

THIRD ANNUAL REPORT
OF THE
STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD



BOARD MEMBERS

JOHN H. WEST, III, ESQ., CHAIR
LARRY E. EFFINGHAM
DEBORAH F. MOORE-CARTER
RENÉ C. SWAFFORD, ESQ.
DARREN S. WIGFIELD

SEPTEMBER 2018

**THIRD ANNUAL REPORT
OF THE
STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD**

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 a 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 July 1, 2017, through June 30, 2018.

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. In addition, the Board understands that the law does not provide an opportunity for the Public Access Ombudsman to submit a similar report, but believes such a report is useful in understanding the current state of dispute resolution under the Public Information Act. For this reason, the Board has included a report from the Ombudsman as an Appendix to the Board's Report.

**I.
ACTIVITIES OF THE BOARD**

A. *Responsibilities of the Board*

On October 1, 2015, the law creating the Board went into effect, making FY2018 the Board's second full year of operation. The duties of the Board include:

- Receiving, reviewing, and resolving complaints that a custodian of public records charged an unreasonable fee that exceeds \$350;
- 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 original five members of the Board were commissioned on December 28, 2015, for terms that would expire on staggered dates. Four of these members remain, as follows:

- John H. West, III, Esquire—Chair; citizen member— Expires 06/30/2019
- Deborah F. Moore-Carter—knowledge/Maryland Association of Counties/Maryland Municipal League member— Expired 06/30/2018 (carrying over until successor is named)
- René C. Swafford, Esquire—attorney member— Expires 06/30/2021 (reappointed on 07/01/18 for a second term)
- Darren S. Wigfield—citizen member— Expires 06/30/2019

In August 2017, Larry E. Effingham was appointed to serve on the Board as its non-profit/open government/news media member. The term of his commission is three years and expires on 06/30/2020.

The Board wishes to thank Deborah F. Moore-Carter for her participation and contributions to the Board's work during her nearly three years as a Board member. Ms. Moore-Carter's term expired in June 2018 and she will continue to serve until a new knowledge/Maryland Association of Counties/Maryland Municipal League member is appointed. The continuing Board members look forward to working with this new member.

The Attorney General's Office provides the Board with the services of counsel and 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. The Board appreciates the excellent service it has received from the Attorney General's Office in the performance of these tasks.

The Board also extends its thanks to the Public Access Ombudsman, Lisa Kershner, who handles many matters that might come to the Board but for her excellent mediation efforts. The Ombudsman's services often lead to an outcome of compromise that can be more satisfying to the parties than a declaration by the Board that a fee is reasonable or unreasonable.

B. Processes and procedures

The Board adheres to the statutory process for receiving and handling complaints. The Board's procedures appear on the website, along with a description of the type of information the Board finds useful for making its decision. The website also contains tips for complainants and custodians to attempt to resolve an issue before submitting a complaint to the Board.

Generally, complaints are received by Board staff at the Office of the Attorney General and numbered based on the date received. Board counsel makes an initial determination as to whether the complaint falls within the Board’s jurisdiction. If the complaint involves an assertion of an unreasonable fee that exceeds \$350, Board staff forwards the materials to the relevant custodian of records for a response. Once all materials are compiled, the Board reviews them and determines whether to schedule a conference with the parties or to decide the matter based on the materials. The Board makes its decision within thirty days after the conference, if there is one, or within 30 days after receiving the custodian’s response, if relying solely on the submissions.

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 fee waiver request, but does not assert that the fee is unreasonable, the Board does not have the authority to consider the issue. These kinds of complaints, and those that include multiple issues in addition to the unreasonableness of a fee, often fall within the Public Access Ombudsman’s authority to address. If the Board believes it does not have jurisdiction, and/or that the complaint might benefit from mediation, it refers the complainant to the Ombudsman. 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 so that even the fee dispute does not require consideration by the Board.

C. *Complaint and Opinion Activities for FY2018*

1. Statistics

- New complaints submitted to the Board: 14
- Complaints dismissed without opinion: 10
 - Not within Board’s limited jurisdiction: 10
 - Referred to Ombudsman for mediation: 7
- Opinions issued during FY2018: 7
 - Carryover from FY2017 complaints: 3
- Complaints submitted in FY2018 and still pending on 7/1/18: 0

2. Complaints

The complaints received by the Board often include issues other than the reasonableness of a fee greater than \$350 – the sole issue within the jurisdiction of the Board. This trend indicates that the limited role of the Board is still not well understood. During the reporting period, the Board received several complaints from complainants who claimed they could not afford the fee, rather than that the fee was unreasonable. In most of these instances, the complainant had requested a fee waiver, but the agency denied the request. The Board most often referred these complaints to the Public Access Ombudsman for mediation, and the Ombudsman graciously accepted them.

During the past year, the Board has found that the Public Access Ombudsman continued to provide essential service to the public. In addition to accepting several referrals from the Board, she handled more than 200 matters from individual requesters and agencies. From the Board’s vantage point, it appears that many complaints benefit from the assistance of the Ombudsman as a first step in the PIA dispute-resolution process. Because the Ombudsman can assist the parties in clarifying a request and discussing the reasonableness of the costs, her guidance often resolves all aspects of the dispute and eliminates the need for the Board’s review. Facilitating this kind of compromise between the parties reflects the essence of the policy goals of the Public Information Act by ensuring that public records are provided without an undue burden on either the requester or the agency.

The following matters did not result in a formal opinion of the Board, because they were dismissed for lack of jurisdiction without a written opinion and/or referred to the Ombudsman for mediation:

- **PIACB-18-03 Baltimore City State's Attorney's Office**

Issues: Agency denied request for fee waiver. Complaint arrived more than 90 days after action.

Process: Complaint was dismissed for lack of jurisdiction because it was untimely and subject matter was not within Board’s purview. The Board sent the complainant a denial letter.

- **PIACB-18-04 Baltimore City Fire Department**

Issues: Agency estimated a fee of \$50,000 to respond to request. Complainant sought judicial relief. The court ruled that the statute required the complainant to go to the Board first. (However, the statute explicitly states that a complainant need not exhaust the Board’s process before filing for judicial review). The complainant

then filed a complaint with the Board, but more than 90 days had passed since the Fire Department had issued its fee response.

Process: Complaint was dismissed for lack of jurisdiction because it was untimely. The Board sent the complainant a denial letter, and referred the requester to the Ombudsman.

- **PIACB-18-06 Baltimore City State's Attorney's Office**

Issues: Agency estimated a fee of \$526.50 to respond to request, and denied a request for fee waiver. Complainant did not assert that the fee was unreasonable, but emphasized his inability to pay due to indigence.

Process: Because the primary issue was the affordability of the fee, not its unreasonableness, the complaint was not within the jurisdiction of the Board. The Board sent the complainant a denial letter and a copy of PIACB 18-01, which dealt with a request similar to complainants and had found the same agency's rates to be reasonable.

- **PIACB-18-07 Baltimore City State's Attorney's Office**

Issues: Agency estimated a fee of \$595.00 and denied a request for fee waiver. Complainant did not assert that the fee was unreasonable, but emphasized his inability to pay due to indigence.

Process: Complaint was not within the jurisdiction of the Board because it did not assert that the fee was unaffordable, not that it was unreasonable. The Board sent the complainant a denial letter and referred him to the Ombudsman.

- **PIACB-18-09 Cecil County Sheriff's Office**

Issues: Agency estimated a fee of \$435.00 and denied request for fee waiver. Complainant did not assert that the fee was unreasonable, but that he could not afford to pay it.

Process: Complaint was not within the jurisdiction of the Board because it alleged unaffordability, not unreasonableness. The Board sent the complainant a denial letter and referred him to the Ombudsman.

- **PIACB-18-10 Circuit Court for Baltimore City**

Issues: Court charged \$450 for copies of hearing transcripts and denied request for fee waiver. Complainant alleged that he could not pay the fee.

Process: Complaint was not within the jurisdiction of the Board because Circuit Court hearing transcripts are judicial records, which are not governed by the Public Information Act but by Md. Rules 16-901 – 16-914. The Board sent the complainant a denial letter with information about the Rules governing access to judicial records.

- **PIACB-18-11 Dept. of Public Safety and Correctional Services**

Issues: Complainant made various allegations about handling of his PIA requests by the Western Correctional Institution, but did not assert that a fee was unreasonable.

Process: Complaint was not within jurisdiction of the Board. The Board sent the complainant a denial letter, explaining that the issues he raised might be more appropriate for Ombudsman assistance and referring him thereto.

- **PIACB-18-12 Baltimore City State's Attorney's Office**

Issues: Complaint alleged that agency had not responded to PIA request after several months.

Process: The Board lacked jurisdiction because there was no fee at issue. The Board sent complainant a denial letter and referred him to the Ombudsman.

- **PIACB-18-13 Dept. of Labor, Licensing, and Regulation**

Issues: Complaint alleged that agency had not responded to PIA request after more than a month.

Process: The Board lacked jurisdiction because there was no fee at issue. The Board sent complainant a denial letter and referred him to the Ombudsman.

- **PIACB-18-14 Baltimore County State's Attorney's Office**

Issues: Agency charged \$1,683 in response to request for an entire case file. Complainant alleged he wanted only a chain of custody report so the fee should not be so high.

Process: The Board believed the issue was more appropriate for the Ombudsman given the clear miscommunication between requestor and agency as to the scope of the request. The Board sent complainant a denial letter and referred him to the Ombudsman.

3. Opinions

When a complaint is clearly within the jurisdiction of the Board and ripe for review, the Board will issue a written opinion. During FY2018, the Board issued seven opinions. Of these, five involved the same complainant. The limited number of opinions and complainants might have several causes. One possible explanation is that local custodians are for the most part charging fees less than \$350, and/or are increasingly articulating to requestors the reasonableness of higher fees. Indeed, the Board concluded, in each of its opinions this year, that the agency's estimated fee appeared to be reasonable based on a detailed breakdown of anticipated costs. Another explanation is that the Ombudsman's active mediation and outreach efforts over the past two years have resulted in the resolution of disputes before they require the Board's services.

The Board's opinions for FY2018 appear on the Office of the Attorney General's website at: <http://www.marylandattorneygeneral.gov/Pages/OpenGov/piaindex.aspx>. Summaries of the opinions appear in this report for ease of reference.

- **PIACB-17-15 MDOT/State Highway Administration**

Complainant challenged reasonableness of \$475.05 estimated fee for all records related to an employee's retirement. Preliminary calculation based upon hourly rates of employees and contractor who would conduct the search for and review or responsive records.

Ruling: Dismissed as premature because fee was only an estimate and could change based on agency's actual work in responding. Board nonetheless examined the estimate and concluded it appeared to reflect a "reasonable fee" as defined by the PIA. Board also encouraged agency to either omit the contractor's hourly rate from the estimate or tie it better to the actual costs of performing the work, because it was calculated based on a flat annual fee.

Opinion: August 31, 2017

- **PIACB-17-17 Department of Labor, Licensing, and Regulation**

Complainant challenged reasonableness of \$62,525.50 estimated fee for all records pertaining to a certain construction assessment. Preliminary calculation based on anticipated volume of records and staff review time.

Ruling: Dismissed as premature because fee was only an estimate and could change based on agency's actual work in responding. Board nonetheless examined the estimate and concluded it appeared to reflect a

“reasonable fee” as defined by the PIA. Board encouraged parties to try to work together to narrow the request given the volume of responsive records, and cautioned agency against charging for too many overtime hours.

Opinion: August 8, 2017

- **PIACB-17-18 MDOT/State Highway Administration**

Complainant challenged reasonableness of \$3,139.65 estimated fee for emails of three employees that related to the complainant. Preliminary calculation was based on time and effort for retrieval and review, including a contractor.

Ruling: Dismissed as premature because fee was only an estimate and could change based on agency’s actual work in responding. Board nonetheless examined the estimate and concluded it appeared to reflect a “reasonable fee” as defined by the PIA. Board, however, encouraged agency to either omit the contractor’s hourly rate from the estimate or better tie it to the actual costs of performing the specific work, because it was based on a flat annual fee.

Opinion: August 31, 2017.

- **PIACB-18-01 Baltimore City State’s Attorney’s Office**

Complainant challenged reasonableness of \$790 estimated fee for the contents of his case file. Preliminary calculation based on anticipated volume and time for review and redaction.

Ruling: Dismissed as premature because fee was only an estimate and could change based on agency’s actual work in responding. Board nonetheless examined the estimate and concluded it appeared to reflect a “reasonable fee” as defined by the PIA. Complainant could submit new complaint once precise figure existed.

Opinion: October 2, 2017

- **PIACB-18-02 MDOT/State Highway Administration**

Complainant challenged estimated fee of \$12,442.92 for all agency emails pertaining to him. Preliminary calculation based on anticipated volume, use of contractor to retrieve old emails, and time for review and redaction. (Similar complaint to PIACB-17-15: same requestor, same agency, similar request.)

Ruling: Dismissed as premature because fee was only an estimate and could change based on agency’s actual work in responding. Board

nonetheless examined the estimate and concluded it appeared to reflect a “reasonable fee” as defined by the PIA. Board urged complainant to work with agency to narrow request, but noted complainant had been unwilling to do so.

Opinion: October 6, 2017

- **PIACB-18-05 MDOT/State Highway Administration**

Same complainant, agency, records, and fee estimate as in PIACB-18-02.

Ruling: In a written opinion, the Board noted the complainant withdrew the complaint after failing to make himself available for teleconferences. The Board therefore closed the matter and stated it would not entertain any renewed complaint from complainant about this agency’s estimates for the cost of producing the documents at issue here and in PIACB-18-02.

Opinion: January 19, 2018

- **PIACB-18-08 University of Maryland, University College**

Complainant challenged estimated fee of \$2,900 for all emails and other documents pertaining to him from various agency employees. Preliminary calculation based on anticipated volume and time for review and redaction.

Ruling: Dismissed as premature because fee was only an estimate and could change based on agency’s actual work in responding. Board nonetheless examined the estimate and concluded it appeared to reflect a “reasonable fee” as defined by the PIA. Because agency’s rates appeared reasonable, complainant should submit a new complaint only if he had grounds to believe agency spent an unreasonable number of hours on the response.

Opinion: March 7, 2018

II.

LEGISLATION—2018 SESSION AND BOARD RECOMMENDATIONS

A. *2018 Legislative session*

New laws. The General Assembly made one change to the Public Information Act during the 2018 legislative session. HB677/SB477 amended the PIA to require a custodian to:

deny inspection of a distribution list and a request to be added to a distribution list that identifies a physical address, an e-mail address, or a telephone number of an individual that is used by a governmental entity or an elected official for the sole purpose of: (1) periodically sending news about the official activities of the governmental entity or elected official; or (2) sending informational notices or emergency alerts.

Md. Code Ann., General Provisions Article, § 4-341. This change did not impact complaints to the board.

B. Board recommendations for the 2019 Legislative Session

The Board suggests that the Legislature consider a number of improvements to the Public Information Act, including changes to the Board’s jurisdiction and procedures. These suggestions are based on the complaints received by the Board, the Board’s ongoing cooperation with the Public Access Ombudsman, the public comments at the Board’s 2018 annual meeting, and the Final Report of the Attorney General on the Implementation of the Public Information Act (OAG Final Report), issued in December 2017.

Entitle inmates to one indigence-based fee waiver for own case files

Both the Board and the Ombudsman routinely receive complaints from inmates who are seeking records in their own case file—often from the State’s Attorney’s Office—but cannot afford the agency’s fee. Many of these inmates have requested a fee waiver based on indigence, under GP § 4-206(e)(2)(i), which the agency has denied. Under the current law, a custodian has total discretion whether or not to grant a waiver request based on indigence. *See* GP § 4-206(e)(2)(i). Moreover, the Board does not have jurisdiction to review an agency’s denial of a requested fee waiver, and the Ombudsman, though she can ask the agency to reconsider the denial, has no enforcement authority.

The Board recommends that the PIA be amended to entitle indigent inmates to a one-time fee waiver when they request records pertaining to their own conviction or incarceration. This recommendation is largely consistent with that in the OAG Final Report, on pages 24-26. The Board recognizes that this recommendation would likely increase the burden on agencies that have custody of prosecutorial and incarceration files. The Legislature could partially ameliorate this burden by creating a “PIA fee waiver fund” to which an affected agency could apply to recoup costs.

Expand Board jurisdiction to include review of fee waiver denials

Under the current law, a custodian is given the discretion to grant a requested fee waiver if “after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.” GP § 4-206(e)(2)(ii). The Board perceives that many agencies routinely “rubber stamp” fee waiver denials without indicating that they have considered, on a case-by-case basis, factors relevant to determining whether a fee waiver is in the public interest. Consistent with the recommendation in the OAG Final Report, on pages 13-16, the Board recommends that its jurisdiction be expanded to include review of a custodian’s fee waiver denial, where the fee in question exceeds \$350—the threshold for Board review of a fee’s reasonableness.

The Board believes this modest expansion in its jurisdiction would benefit both requestors and custodians. Requestors would benefit because they would have the option of bringing all significant PIA fee disputes, *i.e.*, both reasonableness and waiver disputes, to one independent body for review. Custodians would benefit by receiving uniform guidance on the factors to consider in determining whether a waiver is in the public interest; currently, there is little authority on this topic in state statute or case law. *See* OAG Final Report at 13, 20-21.

Expand protection of bulk personal information held by public custodians

The Board applauds the Legislature’s passage of HB677/SB477, which amended the PIA to protect distribution lists containing an individual’s physical address, e-mail address, or telephone number, if the list is used by a governmental entity or elected official for sending official news or alerts. The Board recommends that the Legislature go further down this path and protect personal identifying information—including names, addresses, phone numbers, social security numbers, driver’s license numbers, etc.—whenever such information is held in bulk by a governmental entity or official.

The Board made the following recommendations in its 2017 Annual Report, and incorporates them again here.

Agency records storage and retention practices

The General Assembly in 2017 took a positive step in enacting SB44, which established clear requirements for agencies to maintain accurate inventories of their records. The Board encourages additional provisions to ensure that agencies subject to the PIA adhere to consistent records management practices. Doing so allows agencies to locate

and provide records more quickly and at lower cost. As agencies increase their use of contractors for these storage and maintenance needs (both for physical and digital records), the Board encourages extension of the same requirements to the vendors who perform those services. In this respect, we recommend that the PIA be amended to make the records of all third-party government contractors subject to the Act. This would not apply to the contractors' business operation records, but would cover the records held and created for the government agencies.

Composition of the Board membership

As government agencies rely on more software programs and electronically-stored information, the need for the Board to have technology knowledge within its membership becomes more crucial. At least one of the complaints reviewed by the Board during the past year benefitted from having this expertise on the Board. Without this specific area of knowledge, the Board could not have asked the necessary questions to yield the information it needed to decide the case. The Board recommends that its membership ensure inclusion of at least one individual who has a significant background in technology resources. This could be achieved through an amendment to the PIA or just through a conscious evaluation of applicants' backgrounds when vacancies occur.

Referral of matters to Ombudsman

To date, the Board and Ombudsman have worked cooperatively to address the matters before them. In many instances, a complainant raises issues other than the fees, or presents an issue that would benefit from the Ombudsman's efforts to resolve the dispute before the Board addresses the reasonableness of fees. Because there are time constraints on the Board's work, it would be helpful to have clear language in the statute that recognizes the Board's ability to refer appropriate matters to the Ombudsman and that shifts the deadlines for the Board to issue a decision accordingly. Although the current law allows the Board to extend the due date for its opinion up to 90 days after the complaint is filed, some mediations may require more time than the extension allows

Appendix**APPENDIX****REPORT OF THE PUBLIC ACCESS OMBUDSMAN**

The General Assembly created the Office of the Public Access Ombudsman through the same statute that created the Public Information Act Compliance Board. The Ombudsman's duties involve making reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records under the PIA, including issues involving exemptions, redactions, failure to respond timely, overly broad requests, fee waivers, and repetitive or redundant requests. *See* § 4-1B-04 of the General Provisions Article of the Maryland Code.

This report describes the Ombudsman's principal activities during 2018, and suggestions for possible improvements to the PIA system. A summary statistical report concerning PIA mediations and other Ombudsman program activities for calendar year 2018 to date is included at the end of this Appendix.

ACTIVITIES OF THE OMBUDSMAN

The Office of the Public Access Ombudsman began operations on March 30, 2016. During 2016 and 2017, the Office was largely occupied with start-up tasks necessary to establish the program, the Ombudsman's investigation of the Howard County Public School System's compliance with the PIA pursuant to H.B.1105 (completed in December 2016), a significant backlog of mediation matters, and responding to requests for training and other assistance. Calendar year 2018 has seen the Office reach a new level of operational and programmatic efficiency.

During 2018, the Ombudsman continued and/or expanded mediation and outreach activities, and was able to:

- clear a substantial portion of protracted mediation matters, thereby reducing the mediation queue;
- expand online training and resource material, including the "Open Matters" blog and a digest of recent Maryland appellate decisions involving the PIA;
- engage with additional agencies and organizations around the state that request PIA trainings, and/or that confer proactively with the Ombudsman program to avoid PIA problems and disputes; and
- refine case management processes and procedures.

Appendix

The Ombudsman anticipates introducing a number of institutional and operational improvements in the coming year, including:

- a robust relational database to more efficiently track and manage mediation matters;
- a repository of governmental agency “best practices” for PIA intake and response procedures; and
- proposed interpretive regulations that elaborate on the mediation process, including the Ombudsman’s duty to maintain confidentiality, and the ground rules that mediation participants are expected to follow.

LEGISLATIVE RECOMMENDATIONS

Based on the Ombudsman’s mediation work, and her cooperation with the Public Information Act Compliance Board, she recommends the following legislative changes:

Expand Board jurisdiction to include review of fee waiver denials

Many of the complaints received by the Board and the Ombudsman involve an agency’s denial of a request for PIA fee waiver. This issue is not currently within the jurisdiction of the Board, and the Board often forwards these disputes to the Ombudsman for possible mediation assistance. Although the Ombudsman can request that an agency reverse its waiver denial and/or reduce its fee, she does not have enforcement authority and cannot require an agency to reconsider its position. The Board is particularly suited to address fee waiver denials, because it is already charged with reviewing the reasonableness of fees, and the two issues are often closely entwined. Moreover, the Board has the authority to require a particular outcome. Accordingly, the Ombudsman believes that expanding the Board’s jurisdiction to include review of fee waiver denials would provide the public with an efficient extra-judicial mechanism to resolve all PIA fee-related disputes.

The availability of this mechanism would also enhance the Ombudsman’s mediation process in two ways. First, the decision of the Board would be enforceable, so it would provide an effective forum for those fee-related disputes that have proven to be irresolvable in mediation. Second, and relatedly, it would provide an incentive for parties to reach an agreement voluntarily so as to avoid this forum.

Appendix*Entitle indigent inmates to own case files*

A significant portion of the Ombudsman's mediation caseload involves inmates who are seeking their case files from law enforcement agencies, including state's attorney's offices and police departments, but who cannot afford the agency's fee. The Ombudsman agrees with the Board's recommendation that an indigent inmate should be entitled to records in their own case file free of charge, and that amending the PIA to grant a one-time fee-waiver could achieve that result. However, the Ombudsman recommends that the Legislature consider amending the post-conviction and/or criminal discovery laws to give inmates access to their own case files without resorting to the PIA process. The Ombudsman frequently works with law enforcement agencies that are on the receiving end of such PIA requests. She has perceived that dealing with post-conviction requests for criminal case files through a discovery-like process, and not through the PIA process, could alleviate some of the burdens associated with these requests, for both inmate requesters and responding agencies.

CONCLUSION

The Ombudsman wishes to thank the Attorney General for appointing her to this important position. In addition, the Ombudsman thanks the PIACB for providing this forum for sharing her experience and offering suggestions for improvement. Please note that throughout the year, the Ombudsman posts statistical reports, helpful tips, and PIA-related news on the Ombudsman's website (piaombuds.maryland.gov) and on Twitter (@MPIA_Ombuds).

Respectfully submitted,
Lisa A. Kershner
Public Access Ombudsman
September 2018

MARYLAND PUBLIC INFORMATION ACT (PIA)

The public's right to information about government activities lies at the heart of democracy.

Public Access Ombudsman

Since Inception (26 mo.)
March 30, 2016 — August 31, 2018



Since Inception - 29 Months

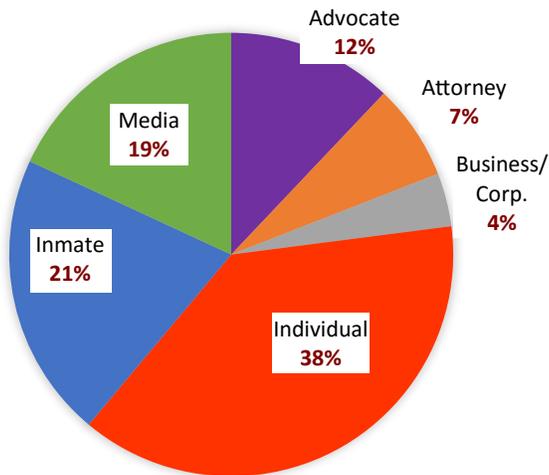
790 since March 30, 2016

- ◆ 560 - Mediation requests
- ◆ 230+ - Other / "help-desk" inquiries

The Big Picture: Mediation Matters!

Early resolution of disputes saves time and resources and increases public knowledge and awareness of the PIA process. Mediation is entirely voluntary, confidential, and in many cases doesn't require an attorney.

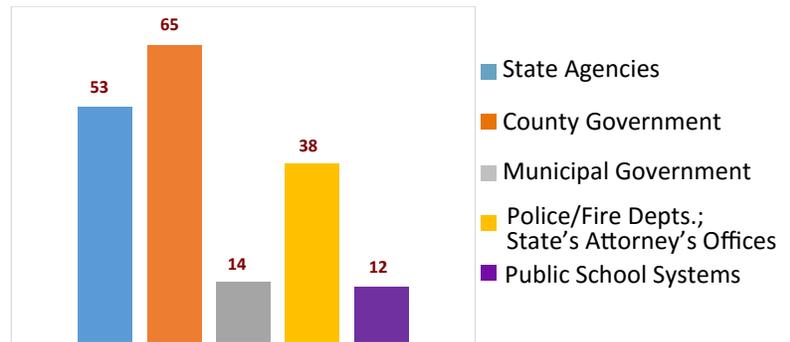
The Requestors



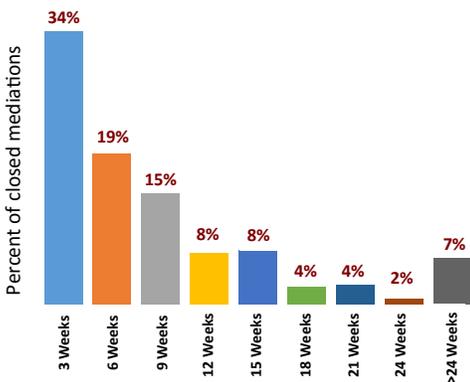
The Agencies

182 unique agencies participated in mediation matters with the PIA Ombudsman since the beginning of the program. Agency jurisdictions are state level, 21 different counties, 18 municipalities, and Baltimore City.

What Agencies are Participating in Mediation?

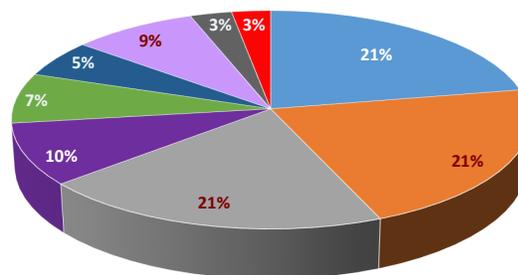


How Long does Mediation Take?



Range: 1 – 519 days. 34% of the cases are resolved within 3 weeks and 53% by 6 weeks.

What are the PIA disputes?



Disputes are presented as framed by the requestor. Characterizations are based on how the requestors describe the issues. These are not findings.

Mediation March '16 – August '18	
New/Incoming cases between 3/31/16 – 8/31/18	560
Closed as of 8/3/18	521

- Misapplication of exemption
- MIA: No Response
- Partial, nonresponsive, or incomplete response
- Fees excessive
- Fee waiver request denied or ignored
- Does not believe response
- Asked for explanation of response
- Redaction inappropriate
- Other

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Ombudsman's Website:

<http://piaombuds.maryland.gov>

**MPIA Ombudsman
on Twitter**
@MPIA_Ombuds

PIA News & Notes

2018 Legislation & Court Opinions — Since April 2018

- ◆ HB677/(SB477) - **PIA Required Denials** - Requires a PIA custodian to deny inspection of a distribution list that identifies an address, e-mail, or telephone Number.
- ◆ **Lamson v. Montgomery County, Md. (Ct. App. 2018)** No. 67, Sept. Term 2017, filed July 31, 2018
- ◆ **Glass v. Anne Arundel County, et al. (unreported Ct. of Sp. App.)** No. 918, Sept. Term, 2015; filed July 18, 2018. 2018 WL 3472049

2017 Legislation— Effective October 1, 2017

- ◆ HB0383/(SB1057) **Public Information Act - Denials of Inspection - Explanation Regarding Redaction**
- ◆ SB 44 **Records Management and Preservation - State and Local Government Units - Responsibilities**

Ombudsman's Blog

Open Matters

- ◆ **Privacy Beyond the Grave: Does the PIA Protect the Personnel Records of a Departed Employee?**, Open Matters, 7/13/18

PIA In The News

- ◆ **Court orders Salisbury to release police lawsuit records.** delmarvanow.com. 8/22/18
- ◆ **Maryland tightens access to sealed indictments — after leak to gang members in Anne Arundel.** Capital Gazette. 6/22/18
- ◆ **MD high court weighs if MPIA requires disclosure of supervisor's notes.** The Daily Record. 5/7/18

Recent Outreach 2017-2018

Presentations, Workshops, Meetings

2018

- Montgomery County Police, Records Section. April 17
- Office Of the Public Defender, April 23 Annual Conference, and Nov. 8
- Prince George's County, State's Attorney's Office. May 17, and Sept. 18
- Maryland Municipal League, June 12
- American Association of Law Libraries , 2018 Annual Meeting, July 14-17
- Joint Committee on Legislation, Information Technology & Open Government, Oct. 3
- Department of Health, October 9
- Greenbelt, City of, October 18

2017 (selected)

- Charles County Sherriff's Office, December 19
- Prince George's County Attorneys, December 12
- Maryland State Bar Association, State and Local Government Section, November 30
- Joint Committee on Legislation, Information Technology & Open Government, Nov. 8
- DHMH, Training, October 31
- Maryland Office of the Public Defender, Training, October 30
- Calvert County League of Women Voters, Presentation, October 26
- Maryland Association of Counties, Presentation, October 18

Publications

- **Ombudsman Program - Summary Report, Program Operations** *Since Inception, March 30, 2016 - August 31, 2018*
- **Fee Estimates, Flat Fees and Waiver of Fees.** Office of the Public Defender, Post Conviction Newsletter, Spring 2018
- **Advice for your MPIA Request from the Public Access Ombudsman,** Office of the Public Defender, Post-Conviction Newsletter, Winter 2017
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- **HB 1105 Report: Ombudsman's Report Concerning the Howard County Public School System's Handling of Requests Under the Public Information Act.** December 30, 2016

PIA "Help Desk"

The office of the Ombudsman receives daily requests regarding a number of PIA matters, including:

- Questions about PIA process;
- Misdirected requests to Ombudsman are referred to the correct custodian; and
- Referrals to other resources, e.g., PIA Compliance Board Fee Issues.

RESOURCES/LINKS

- ◆ **PIA Manual 14th Edition:** http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf. Including: List of Public Record Custodians: Appendix "J"; and Overview of the Public Information Act: Appendix "I"
- ◆ **MD State Archives:** <http://msa.maryland.gov> is a resource for custodians' record management and retention practices.
- ◆ **Records Management Guide:** http://msa.maryland.gov/msa/intromsa/html/record_mgmt/pdf/nagara/making_mgmtsuccess.pdf
- ◆ **Federal FOIA (Freedom of Information Act):** <https://www.foia.gov/>
- ◆ **Public Access Ombudsman - Request for Mediation Form:** <http://mpiaombuds.maryland.gov/request-mediation/>



MARYLAND PUBLIC INFORMATION ACT (PIA)
The public's right to information about government activities lies at the heart of a democratic government.

Public Access Ombudsman

2018 Annual Report (YTD)
 January 1, 2018 — August 31, 2018



2018 ^{8 Mo.}
 Annual Report

271 in 2018

- ◆ 141 - Mediation requests
- ◆ 130+ - Other / "help-desk" inquiries

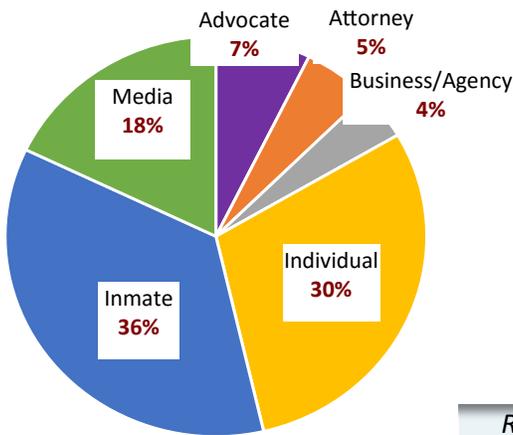
The Big Picture: Mediation saves money
Early resolution of disputes saves time and resources and increases public knowledge and awareness of the PIA process. For example, mediation is entirely voluntary, confidential, and in many cases doesn't require an attorney.

Total Mediation Cases 2018	
Carry over from prior years	26
New/Incoming cases in 2018, YTD	141
Total Number of Mediation cases	167
Mediation cases currently open, 8/31	29
Mediation cases Closed, YTD	138

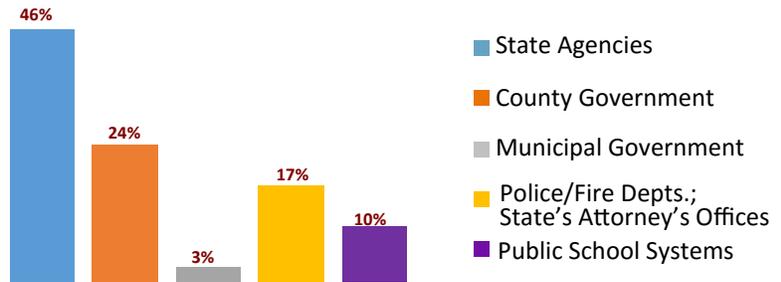
The Agencies

70 unique agencies participated in mediation matters with the PIA Ombudsman in 2018. Agency jurisdictions include state level, **13** different counties and Baltimore City, and **3** municipalities.

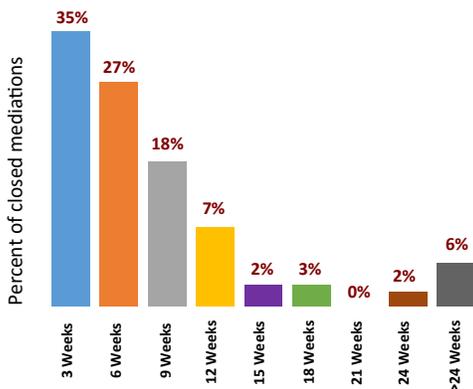
The Requestors



What Agencies are Participating in Mediation?

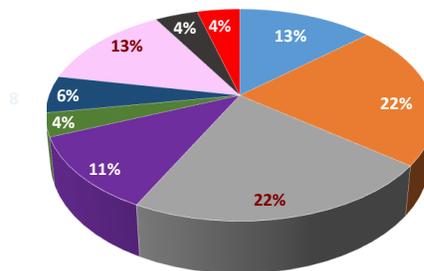


How Long does Mediation Take?



Range: 1 – 468 days.
35% of the cases are resolved within 3 weeks and **62%** by 6 weeks.

What are the PIA disputes?



Disputes are presented as framed by the requestor. Characterizations are based on how the requestors describe the issues. These are not findings.

Lisa Kershner

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 25th Floor
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 Twitter: @MPIA_Ombuds

Ombudsman's Website:

<http://piaombuds.maryland.gov>

**MPIA Ombudsman
on Twitter**
@MPIA_Ombuds

PIA Legislation & Publications

2018 Legislation & Court Opinions

- HB677/(SB477) - **PIA Required Denials** - Requires a PIA custodian to deny inspection of a distribution list that identifies an address, e-mail, or telephone Number.
- **Lamson v. Montgomery County, Md.** (Ct. App. 2018) No. 67, Sept. Term 2017, filed July 31, 2018
- **Glass v. Anne Arundel County, et al.** (unreported Ct. of Sp. App.) No. 918, Sept. Term, 2015; filed July 18, 2018. 2018 WL 3472049

Ombudsman's Blog — *Open Matters*

- **Privacy Beyond the Grave: Does the PIA Protect the Personnel Records of a Departed Employee?** 7/13/18
- **Why Am I Being Charged? A Q&A Breakdown of Fees Agencies Charge for Maryland PIA Requests.** 06/18/18
- **Innovative Approach to Case Management Aids Anne Arundel's Compliance with the PIA.** Submitted by Kemp Hammond. 3/29/18

PIA Fact Sheets

- *Tips for Submitting and Responding to a PIA Request*
- *Tips for Participating in a PIA Mediation*

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- ◆ **Office of Government Information Services (OGIS – FOIA)** <https://www.archives.gov/ogis>
- ◆ **Federal FOIA (Freedom of Information Act) :** <https://www.foia.gov/>
- ◆ **Public Access Ombudsman - Request for Mediation Form:** <http://news.maryland.gov/mpiaombuds/request-mediation/>
- ◆ **DC Office of Open Government:** <https://www.open-dc.gov/office-open-government>
- ◆ **Calvert County League of Women Voters:** Transparency Report: <http://calvert-lwvmaryland.nationbuilder.com/publications>

Outreach 2018

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