

J. JOSEPH CURRAN, JR.

Attorney General

jschwartz@oag.state.md.us

E-MAIL

(410) 576-7003

TELECOPIER NO.



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

May 22, 1998

CARMEN M. SHEPARD
DONNA HILL STATON
Deputy Attorneys General

(410) 576-6327

WRITER'S DIRECT DIAL NO.

Mark M. Viani, Esquire
Associate County Attorney
Courthouse
175 Main Street
Prince Frederick, Maryland 20678

Dear Mr. Viani:

I am writing in response to your letter of May 13, 1998, in which you requested my views on whether the Maryland Public Information Act authorizes a requester to submit a "standing request" - that is, to request that a category of records prepared at regular intervals be provided as they are created. In my view, the PIA does not entitle a requester to have a standing request honored.

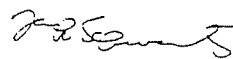
The PIA applies only to "public records." A public record is defined as documentary material that is "made" or "received" by a unit of government. §10-611(f)(1) of the State Government Article. These terms imply that the records within the scope of a request already exist. Moreover, the terms "custodian" and "official custodian" are meaningful only for records that currently exist, because no one can have "physical custody and control of a public record" that is nonexistent. §10-611(c) and (d). Finally, the entire process of review that is required in order to determine whether an exemption in the PIA mandates or permits nondisclosure would be meaningless if records do not exist to be reviewed.

While I am not aware of any case law in Maryland on this question, a federal appellate court has held that nothing in the federal Freedom of Information Act "can be construed as requiring an agency to set up a mailing list to automatically disseminate agency records or information." *Mandel Grunfeld and Herrick v. United States Customs Service*, 709 F.2d 41, 43 (11th Cir. 1983). See also *Lybarger v. Cardwell*, 577 F.2d 764, 767 (1st Cir. 1978). In my view, Maryland courts would reach the same conclusion if the matter were litigated under the PIA.

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I hope that this letter of advice, although not an opinion of the Attorney General, is fully responsive to your inquiry. Please let me know if I may be of further assistance.

Very truly yours,



Jack Schwartz
Chief Counsel
Opinions & Advice

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