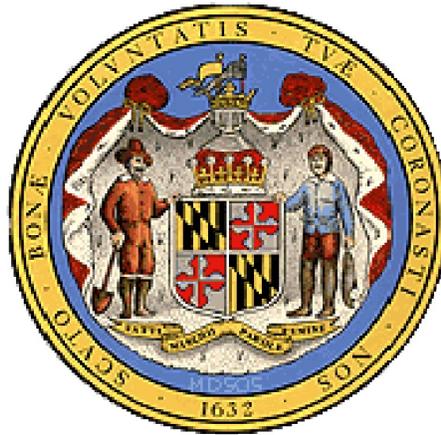


FIRST ANNUAL REPORT
OF THE
STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD



BOARD MEMBERS

JOHN H. WEST, III, ESQ., CHAIR
CHRISTOPHER A. EDDINGS
DEBORAH F. MOORE-CARTER
DARREN S. WIGFIELD
RENE C. SWAFFORD, ESQ.

SEPTEMBER 2016

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The Maryland Public Information Act promotes access to information about the affairs of government and the official acts of public officials and employees. The General Assembly created the State Public Information Act Compliance Board (Board) through statute enacted during the 2015 legislative session to address complaints regarding whether a custodian has charged an unreasonable fee. Pursuant to § 4-1A-04(c) of the General Provisions Article of the Maryland Code, the Board submits this annual report for the period running from October 1, 2015, through June 30, 2016. This report contains a description of the Board's activities during the past year, including summaries of the Board's opinions, the number and nature of complaints filed with the Board, and any recommended improvements to the statute.

**I.
ACTIVITIES OF THE BOARD**

A. Responsibilities of the Board

On October 1, 2015, the law creating the Board went into effect. The duties of the Board include:

- Receiving, reviewing, and resolving complaints that a custodian of public records charged an unreasonable fee;
- Issuing a written opinion regarding whether a violation has occurred relating to a fee, including the ability to direct a reduction of a fee or a refund of the portion of a fee that was unreasonable;
- Studying ongoing compliance with the imposition of fees by custodians of public records; and
- Making recommendations to the General Assembly for improvements in Title 4-1A of the General Provisions Article of the Maryland Code.

The members of the Board were commissioned on December 28, 2015, for terms that expire June 30, 2018, as follows:

- John H. West, III, Esquire—Chair; citizen member
- Christopher A. Eddings—non-profit/open government/news media member
- Deborah F. Moore-Carter—knowledge/Maryland Association of Counties/Maryland Municipal League member
- Rene C. Swafford, Esquire—attorney member
- Darren S. Wigfield—citizen member

The Attorney General's Office provides the Board with the services of counsel and the administrator, posts the Board's opinions and other Public Information Act materials on its website, and bears the incidental costs of copying and mailing Board-related documents.

B. Processes and procedures

The Board adheres to the process for receiving and handling complaints established by the statute. A set of interim procedures appears on the website, which elaborates on the process by describing the type of information the Board finds useful for making its decision and encouraging a complainant and custodian to attempt to resolve an issue or concern before submitting a complaint to the Board.

Generally, complaints are received by the Office of the Attorney General and numbered based on the date received. An initial determination is made as to whether the complaint fits within the jurisdiction of the Board. If the complaint involves an assertion of an unreasonable fee, the materials are sent to the custodian of the records for a response. Once all materials are compiled, the Board receives them and a conference date is scheduled with the parties. After the conference, the Board makes its decision and its opinion is issued within 30 days.

When a complaint addresses only issues that are not within the jurisdiction of the Board, the matter will be dismissed. For example, if a complainant seeks review of a

waiver request, but does not assert that the fee is unreasonable, the Board does not have the authority to consider the issue. Some complaints include an assertion of an unreasonable fee, as well as multiple issues that are within the authority of the Public Access Ombudsman to address. The experience to date reflects the success of the Ombudsman's efforts to mediate those issues, which often resolves all of the outstanding disputes between the parties.

C. Complaint and Opinion Activities for FY2016

1. Statistics

- New complaints submitted to the Board: 9
- Opinions issued during FY2016: 5
 - Complaints dismissed: 3
 - Fee held reasonable: 1
 - Fee ordered reduced: 1
- Complaints withdrawn: 2
- Complaints referred to the Public Access Ombudsman: 2
- Complaints submitted in FY2016 and still pending on 7/1/16: 0

2. Complaints

The complaints received by the Board often include issues other than the reasonableness of a fee. Handling of the complaints may vary depending on the nature of the additional issues. During the reporting period, the Board found that the Public Access Ombudsman provided extraordinary service to the public. Not only did she handle matters through individual requesters and agencies, but she accepted several referrals from the Board. The Ombudsman achieved great success in resolving disputes over denials of fee-waiver requests, as shown in the complaint summaries.

- PIACB-16-02 Maryland Police Training Commission
 - Issues: unreasonable fees, no decision on waiver of fees, delay in producing records, no 10-day letter, and no estimate of date when response will be provided
 - Process: parties discussed the matter and resolved the issues; withdrawn.

- PIACB-16-04 Kent County Administrator
 - Issues: unreasonable fees
 - Process: parties resolved on their own; records became available with reduced fee that was less than Board's jurisdictional threshold; complaint withdrawn.

- PIACB-16-06 Montgomery County Office of Intergovernmental Affairs
 - Issues: unreasonable fees, denial of waiver of fees, and sufficiency of the search
 - Process: referred to Public Access Ombudsman and resolved; fees adjusted based on resolution of the other issues by the Ombudsman.

- PIACB-16-07 Carroll County
 - Issues: unreasonable fees, and delay in searching and providing records
 - Process: referred to Ombudsman for mediation of the delay and search issues; matter resolved, including a fee reduction, based on the modified request for records.

3. Opinions

The Board's opinions for FY2016 appear on the Attorney General's Office website at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/piaindex.aspx>. Summaries of the opinions appear in this report for ease of reference.

PIACB-16-01—Maryland State Archives

Daniel Siesser, Complainant—request for review of waiver request; complaint filed more than 90 days after agency action

Ruling: untimely (more than 90 days after action); waiver not within jurisdiction of Board

Opinion: April 21, 2016.

PIACB-16-03—Maryland Aviation Administration

UNITE HERE Local 7, Complainant—request for review of unreasonable fee; agency modified estimate, but complainant sought to have the fee waived

Ruling: the custodian did not charge an unreasonable fee based on the cost of the contractor performing the retrieval services; the Board did not have jurisdiction to review the waiver request

Opinion: March 21, 2016.

PIACB-16-05—Montgomery County

Bernadette F. Lamson, Complainant—series of requests for review of unreasonable fees

Ruling: fees included duplication of effort and employee benefits in addition to salary; Board ordered a refund of the excessive portion of the fee

Opinion: June 1, 2016.

PIACB-16-08—Harford County Sheriff’s Office

Paul McGrew, Complainant—request for review of denial of waiver request

Ruling: Board does not have jurisdiction to review denials of waivers; dismissed as not within the Board’s jurisdiction

Opinion: May 19, 2016.

PIACB-16-09—University of Maryland, College Park

Colin Byrd, Complainant—request for review of estimated fee that had not been charged; information was about to become available without any fee, leaving no actual or estimated fee for the Board to review

Ruling: dismissed as premature

Opinion: June 15, 2016.

II.

LEGISLATION—2016 SESSION AND BOARD RECOMMENDATIONS

A. *2016 Legislative session and ongoing provision*

The General Assembly amended Title 4-1A of the General Provisions Article through HB 1105, which requires the custodian of a public record for the Howard County Public School System to provide written notice to an applicant that the applicant may file a complaint with the Board to contest the fee. The new requirement took effect on July 1, 2016, so it is unknown whether the provision will have an impact on the Board’s activities.

B. Board recommendations for the 2017 Legislative Session

Based on the complaints reviewed by the Board during its first year of operation, several issues merit the Legislature's consideration for possible amendments to the Public Information Act. These suggestions are offered, not for the purpose of expanding the authority of the Board, but rather, to provide meaningful clarification to the members of the public who request information and to the custodians of records who respond to those requests.

Standardized fees and grounds for waivers

The law currently allows an agency to charge for copying costs and for the time expended by staff in gathering and producing information after the first two hours. In some instances, however, the Board has seen unreasonable fees that included duplicate reviews by multiple staff members and the inclusion of an employee's benefits in addition to the hourly salary rate. It would be helpful for the law to clarify that charges for duplicate reviews are not permitted, or are permitted only for specific legitimate purposes. The law presently allows two differing interpretations as to whether benefits should be included in the charges for employee time when answering a Public Information Act request. The Board recommends that the law be clarified. *See* § 4-206(b)(1)(ii) and § 4-206(b)(2) of the General Provisions Article of the Maryland Code.

Similarly, the general factors for consideration of whether to grant a waiver of fees have posed difficulty for many requesters. The discretion an agency has to decide whether to grant a waiver request leads to significant delays, because the records usually are not produced while a requester seeks assistance from the Ombudsman. The law should include clearer guidelines that identify when a waiver is appropriate.

Response times

The law currently requires a custodian to send a letter within 10 days of receipt of a request indicating whether the materials will be provided and how long it will take. The general requirement is to respond within 30 days of the request, with the ability to obtain one 30-day extension by agreement of the parties. Several issues accompany these provisions:

- Some custodians view the 30 days as the standard and do not provide records sooner than 30 days, even when the materials are readily available. When the request is time-sensitive, this can prevent the requester from an opportunity to participate in a separate discussion based on the lack of information.
- A delay in disclosure may occur when an agency provides an estimate of the cost of providing the records and awaits payment of the fee before beginning to gather the materials for disclosure.
- Significant delays occur when each stage of the process takes 30 days. For example, the fee estimate, a fee reduction or waiver request, mediation with the Public Access Ombudsman, and clarifying the original request.
- **Recommendation:** The Board recommends that 15-day intervals for steps that occur following the first 30 days would be better, provided that the substance of the request falls within the scope of the original request.

The law should ensure that records are produced as quickly as possible and without undue delay. The Board recognizes that some requests seek a large volume of information or have complex nuances that require more than 30 days and, in some instances, more than 60 days. To the extent that evaluation of the reasonableness of a fee may involve review of the breadth of the request, the Ombudsman serves as a useful resource to clarify or narrow a request for records, and it tolls the time for a response. In turn, this can reduce the fees and expedite the disclosure. For extremely complex or broad requests that cannot be reduced, the parties should have the ability to extend the time period by agreement for a

period longer than 60 days if needed. While the Board understands the limited staff available to many agencies, a greater effort to respond quickly in most instances should be made, with the need for extensions being a rare circumstance.

Additional comments

The Board recognizes that not all mechanisms for strengthening the public's access to government records require legislation. The custodian of records always has the ability to speak with a requester to clarify a request that seems overbroad. By discussing the nature of the request, many responses could be provided more quickly and at lower cost than some agencies experience presently. Now that a custodian must provide a letter within 10 days of the request, the letter could include a suggestion that any dispute regarding the estimated fee or time for response be brought to the Ombudsman immediately. Doing so tolls the time for the custodian to respond, and the earlier consultation with the Ombudsman may reduce the cost and expedite the response.