman).** The Ombudsman's office was created to provide voluntary mediation between requestors and the various Maryland agencies that are subject to the PIA. "Voluntary" means either participant can withdraw at any time from the process. Among other things, the Ombudsman can contact the agency to clarify requests, obtain status updates on when you can expect an agency's response, and ask for additional information about the agency's response to your request and the records it has. However, the Ombudsman's office does not have enforcement authority—**it cannot compel an agency to provide its public records, nor can it require a particular outcome.**

In addition, the Ombudsman has no investigative authority, can only accept the parties at their word, and cannot provide legal representation or advice. Submit requests for mediation to: Public Access Ombudsman, c/o Office of the Attorney General, 200 St. Paul Place, Baltimore MD 21202.

- **PIA Compliance Board (PIACB).** The PIACB hears complaints regarding fees under the PIA. Specifically, **a requestor who is assessed a fee of more than \$350 and who believes the fee is unreasonable may file a complaint.** The PIACB will issue a written opinion and, if it finds the fee to be unreasonable, may order the custodian to reduce or refund the fee. **The Board cannot decide complaints that involve fees of less than \$350 or that arise out of a government custodian's handling of a PIA request. Submit complaints to PIA Compliance Board,** c/o Office of the Attorney General, 200 St. Paul Place, Baltimore MD 21202.
- **Civil Court Action.** All requestors have the right to seek relief in circuit court by filing a lawsuit against the agency. It is advisable that you consult your attorney if you are seeking this option.

The Public Access Ombudsman's Office would like to thank the Baltimore City and Baltimore County Police Departments, and States' Attorney's Offices, and the Office of the Public Defender for their assistance with this article and their continuing cooperation with the Ombudsman's mediation process.

~ Submit a request for mediation to: Public Access Ombudsman, c/o Office of the Attorney General, 200 St. Paul Place, Baltimore MD 21202.