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BOYD K. RUTHERFORD
LT. GOVERNOR



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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

TESTIMONY IN SUPPORT OF SB 449
February 23, 2021
Education, Health, and Environmental Affairs Committee

Dear Chair Pinsky, Vice Chair Kagan, and Members of the Committee:

On behalf of the Public Information Act Compliance Board (“Board”), we ask for a favorable report on SB 449, which would provide the Board with comprehensive jurisdiction to review and decide disputes about access to public records that cannot be resolved through mediation with the Public Access Ombudsman (“Ombudsman”). We continue to believe that this is a needed and necessary improvement to the current dispute resolution scheme provided by the Public Information Act (“PIA”).

Established by legislation passed in 2015, the Board is an independent, volunteer body comprising five members who represent diverse interests and knowledge areas, including the media, government, the bar, and the private citizenry. Though the first draft of the 2015 bill provided the Board with the comprehensive PIA jurisdiction that SB 449 provides, its final form drastically limited the Board’s authority by permitting it to review and decide only complaints about unreasonable fees over \$350 charged under the PIA. Since October of 2015, the Board has received just 41 complaints that meet this narrow jurisdictional threshold.

By contrast, the Ombudsman’s program, which was created at the same time as the Board and which involves purely voluntary, non-binding mediation, has received more than 1,153 mediation requests for all types of PIA disputes during the same time period. The vast majority of these do not involve fees over \$350, but instead cover allegations ranging from unlawful withholding of records and untimely responses to overly broad or burdensome requests.

The Ombudsman makes every effort to resolve the disputes that come to her, but many are not resolved through mediation, leaving frustrated requesters or custodians no alternative but going to court. Because court is costly, time-consuming, and complicated, it is not an accessible remedy for many PIA requesters—which means that those without the time and money litigation requires have no real dispute resolution options available. These disputes simply go unresolved.

SB 449 addresses these unresolved disputes and enables the Board to fill the gap in a way that enhances and compliments the important work of the Ombudsman. Notably, in those comparatively rare instances where the Board’s jurisdiction does overlap with that of the Ombudsman—i.e., where a requester complains that he or she has been assessed an unreasonable fee over \$350 for production of public records—mediation is often successful. Such anecdotal

evidence suggests that expanded Board jurisdiction will enhance the effectiveness of the Ombudsman program by providing the parties an incentive to work out their disputes in a more informal, confidential setting. And, for those disputes that cannot be resolved through mediation, the Board can provide an accessible and meaningful remedy.

We emphasize the practicality of the proposed changes. The pandemic has brought into stark relief to extent to which disputes continue, despite significant changes to the way government (and courts) go about conducting their business. When disputes about access to public records arise, the Board has the ability to review and decide cases based on submissions and argument. For those relatively few, more complex cases where a hearing or review of records might be necessary, the Board is capable of holding video videoconferences with the parties or conducting confidential records reviews akin to the *in camera* reviews done in court. Put simply, expanded Board jurisdiction will provide timely, accessible, cost-effective, and meaningful resolution of PIA disputes—during both pandemic and non-pandemic times.

Finally, the Board is equipped to take on an expanded caseload without any major changes to its structure or operation. As described in the *Final Report on the PIA*,¹ which was published in 2019, we believe the Board’s increased caseload under SB 449 could be handled by two additional full-time staff. This is a modest expenditure in exchange for a crucial addition to the PIA dispute resolution process and, ultimately, for improving transparency at all levels of State and local government.

For all of these reasons, we urge a favorable report on SB 449.

Public Information Act Compliance Board

John H. West, III, Esq., Chair
Christopher A. Eddings
Deborah Moore-Carter
René C. Swafford, Esq.
Darren S. Wigfield

¹ The report is available here: <https://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2019/12/Final-Report-on-the-PIA-12.27.19.pdf>.