

**Public Information Act Compliance Board**

Minutes of Annual Meeting

September 12, 2016

Office of the Attorney General

200 St. Paul Place, Baltimore

**In attendance:**

*Board and Board staff:*

John H. West, III, Chair

Christopher A. Eddings

Deborah F. Moore-Carter

Rene C. Swafford

Darren S. Wigfield

Karen L. Federman Henry, Board Counsel

*Members of the public:*

Kemp Hammond, Assistant County Attorney, Anne Arundel County Office of Law

Lisa Kershner, Public Access Ombudsman

Ann MacNeille, Assistant Attorney General, OAG

George McDermott, Maryland Court Watch

Dr. Rubin McClain, Retired BCPS educator

John Norris, County Attorney, Calvert County

Rebecca Snyder, Executive Director, MDDCPress

Sarah Wicks, Intern, OAG

Monique Wilson, Paralegal, Frederick County Public Schools

**Call to order and welcoming remarks**

The Board Chair called the meeting to order at 11:15 a.m. The Board Chair invited the Boardmembers and members of the public in attendance to introduce themselves and to note their affiliations. Boardmember Eddings noted that he participated in the Open Meetings Act training and that all Boardmembers would find it valuable.

**Discussion of issues to study or recommend for legislative action**

The Board Chair opened the discussion with a description of the assistance provided by the Public Access Ombudsman during the past year and expressed the Board's thanks for the Ombudsman's efforts to resolve disputes between applicants for public information and custodians of public records. The Board Chair also thanked the

Boardmembers for their participation. The Board then discussed issues that may require study or legislative action.

Boardmember Eddings commented that the waiver of fees has been a recurring issue that often affects the time in which a custodian responds to a request for public information. Mr. Eddings noted that a request sometimes is time-sensitive and when an applicant needs to wait for mediation of a fee or fee waiver to gain access to the materials, the meeting or presentation that the applicant needed the information for may occur before they obtain the information. Mr. Eddings would like to see a mechanism that provides for disclosure of the information while a dispute over the fees is pending. Boardmember Moore-Carter agreed and suggested that the law needs more specific criteria for the grant or denial of a waiver request to better assess an applicant's ability to pay the fee and an appropriate reduction of the amount. Board Chair West noted the difficulty in proposing a solution, but agreed that the Board should alert the General Assembly to the issue and identify items that would improve the process. Boardmember Eddings also noted that the costs charged to applicants seem too high, especially when an agency engages in duplicate reviews by its staff or attorneys and charges for all of their time.

Based on the discussion, the Board agreed in concept to recommend that the General Assembly address fees, either by limiting them or reducing them, and also, consider addressing the time in which a custodian provides the information once an estimated fee is provided.

Boardmember Wigfield offered the possibility that the Board could review redactions of material when providing public information. The Board Chair noted that redactions occur for a variety of reasons (privacy, medical, privilege) and typically are subject to judicial review. As a result, redactions may not fit within the Board's expertise. The Board agreed that the issue involves analysis better left to the courts.

Boardmember Wigfield also recommended that the law should clarify what actual costs may be charged. He highlighted the apparent conflict in the law between the option to charge actual costs and the limits on an employee's salary. In particular, the issue of an employee's salary came up during the year and the Board held that the custodian could include only the hourly rate, but not the additional cost of benefits that an employer may provide. The Board agreed to include this recommendation in the annual report.

Boardmember Eddings suggested that a database might be useful as a long-term effort to track the handling of public information requests. He noted that it would be helpful to know the timing of responses as well as the situations in which an applicant does not pick up the information once it is available. Boardmember Swafford noted that the database should reflect those requests that are narrow and those that are overly broad. Boardmember Wigfield followed up with a suggestion that the Public Information Act

Manual issued by the Office of the Attorney General include guidance to promote keeping requests reasonable and not overly broad.

Several attendees provided additional concerns. Kemp Hammond commented that broad requests often need additional time for a response and suggested that some situations merit an extension of time by consent or a tolling mechanism to accommodate the response time. Several Boardmembers agreed with this concept. Rebecca Snyder emphasized the delays by custodians when providing information even when a request is not overly broad or large. She noted the distinction between a good faith effort to respond and an effort that does not reflect good faith. John Norris commented that requests vary significantly—some can be handled immediately and others require more time due to volume or overly broad requests. When the applicant and custodian can consult with someone, the request and often the fees can be reduced. Mr. Norris indicated that he relied on provisions of the Freedom of Information Act to assist in the cost analysis in an instance with a large volume of documents.

The Ombudsman noted her experience with reducing costs and voluminous requests and suggested that training the legal advisers to the agencies can assist as well. One idea is to use the 10-day letter sent by the custodian to offer referral to the Ombudsman at an early stage to expedite the discussion and outcome. The Board Chair noted that this is consistent with the requirement of the Federal Rules for discovery when electronically stored information is involved—the parties are required to discuss the search terms and scope of the materials sought. The same method could assist public information requests.

George McDermott raised his concern with unsigned court orders and the denial of his request for certified copies of the judges' signatures on orders and oaths of office. The Board Chair explained that Mr. McDermott's complaint had been received by the Board and will be handled according to its process. In addition, the Board Chair explained that the Board's authority does not include reviewing an agency's procedures or changes in agency policies and procedures.

Monique Wilson asked the Board how to handle applicants who submit multiple and frequent requests for information. Several Boardmembers referred Ms. Wilson to the Public Information Act Manual prepared by the Office of the Attorney General for information regarding the calculation of costs for ongoing or frequent requests.

### **Review of draft annual report**

The Boardmembers agreed to the contents of the draft annual report. Additional matters to include are:

- acknowledgement of the Ombudsman's extraordinary efforts during the reporting period;
- recommendations regarding standardized fees and waivers, and addressing response times.

Staff was instructed to prepare appropriate language and revise the report for the Board's review and approval. The report is due October 1, 2016, and the Board Chair will attend a meeting before the Joint Committee on Legislative Information Technology and Open Government in Annapolis on November 2, 2016, with the Board's counsel.

### **New business**

The Board discussed its approach for communicating with the General Assembly regarding legislation of interest to the Board. The Board agreed to have testimony flow through the Board Chair on behalf of the Board, with input from the full Board prior to any public comments. In situations where the Board has agreed to talking points on an issue, individual Boardmembers may share those points with members of the General Assembly. The goal is to ensure that the Board speaks as a unit and that, to the extent any matter does not yield consensus, the testimony provided by the Board Chair would identify the alternate views.

### **Closing remarks and adjournment**

The Board Chair thanked everyone for attending and adjourned the meeting at 12:20 p.m.