

**RESPONDING TO REQUESTS
UNDER THE
MARYLAND PUBLIC INFORMATION ACT:
A SUGGESTED PROCESS**



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The basic mandate of the Public Information Act (“PIA”) is to enable people to have access to government records without unnecessary cost or delay. Custodians have a responsibility to provide such access, unless the requested records fall within one of the exceptions provided in the PIA. The keys to compliance with the PIA are:

(1) a *clear process* for handling requests for records;

(2) quality *training* about the law for frontline personnel; and

(3) the same attitude of *professionalism and customer service* expected for other agency functions.

The following guidelines are intended to offer custodians of records practical ways to enhance compliance with the letter and spirit of the PIA. They reflect best practices, but they are not meant to cover all aspects of the law. Nor are they intended to create any legal rights for any person; the Act itself and agency regulations that govern the handling of PIA requests set forth the legal rights and obligations under the PIA.

1. PROACTIVE DISCLOSURE

The PIA contains two provisions that may reduce the burden of responding to requests for records. Under those provisions, the official custodian must:

A. Adopt a policy of proactive disclosure of public records available for inspection. That policy may:

(i) Vary as to the type of public record and also as to an agency’s staff and budgetary resources;

(ii) Include publishing records on the agency’s website or publishing prior responses to PIA requests.

B. Designate and maintain a current list of types of agency records that are available immediately upon request.

2. IDENTIFY KEY PERSONNEL

Who receives requests for records at the agency? Who should respond to them?

A. Designate an agency PIA coordinator (or more than one, if need be) who is responsible for PIA compliance. The person the agency identifies as its PIA “representative” for purposes of receiving PIA requests would be a logical choice.

B. Set clear guidelines for those who handle PIA requests; for example, make sure that whoever opens the mail knows to whom a PIA request should be sent and the importance of delivering the request promptly.

3. SEPARATE THE SIMPLE FROM THE UNUSUAL OR COMPLEX

Are the requested records in a category that you have previously identified as

available to anyone immediately, no questions asked?

A. If YES:

(i) Make the records available immediately for inspection, even if the request is made orally;

(ii) If the requester wants copies (paper or electronic), charge no more than a reasonable, pre-set fee.

B. If NO:

(i) If the request was made orally, ask the requester to write out the request. You may find it useful to devise a form for this purpose.

(ii) Promptly send the request to the person in the agency designated to handle PIA requests (or to the person or persons who handle this type of PIA request).

Should you ask requesters who they are or why they want the records?

In general, no. In some circumstances, however, you will need to identify who the requester is. Some records (*e.g.*, medical files, personnel files) that are not available to the general public are available to the subject of the records, who is called a “person in interest” in the PIA. If the request involves a type of record for which a person in interest has special rights, you need to find out if the requester is a person in interest.

4. INFORM THE REQUESTER PROMPTLY OF PROBLEMS WITH THE REQUEST

Does the request cover records in the agency’s custody? Are they described in a way that allows the records to be found after a reasonable search?

A. If you can’t search for the records because they don’t exist (there is no duty to create records) or you don’t have them, tell the requester promptly (within, at most, 10 days); if you know that another agency has the records, tell the requester; if feasible, you may offer to forward the request to that agency.

B. If you can’t search for the records because the request is unclear or unreasonably broad, promptly ask the requester to clarify or narrow the request. If you think it would be helpful, you may offer to assist the requester in reframing the request. Do not simply wait 30 days and deny the request only because it is unclear or unreasonably broad.

C. If there is a reason why the search or review of the records will take more than 10 working days, send the requester a letter or email *within that 10-day period* explaining the reason for the delay, the time needed to respond, and an estimate of the range of fees that might be charged.

5. RETRIEVE – REVIEW – RESPOND

A. If your agency has the records and can find those covered by the request after a reasonable search, promptly retrieve the records.

B. Review the records, with legal assistance as needed, to determine their status under the PIA.

C. Decide whether your review requires information from outside the agency and, if so, request it right away. Two common situations:

(i) A record would be available to a person in interest, but not to a member of the

general public. If applicable, ask for the information you need to determine whether the requester is a person in interest.

(ii) A record contains information that appears to be confidential commercial or financial information. Ask the person or entity that submitted the information whether the information is regarded as confidential and, if so, why.

D. Determine if any of the exemptions in the PIA (or in another law) apply to the record or a portion of the record.

(i) If an applicable exemption *requires* that all of the information be withheld from disclosure, withhold the entire record unless redacting all identifying information would remove the record from scope of the exemption. If only part of the information is exempt, redact the exempt portion.

(ii) If an applicable exemption *permits, but does not require*, that information be withheld from disclosure, carefully consider how you will exercise the discretion that the law gives you. In general, disclose the record unless doing so would cause a harm to the public interest that you can describe.

(iii) If *no exemption* applies, disclose the record unless, within 10 days, your agency will go to court for an order allowing you to withhold the record on the ground that disclosure would cause “substantial injury to the public interest.” Courts will likely grant such orders only in extraordinary circumstances.

E. Complete the retrieval and review process as quickly as possible, but in any case

within 30 days of receiving the request, unless the requester agrees to an extension.

(i) If you determine that records are to be disclosed, notify the requester immediately that the records are available for inspection or copying.

(ii) If you determine that the records are to be withheld in whole or in part, promptly send the requester a letter explaining why those records are exempt from disclosure, citing legal authority and telling the requester how to seek review of your decision.

6. PROVIDE COPIES, IF REQUESTED

A. If the requester seeks copies, provide them within a reasonable time. If the request is voluminous, discuss a mutually agreeable schedule – for example, providing copies on a rolling basis.

B. If copies are requested in an electronic or other special format, honor that request if it is possible to do so without significant cost or burden on the agency. In some circumstances, the requester may have a right to an electronic copy.

7. CHARGE ONLY REASONABLE, COST-BASED FEES

A. Search and Review Time. If you charge a fee, base the fee on the actual staff time spent responding to the request and their prorated salaries. Keep track of your time, but remember that the first two hours of search and review time are free.

B. Copies. Decide in advance what you will charge per copy. You may decide that it is more cost-effective not to charge for small numbers of copies.

C. Fee Waivers. If the requester asks that you waive the fees, you may do so if a waiver would be in the public interest or if the requester is indigent. For indigency waivers, require the requester to submit an affidavit of indigency. For other waiver requests, consider the ability of the applicant to pay, but other factors as well (*e.g.*, whether the information is sought for a broad public purpose or for a narrow personal or commercial interest).

8. DISPUTE RESOLUTION

The PIA contains alternative dispute resolution options if problems arise during the course of responding to a PIA request or if a requester is unhappy with an agency's response.

A. Public Access Ombudsman. The Ombudsman is charged with making reasonable attempts to resolve a wide range of PIA-related disputes, including (but not limited to) disputes about denials, overly broad requests, and fees. The Ombudsman does this in the context of voluntary, confidential mediation and the services are equally available to custodians and requesters. Thus, if an issue arises during the course of responding to a PIA request (*e.g.*, a request is vague or broad and you are unable to work with the requester to narrow or clarify it), then consider contacting the Ombudsman, at <https://news.maryland.gov/mpiaombuds/#> or PIA.Ombuds@oag.state.md.us.

B. State Public Information Act Compliance Board. The PIA Compliance Board is empowered to issue binding resolutions of certain PIA-related disputes if mediation through the Ombudsman is unsuccessful. Specifically, the Board may review complaints alleging that: (1) a custodian wrongfully denied inspection of a

public record; (2) a custodian charged an unreasonable fee higher than \$350; (3) a custodian failed to respond to a PIA request; and (4) a PIA request is "frivolous, vexatious, or in bad faith." A complaint must be filed within 30 days of receiving a final determination from the Ombudsman that the dispute was not resolved. More information about the Board and its procedures is available here: <https://www.marylandattorneygeneral.gov/Pages/OpenGov/piacb.aspx>.

More information about the PIA may be found in the Attorney General's manual, available online at: <http://www.oag.state.md.us/opengov/pia.htm>