

## **Public Information Act Compliance Board**

Minutes of Annual Meeting

August 19, 2019

Office of the Attorney General

200 St. Paul Place, Baltimore, Maryland

### **In attendance:**

#### *Board and Board staff:*

John H. West, III, Chair

Deborah Moore-Carter

René C. Swafford

Darren S. Wigfield

Jeffrey Hochstetler, Board Counsel

Janice Clark, Board Administrator

*Members of the public:* 31 Members of the public attended, including: Lisa Kershner, Public Access Ombudsman; Brooke Lierman, State Delegate; individuals from advocacy organizations and the media; and employees of governmental organizations across Maryland. (See attached attendance sheet)

### **Call to order and welcoming remarks**

The Board Chair called the meeting to order at 1:00 p.m. The Board Chair introduced the Board members, welcomed members of the public, and provided an overview of the agenda. The meeting agenda would include discussion of the Board's 4th Annual Report, which will be submitted to the Legislature. The goal of the report is to identify and discuss issues to study or recommend for legislative action under the Public Information Act.

### **Update on Board Activities and Composition**

The Chair provided a description of the Board's jurisdiction and responsibilities, and noted a change in the PIA law that had been approved in the 2019 legislative session. SB 5 (2019) requires notification to the "person-in-interest" when certain 911 records are requested--this change does not directly affect the PIACB's jurisdiction.

The Chair recognized the Public Access Ombudsman, Lisa Kershner. He noted the importance of the Public Access Ombudsman program in responding to numerous Public Information Act (PIA) issues outside of the Board's jurisdiction. He also noted that the Board and Public Access Ombudsman have been tasked by the legislature to produce a PIA research report with recommendations on the jurisdiction of the Board.

### **Update by the Public Access Ombudsman on Ombudsman Program and PIA Research Report**

The Chair asked the Ombudsman, Lisa Kershner, to report on the status of this research report and her program. Ms. Kershner began her report by acknowledging Mr. Hochstetler and Ms.

Clark from the Office of the Attorney General's (OAG) Public Access Unit, who staff both the Board and the Ombudsman's office. She explained the role of mediation in the PIA process. She reported on themes she has noted from her experience in the office and the mediation metrics data that the Ombudsman's office has gathered since the inception of the program in 2016. This data is available on the Ombudsman's website at <http://piaombuds.maryland.gov>.

Ms. Kershner highlighted the point that Maryland has no means for extrajudicial enforcement of the PIA other than the very narrow fee jurisdiction of the Board. The only other option for enforcement is the courts, which is unattainable or undesirable for many. Additionally, Ms. Kershner noted that agencies across the state have a vast array of experiences in terms of PIA caseload.

This year the Ombudsman's office has taken on two separate initiatives to assess the PIA experiences of requestors and agencies. A stakeholder survey was disseminated in the beginning of the year to all agencies and requestors that have interacted with the Ombudsman program to hear about their PIA experiences and caseload. We have a very positive response rate.

More recently, at the direction of the Maryland Senate and House Budget Committees, the Ombudsman's Office has undertaken research to collect PIA caseload and compliance data across 23 State cabinet-level agencies through both quantitative and qualitative survey instruments. Ms. Kershner described some of the questions that these agencies are responding to. The Ombudsman noted that the responses to these questions are quite diverse in terms of PIA caseload volume and quality of responses.

Pulling from these surveys and the programmatic experience of the Ombudsman's office and the Board, additional research and recommendations will be undertaken regarding enhanced PIA dispute resolution and compliance monitoring models. Part of this research will involve examining the models of other states and the federal government.

One of the recommendations in the final report will likely be to expand the jurisdiction of the PIACB to include all PIA disputes, while preserving the Ombudsman's program and requiring parties to go through mediation before going to the Board. The final report will be made available at the end of the year.

Ms. Kershner noted that her recommendation builds on what is working well, and fills gaps where there is need, with minimal added infrastructure. She expects that expanded Board jurisdiction will result in 4-7 new matters per month to the Board. Board members discussed the implications of Ms. Kershner's recommendation. They emphasized the value of Ombudsman mediation and noted that the capacity of a truly voluntary board is limited. The Board asked the Ombudsman to review her past matters and come up with a researched estimate for the number of new matters the Board could see with expanded jurisdiction.

## **Public Discussion**

The public was invited to ask questions. Laura Anderson Wright asked Ms. Kershner about the role of the Ombudsman within this proposed structure: Would Ombudsman mediation still be voluntary or would it be required before the Board would hear a complaint? The Ombudsman explained that the nature of the Ombudsman program would still be voluntary and that access to the Board would not be thwarted if a body refused mediation. The Board would have enforcement authority.

Elijah Parker, Montgomery County Police, asked if the new jurisdiction would affect the way agencies assess fees or the Board reviews excessive fees. Ms. Kershner said that she did not expect the recommendations to make any changes to the ways fees are assessed by agencies.

Ms. Kershner emphasized that she is seeking comments from the public and agencies regarding this report and recommendations. Submit comments to [pia.ombuds@oag.state.md.us](mailto:pia.ombuds@oag.state.md.us).

Chairman West thanked Ms. Kershner for her report.

### **Overview of FY 2019 PIACB Cases**

Chairman West provided an overview of the draft annual report of the Board and noted that there continues to be a misunderstanding of the Board's jurisdiction. Of 14 total complaints received in FY 2019, 7 were dismissed as outside of the Board's jurisdiction, 4 opinions were issued, and 3 were still pending as of July 1, 2019, (the end of the fiscal year). Half of the complaints were not about the reasonableness of a fee—the only issue within the Board's jurisdiction—but instead concerned issues such as affordability of a fee and/or a fee waiver denial. Like the previous year, this remains the most significant trend that the Board has seen.

Mr. Wigfield noted that the annual report makes note of the research project described by the Ombudsman and defers recommendations until the end of the year when the report is produced. He asked the Board to consider making recommendations sooner so that the legislature will have time to consider them in the 2020 session. Board members and Ms. Kershner discussed opportunities to make preliminary findings and recommendations in the fall before the end of the year.

### **Vote to Approve Research Plan and Recommendations**

**Discussion.** Chairman West stated that there was consensus among the Board to approve the research plan and recommendations as presented and to propose that preliminary and final recommendations be made to the Legislature.

Mr. Wigfield added that the research plan should include contacting the Office of Administrative Hearings ("OAH") to find out what their PIA appeal experiences have been, and to examine the number and process of OAH PIA appeals before the Board was created and compare that to the process now and as recommended.

**Motion** by Mr. West to approve the plan as presented and amended by Mr. Wigfield. Seconded by Mr. Wigfield. **Motion unanimously approved.**

### **Vote to Approve the 4<sup>th</sup> Annual Report of the PIA Compliance Board**

**Motion** by Ms. Moore-Carter to approve draft of the 4<sup>th</sup> Annual Report of the PIA Compliance Board as written, second by Rene Swafford. **Motion unanimously passed.**

**Public Discussion**

The chairman opened the meeting up to questions and suggestions from members of the public. The Ombudsman's office addressed questions regarding research report data sources, types of recommendations, and advice on tracking software for PIA requests. The Ombudsman also offered to directly respond to specific matters outside of the meeting.

**Closing remarks and adjournment**

The Board Chair thanked everyone for attending and thanked staff and the Office of the Attorney General for its great support. The Chair adjourned the meeting at 2:20 p.m.

## Public Attendees - August 19 Board meeting

Name	Affiliation	Category
Lisa Kershner	PIA Ombudsman	PIA Ombudsman
Brooke Lierman	State Delegate	State Delegate
Janice Clark	Staff	Staff
Jeff Hochstetler	Staff	Staff
Adina Crawford	Montgomery County Government	agency
Alpa Vaghani	Montgomery County Government	agency
Barb Krupiarz	Governor's Office for Children	agency
Becky Freeberger	Environmental Control Board	agency
Bill Jorch	Maryland Municipal League	advocate
Cathy Coble	Northeast Maryland Waste Disposal Authority	agency
Chichi Nyagah-Nash	Baltimore City Department of General Services	agency
Christine Ryder	Anne Arundel County Government	agency
Elijah Parker	Montgomery County Police	agency
Irma Robins	University of Maryland	agency
Janice Sartucci		public
Joanne Antoine	Common Cause	advocate
Joe Sviatko	Maryland Insurance Administration	agency
John Norris	Calvert County Attorney	agency
Kim Gordon	Northeast Maryland Waste Disposal Authority	agency
Laura Anderson Wright	University of Maryland College Park	agency
Laura Hurley	Wicomico County Council	agency
Margaret-Ann F. Howie	Baltimore County Public Schools	agency
Mary Davison	Montgomery County Police	agency
Michael Leedy	Baltimore State's Attorney's Office	agency
Myriem Seabron	Department of Housing and Community Development	agency
R Danielle Brown	University of Maryland	agency
Rebecca Snyder	MDDC Press Association	media
Rhea Harris	Maryland State Police	agency
Rig Baldwin		public
Solomon Abimaje	Montgomery County Police	agency
Tami Cathell	Department of State	agency
Tanya Brooks	Register of Wills, Baltimore County	agency