

## **Public Information Act Compliance Board**

Minutes of Annual Meeting

August 7, 2018

Office of the Attorney General

200 St. Paul Place, Baltimore, Maryland

### **In attendance:**

#### *Board and Board staff:*

John H. West, III, Chair

Larry Effingham

René C. Swafford

Darren S. Wigfield

Jeffrey Hochstetler, Board Counsel

Janice Clark, Board Administrator

*Members of the public:* 27 Members of the public attended, including Lisa Kershner, Public Access Ombudsman, 4 individuals from advocacy associations, and 22 employees of Maryland agencies across the state. (See attached attendance sheet)

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

The Board Chair called the meeting to order at 12:35 p.m. The Board Chair invited the Board members and members of the public in attendance to introduce themselves and to note their affiliations. The meeting agenda includes discussion of the Board's 3rd Annual Report, which will be submitted to the Legislature for its oversight. The goal of the report is to identify and discuss issues to study or recommend for legislative action under the Public Information Act.

### **Board Activities and Composition**

The Chair provided a brief overview of the draft annual report. He noted that there were few complaints ruled on by the board in 2018. The Chair highlighted the importance of the Public Access Ombudsman program in responding to numerous Public Information Act (PIA) issues outside of the jurisdiction of the Board. He noted that the Board has no authority to decide fee waiver issues under the PIA. He provided a description of jurisdiction and responsibilities of the board.

The chair also affirmed the need for the Board to include a member with background on technology and how data is stored. Since the inception of the Board in 2015, Mr. Wigfield has served that role; his term will expire in 2019. The chair recommended that the composition of the board always include someone with that expertise.

### **Inmate Requests for Records**

Chairman West noted that there is a systemic issue regarding inmate requests for case files and investigation records relating to their individual conviction. He added that it is a significant point

of concern to the Board that fees for inmate records can be well beyond the ability of inmates to pay, which prevents them from obtaining the records. The Board brought this issue before the Legislature in its testimony in 2017.

### **Working with the Public Access Ombudsman**

The Chair asked the Ombudsman, Lisa Kershner, to report on her activities under the PIA in FY 2018. Ms. Kershner began her report by acknowledging a number of public attendees to the meeting who have worked with the Ombudsman's office in mediation matters regarding the PIA. She also thanked 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 noted that nearly all requests for mediation are initiated by the requestor, many deal with fees in one way or another, and many fee waiver issues have been referred to her by the Board. Ms. Kershner reported on big picture issues that the Ombudsman's office has seen:

- **Inmate Access to Records.** The barriers to access to records by inmates, usually due to high fees, continues to be an issue.
- **Record management.** The systems that agencies have for record storage and retrieval directly impacts their ability to respond to PIA requests.
- **Agency Outreach.** There has been a trend in the last year of increased outreach by agencies to the Ombudsman's office with questions as well as requests for training and resource materials. The Ombudsman is taking this trend as a sign that her outreach efforts are working and added that the Ombudsman's training program will continue to evolve and be available.

### **Overview of FY 2018 PIACB Cases**

Chairman West called on Mr. Hochstetler to provide a report from staff regarding complaints received in FY 2018. Mr. Hochstetler noted that the OAG's Public Access Unit provides staffing to the Board and are the front line reviewers of Board complaints. Since his hiring in February 2018, there have been multiple complaints to the Board and only one opinion has been issued. Of 15 total complaints received in FY 2018, 11 were dismissed as outside of the jurisdiction of the Board and 4 opinions were issued. Most of the complaints were not about the reasonableness of a fee--within the Board's jurisdiction--but instead concerned the affordability of a fee and/or a fee waiver denial, which are not within the Board's jurisdiction. This is the most significant trend that the Board staff has seen in the past year, which may inform the Board's recommendations in its Annual Report.

### **Public Discussion**

The chairman opened the meeting up to questions and suggestions from members of the public. The comments centered on four areas: board jurisdiction, fee waivers for inmates, estimating reasonable fees, and records custodians balancing transparency with privacy concerns. A more in-depth description follows.

*Q. How was the Board's jurisdiction decided, and where did the minimum fee requirement of \$350 come from?*

**A.** Chairman West replied that the minimum fee requirement is in the statute which was passed in 2015 in the same legislation that created the Board.

Les Knapp, Maryland Association of Counties (MACo), added that he was part of a stakeholders group that included county and municipal associations, state agency representatives, and open government advocates that helped arrive at that number for the statute. The stakeholders reviewed their PIA requests and found that \$350 was the tipping point beyond which agencies would begin to receive push back to their fee estimates.

*Q. How do we balance an increased number of requests from inmates with the increased costs agencies are incurring to respond?*

**A.** Chairman West noted that this is a money issue for both inmates and agencies. Budget increases would have to come from the legislature. He also noted that the current system of charging fees is serving as a barrier for inmates and that the Board raised this issue in prior meetings with the Legislature.

*Q. In any recommendations regarding fee waivers for inmates please note that some inmates are not requesting their own records, but sometimes are asking for records of victims and witnesses.*

**A.** Mr. Wigfield noted that it is a good point and that any recommendations regarding inmate requests and fee waivers should only be for inmates requesting their own case files.

*Q. Our agency does not have the infrastructure capacity to receive money even if we charge fees. Have you seen this with other agencies and do you have any recommendations for how agencies can charge fees if they don't have this infrastructure?*

**A.** Public Access Ombudsman, Lisa Kershner, noted that the Ombudsman's office had not seen this problem before but that it may be possible for small agencies without that capacity to enter into an agreement with a larger Maryland-affiliated agency to create a system of accounts receivable.

*Q. Can agencies use a weighted average for salary in calculations of estimates? Can salary include actual cost to the department?*

**A.** The statute's definition of salary does not include benefits. Previous opinions of the Board have found benefits cannot be included in the salary rate. The Board discussed the definition of reasonable fee.

*Q. Does the Board have any opinions regarding denial of records requests when the requests are being used for commercial purposes.*

**A.** Mr. Hochstetler noted that the Board’s jurisdiction does not include denials of production of records. He added that the PIA generally does not allow agencies to deny records based on the commercial purposes of the requestor.

Members of the public continued to discuss PIA requests for documents that serve solely commercial purposes. They asked the board to include in its recommendations to the legislature limits on commercial requests that do not serve the public good.

Members of the public also discussed “high-volume” requestors and ways to resolve time intensive requests, i.e., requests for “all emails”. Ideas included aggregating similar requests from the same requestor, seeking the assistance of the ombudsman, and contacting the requestor to clarify what they are seeking.

Other topics discussed included the definition of “Person in interest”, privacy concerns regarding PIA requests, and public interest concerns regarding sharing agency contact lists.

#### **Closing remarks and adjournment**

The Board Chair thanked everyone for attending and adjourned the meeting at 1:40 p.m. The Board will reconvene by conference call to finalize and approve the Annual Report, which is due October 1, 2018. The Board acknowledges the efforts of staff and thanked the Office of the Attorney General for its great support.

## Public Attendees - August 7 Board meeting

<b>name</b>	<b>Title</b>	<b>Org</b>
Adina Crawford		Montgomery County Police
Amy Grasso	AAG	Dept. of Housing and Community Development
Bonita Anderson	City Clerk	City of Greenbelt
Cathy Coble	Director of Finance and admin	Northeast Maryland Waste Disposal Authority
Christopher Tkacik	Associate General Counsel	University of Maryland Baltimore County
Courtney Wright	Paralegal II	Dept. of Housing and Community Development
Elijah Parker		Montgomery County Police
Holly Barrett	PIA Coordinator	Maryland State Police
Ida J Williams	Director of Central Records	Maryland State Police
Irma Robbins	Deputy General Counsel	University of Maryland at Baltimore
Janis Zink Sartucci		Parents' Coalition of Montgomery County, MD
Joanne Causey	Communications Specialist	Montgomery County Public Schools
Justin Fury		Maryland Municipal League (MML)
Kendra Randall Jolivet	Executive Secretary	Commission on Judicial Disabilities
Kimberlee Schultz	Public Affairs Officer	MD Department of Education
Laura Anderson Wright	Associate General Counsel	University of Maryland College Park
Leslie Knapp Jr.	Legal & Policy Counsel	Maryland Association of Counties (MACo)
Lisa Kershner	Ombudsman	Public Access Ombudsman
Mary Davidson	IMTD Field Services	Montgomery County Police
Michael Schlein	Division Administrator	Secretary of State
Ms. Effingham		PIACB guest
Richard Wohkittel	Captain	Bowie Police Department
Ronald Fisher	TIMC Commander	Maryland State Police
Rosetta Butler	Chief of Purchasing and Disbursements	Baltimore County Government
Stacey Roig	Secretary	Maryland Workers' Compensation Commission
Tami Cathell	PIA Custodian	Secretary of State
Veronica Marmol		Montgomery County Public Schools