

# **SB 449 - Public Information Act – Revisions (Equit**

Uploaded by: Antoine, Joanne

Position: FAV

February 23, 2021

**Testimony on SB 449**  
**Public Information Act – Revisions (Equitable Access to Records Act)**  
**Education, Health, and Environmental Affairs**

**Position: Favorable**

Common Cause Maryland supports SB 449 which would build on the successful implementation of the Public Information Act (PIA) Compliance Board and the Ombudsman program as well as ensure the process for requesting records under the PIA is equitable.

Maryland citizens deserve access to information. They need fair and open access to data and public records concerning health, safety, natural resources, civil liberties and how government funds and subsidies are sent. While the General Assembly has taken important steps towards more open and accessible government, our current PIA dispute-resolution process leaves many requesters questioning the overall fairness and efficiency of the PIA.

Currently, the PIA Compliance Board has no jurisdiction to decide any disputes other than those involving fees greater than \$350 which are usually regarding fee waivers, repetitive requests, or exemptions. Requesters only option is to seek judicial remedy because there is no other process for obtaining a binding final decision on any PIA dispute outside of going to court. As can be expected, most infrequently use this process because they may be unable to cover the cost of legal fees.

SB 449 address this inequity by taking advantage of the Board that has been underutilized and expanding its jurisdiction while preserving the Ombudsman program. This would ensure all requesters who are unable to afford legal representation are provided with an alternative to resolving their disputes. The process is made even more accessible because the change would not require a complex process or hearing that may confuse requesters. Those requests unable to be resolved in mediation with the Ombudsman would be submitted to the Board who would be able to issue a binding decision.

SB 449 also lowers the current \$350 threshold to \$200, ensuring more disputes involving fees and the denial of fee waivers are able to be reviewed by the Board. This will allow the Board the opportunity to ensure that custodians are making the determination on an individualized, case-by-case basis. While the fee waiver process is still left at the discretion of the agency, many of which deny waivers with no discretion, we do believe this is a good starting point that begins to address the limited transparency available to low-income Marylanders. It also eliminates the process for judicial review of an agency's fee waiver decision which is inaccessible to a requester who is asking for a waiver.

SB 449 also requires regular reporting from agencies, ensuring that they are tracking requests as they receive them and as they are resolved. This will ensure future reports are able to provide a more robust review of the performance of the PIA. We note that agencies were not required to report, but have said that it is feasible for them to periodically report data on PIA caseloads.

The PIA Compliance Board and Ombudsman program play an integral role in ensuring government transparency which is vital to a healthy democracy. Expanding the Board's jurisdiction and ensuring they and the Ombudsman have access to information from agencies as well as adequate staffing will improve the PIA process while ensuring requesters with limited means receive a more equitable treatment.

We urge a favorable report on SB 449.



# **ShoreRivers SB449 Support.pdf**

Uploaded by: Bassett, Elle

Position: FAV



**Testimony in SUPPORT of SB449– Public Information Act – Revisions (Equitable Access to Records Act)**

February 23, 2021  
Education, Health, and Environmental Affairs

Dear Chairman Pinsky and Members of the Committee,

Thank you for this opportunity to submit testimony in **SUPPORT** of **SB449** on behalf of ShoreRivers. ShoreRivers is a river protection group on Maryland’s Eastern Shore with 3,500 members. Our mission is to protect and restore our Eastern Shore waterways through science-based advocacy, restoration, and education.

**SB449 will improve access to public records, enhancing agency accountability and transparency, which ShoreRivers believes will lead to greater enforcement of environmental laws and ultimately a healthier environment and local waterways.**

ShoreRivers routinely submits Public Information Act Requests (PIAs) to seek information pertaining to permitting, enforcement, or rule making. Transparency of this information allows citizens and organizations like ShoreRivers to provide more-informed public involvement and comments in decision-making processes, which is required and encouraged through agency determinations of regulations, standards, plans, permits, or programs. Currently, our PIA requests are often unanswered or not answered on a timely manner and we have experienced inconsistencies between agencies during the process. SB449 would identify and address these inconsistencies, reducing some of the challenges the public faces in the PIA process.

For these reasons stated above, ShoreRivers urges the Committee to adopt a **FAVORABLE** report on **SB449**.

Sincerely,

Elle Bassett  
Miles-Wye Riverkeeper, on behalf of:

---

***ShoreRivers***

Isabel Hardesty, Executive Director  
Annie Richards, Chester Riverkeeper | Matt Pluta, Choptank Riverkeeper  
Elle Bassett, Miles-Wye Riverkeeper | Zack Kelleher, Sassafras Riverkeeper

---

**Main Office**  
114 S. Washington St.  
Suite 301  
Easton, MD 21601  
443.385.0511

**Regional Office**  
111A North Main St.  
Galena, MD 21635  
410.810.7556

**Regional Office**  
207 S. Water St.  
Unit B  
Chestertown, MD 21620  
410.810.7556

[shorerivers.org](http://shorerivers.org)

# **Testimony In Support of SB 449 HB 183 PIA Process**

Uploaded by: Ceruolo, Rich

Position: FAV

February 19, 2021

Maryland Senate  
11 Bladen St.  
Annapolis, MD. 21401

**In Support of SB 449 – Public Information Act – Revisions – Equitable Access to Records Act**

Good day members of the Senate Education, Health and Environmental Affairs Committee.

I am the parent of a child with multiple challenges and disabilities. He has been bounced between 504 plans and IEP plans over the course of 8 years within the AACPS system. Parents like myself often find ourselves left asking for documentation from our local school systems and the state's department of education. We are just one subset of MD citizens requesting improved transparency from our state and county agencies.

Trying to keep up with changes to school system policies, I very often I have found myself having to request documentation from our local school system by way of the Public Information Act.

As if the special education process is not difficult enough for families and students, factors like a lack of a reliable and consistent data sets further complicates our ability to advocate for appropriate services and accommodations for our children during the school academic year, and between academic years.

Very often the information is closely guarded by school systems, crucial to helping track, and measure a student's progress toward their IEP goals. School system policies and local special education process guidelines often inhibit parents, and advocates, accessing student records in a timely manner. Thus, negatively impacting student's access to the programs, supports and accommodations needed by those students and accessing Free Appropriate Public Education or FAPE, guaranteed to them under federal education law.

But Maryland's current PIA process is very time consuming and frustrating in its current state. Delays, incomplete responses to requests, and lack of a robust appeal process along with stone walling tactics employed by some county agencies have made my job as a parent and advocate for children with disabilities harder, if not impossible to accomplish without evening the playing field. Agencies don't feel compelled to abide by response guidelines within the law, because the PIA process lacks much in the way of accountability.

The Ombudsman's office released a report released in December 2019 that outlined recommendations to improve the PIA process, to re-instate the appeal process and appoint an oversight board to help resolve disputes. Having been through the PIA process a number of times, I agree that these recommended changes are needed to improve the PIA process as a whole (Please See SB 590 / HB 502 - 2020 Session).

Please return a favorable report on SB 449 to help improve the transparency of county and state agencies, and to help bring more accountability and improvements to the PIA process within the state of Maryland. Thank you for your time and consideration of my testimony.

Mr. Richard Ceruolo,  
Parent and Civil Rights and Special Education Reform Advocate | Parent Advocacy Consortium

**SB0449\_Represent Maryland\_Favorable.pdf**

Uploaded by: Demnowicz, Cristi

Position: FAV





**BILL: SB0449**

**BILL TITLE: Public Information Act – Revisions (Equitable Access to Records Act)**

**BILL SPONSOR: Senator Kagan**

**COMMITTEE: Education, Health, and Environmental Affairs**

**POSITION: FAVORABLE**

**HEARING DATE: 2/23/21**

### **TESTIMONY IN FAVOR OF SB0449**

Represent Maryland is a grassroots, all volunteer group of voters who believe in democracy and oppose corruption. We believe that a key tenet of a democracy is transparency. In the words of former Supreme Court Justice Louis Brandeis, “Sunlight is said to be the best of disinfectants”. In short, robust transparency mitigates corruption.

We believe that the public must have access to government workings because an educated and informed electorate is essential to a healthy democracy. But our democracy is currently in jeopardy, partially due to decades of lack of access to information and often insurmountable obstacles to obtaining it.

Legislation that improves transparency is more important than ever. Thus, we urge a favorable report for SB0449 as it will strengthen the Public Information Act and make it more universally accessible to all Marylanders.

Sincerely,  
Cristi Demnowicz, Chair  
Represent Maryland  
Maryland Voter-LD07

Represent Maryland is a grassroots anti-corruption group of citizen advocates that #FightForDemocracy in Maryland. Our democracy solutions include: Public Election Funds, Independent Redistricting, Special Elections, Ranked Choice Voting, Increased Ethics and Transparency, and Increased Voter Participation. Learn more about our work at [www.RepresentMaryland.org](http://www.RepresentMaryland.org)  
Authorized by Represent Maryland PAC, T Miller, Treasurer

**SB 449 PJC favorable testimony.pdf**

Uploaded by: Gardner, Debra

Position: FAV



Debra Gardner, Legal Director  
Public Justice Center  
201 North Charles Street, Suite 1200  
Baltimore, Maryland 21201  
410-625-9409, ext 228  
gardnerd@publicjustice.org

---

## SB 449

### Public Information Act – Revisions (Equitable Access to Records Act)

Hearing before the Education, Health & Environmental Affairs Committee, February 23, 2021

**Position: FAVORABLE**

**SB 449 represents a significant advance in improving Maryland’s Public Information Act (PIA).** As reflected in the 2019 report of the Public Access Ombud and the PIA Compliance Board (Report), to fulfill the promise of 2015 reforms, there is a significant need to make access to dispute resolution under the Act more accessible, faster, and less expensive for both applicants for public records and for governmental entity custodians.

SB 449’s expansion of the Compliance Board’s jurisdiction will do just that. It will provide user-friendly access to both mediation with the Ombud and immediate recourse to the Board where mediation was unsuccessful. This reform will open access to public records to many in Maryland who are currently blocked from pursuing their rights to public records. Under the current law, as well documented by the Report, all too often government entities in Maryland continue to deny requests that should be granted (at least in part), or worse, ignore valid requests altogether.

**A recent example shows the need for this bill. PJC staff sent an identical simple PIA request to 40 similar county and municipal agencies across the state. Of the 40, 17 (43%) completely ignored the request, 6 more (15%) acknowledged it but never responded otherwise, and months after records were due, only 10 (25%) had provided records, and only 5 (13%) fully complied with the law in all respects.**

Applicants for public records have no effective remedy if the government entity refuses to participate in mediation and the applicant cannot afford to hire a lawyer and take the agency to court. SB 449 incentivizes meaningful mediation, expands the scope of the Ombud’s mediation authority, and provides effective remedies for both sides through the Compliance Board, consistent with the purpose of the PIA.

Yet any party dissatisfied with a Board decision may still appeal to the circuit court and obtain a final, judicial determination. Moreover, a Board decision is automatically stayed when such an appeal is filed. As amended by SB 449, Maryland’s PIA will provide maximum access and flexibility to all interested parties.

**SB 449 is necessary to change the culture of compliance with the PIA from essentially optional (Report at 5) to mandatory, as this body intended. The PJC urges a FAVORABLE REPORT on SB 449.** If you have any questions, please feel free to contact Debra Gardner, Legal Director, gardnerd@publicjustice.org, 410-625-9409 x228.

**SB 449 PIA Bill SUPPORT.pdf**

Uploaded by: Haren, Angela

Position: FAV

February 19, 2021

Senate Education, Health, and Environmental Affairs Committee  
2 West  
Miller Senate Office Building  
Annapolis, Maryland 21401

*Via electronic submission*

**Re: SUPPORT for SB 449 Equitable Access to Records Act**

Dear Chair Pinsky and Committee Members:

Thank you for the opportunity to comment in support of SB 449. Access to information is critical to public interest organizations, like ours, who work to ensure that the laws you pass to restore the Bay and keep Maryland's air and water clean and healthy are actually implemented and enforced. We use information obtained through Public Information Act Requests (PIAs) to participate in public processes for permitting, enforcement, and rule making. We strongly support this bill and its purpose to improve access to public records and to improve state agency accountability and transparency.

***Access to Public Information is a Legal Right***

Transparency is a critical component to good government, and the public has the legal right of access to environmental information. The Maryland Environmental Policy Act (MEPA) requires state agencies to provide "the fullest practicable provision of timely public information"<sup>1</sup> and Maryland's Public Information Act establishes that "all persons are entitled to have access to information about the affairs of government." The Maryland Department of the Environment, in particular, is required to encourage and utilize "active public involvement throughout the intergovernmental decision-making process ... to accomplish the objectives of State and federal laws and regulations."<sup>2</sup> In accepting the responsibility for implementing the federal Clean Water Act from the U.S. Environmental Protection Agency, the Department agreed that "public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program ... shall be provided for, encouraged, and assisted."<sup>3</sup>

The Department has not met these standards and, as detailed below, has obstructed the public's right to information. This failure is partly a result of a lack of agency staff and resources, but also due to institutional policies and norms that must be reformed through a more vigorous Public Information Act.

---

<sup>1</sup> Maryland Natural Resources § 1-303 (3).

<sup>2</sup> COMAR 26.08.01.02

<sup>3</sup> 33 U.S. Code § 1251(e)

## ***Maryland's Current System for Public Access to Information Needs Improvement***

Our organizations routinely encounter challenges with PIA requests. While our challenges may have been exacerbated by the pandemic, they are not new. If anything, the COVID-19 crisis has shined a light on precisely how antiquated agency processes for document retention, organization, and dissemination to the public are detrimental to true transparency and efficiency.

A summary of some of the challenges our organizations routinely experience include:

- PIA requests go unanswered, requiring requesters to follow up with agency staff only to be told the request had been “overlooked.”
- State agencies responding to PIAs saying they have no files pertaining to a request, yet similar PIAs sent to local governments produced correspondence with state agencies on the same matter.
- Requests for time sensitive investigations or permit renewals languish for months with no agency response, only to then have the request fulfilled when the issue is no longer relevant (e.g. after the public comment period closes).
- Fee waivers requests denied with no explanation or providing justifications that are not relevant or consistent with the PIA law or the Maryland Public Information Act Manual.
- Inconsistency for when and how much fees are charged.

Our groups have reached out directly to agency staff to address these issues. For your reference, we have attached a letter sent to the Maryland Department of the Environment expressing our concerns and suggesting improvements.

## ***The Public Information Act Compliance Board Should be Strengthened to Combat these Challenges and Give Effect to the Spirit of the Act.***

Our groups have also engaged the Public Access Ombudsman. However, that position's effectiveness at resolving issues is constrained by a lack of authority. Although the Maryland General Assembly thoughtfully created the Public Information Act Compliance Board and the Public Access Ombudsman position in 2015 to mediate PIA disputes between agencies and the public when they arise, it did not provide adequate authority to either the Board or the Ombudsman to remedy the disputes.

Currently, the Board's duty is to hear and decide complaints involving allegations that a government custodian imposed an unreasonable fee of more than \$350; the Board cannot decide other issues that may arise between a requester and an agency. We also note that agencies routinely charge fees just under \$350, thus eliminating the public's ability to file a complaint. HB 183 would resolve this issue by giving the Board authority to hear any complaints if the Ombudsman has issued a final determination that the dispute was not resolved.

SB 449 would strengthen the Public Information Act Compliance Board's authority to address some of the significant challenges that the public faces in attempting to get information from state agencies.

Further, this bill provides increased agency accountability by requiring agencies to prepare a

report on the number of PIA requests it receives as well as the number of requests granted, denied, or outstanding.

For these reasons, we urge you to give SB 449 a favorable report.

Thank you,

Angela Haren  
Director of Legal Innovation  
Chesapeake Legal Alliance

Mary E. Greene  
Deputy Director  
Environmental Integrity Project

Morgan A. Johnson, Esq.  
Staff Attorney  
Waterkeepers Chesapeake

Elle Bassett  
Miles-Wye Riverkeeper  
ShoreRivers

Jesse L. Iliff  
South, West & Rhode RIVERKEEPER®  
Arundel Rivers Federation, Inc.

Robin Jessica Clark  
Maryland Staff Attorney  
Chesapeake Bay Foundation

Kristen Harbeson  
Political Director  
Maryland League of Conservation Voters

Kathy Phillips  
Assateague COASTKEEPER  
Assateague Coastal Trust

Alice Volpitta  
Baltimore Harbor Waterkeeper  
Blue Water Baltimore

Katlyn Schmitt  
Policy Analyst  
Center for Progressive Reform



December 1, 2020

Suzanne Dorsey, Assistant Secretary  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, MD 21230  
*Via email to: [Suzanne.dorsey1@maryland.gov](mailto:Suzanne.dorsey1@maryland.gov)*

Re: Public Information Act Issues at Maryland Department of the Environment

Dear Ms. Dorsey:

Thank you for meeting with our organizations on November 12, 2020 to discuss challenges with the Public Information Act (PIA) process. We understand the COVID-19 pandemic has caused delays and barriers for the Maryland Department of Environment (MDE or Department) to fulfill requests in a timely manner. Nevertheless, transparency remains a legal requirement of Maryland agencies under the Public Information Act and for MDE in its operations, notably for present purposes under Section 101 of the Clean Water Act, the Maryland Environmental Policy Act, and MDE's own regulations. The public's access to information remains critical to meaningful engagement, including in the public processes currently underway for the many permits that MDE is currently re-issuing.

While the challenges we routinely encounter with PIA requests at MDE may have been exacerbated by the pandemic, they are certainly not new. If anything, the COVID-19 crisis has shined a light on precisely how MDE's current process for document retention, organization, and dissemination to the public is detrimental to true transparency and to the efficiency of agency operations.

MDE's lack of timely responses and lack of complete responses given to PIA requests erodes the public's faith in government transparency and hinders meaningful public participation. As we discussed, our organizations have experienced significant challenges getting adequate information in a timely manner from MDE in response to our PIA requests. We write to clarify our concerns and suggestions to address both short-term and long-term problems with the PIA process.



Some of the challenges we have experienced include requests:

- That were not issued acknowledgment letters, requiring us to follow-up with agency staff only to be told they had been “overlooked”.
- That MDE responded saying it held no files pertaining to the request, yet similar PIAs to local governments showed documents from and correspondence with MDE.
- That were requested for time sensitive compliance investigations or permit renewals but languished for months with no agency response.
- Where fee waivers were denied with no explanation or justification despite repeated attempts to request justifications.
- Where fee waiver denials were explained on the basis of reasons that were not relevant or consistent with the PIA law or the Maryland Public Information Act Manual.
- That MDE claims no electronic files are available to share despite knowledge of their existence in electronic format, thus contravening the purpose of section 4-205 of the General Provisions Article.
- That were confused with other requests or assumed to be the same request without MDE seeking clarification.
- That incurred large fees where other similar requests incurred no fees.

### **1. All Fee Waivers Should Be Granted During the COVID-19 Pandemic**

During the pandemic, all fee waivers for PIAs should be granted, or at least all fees should be waived for requests made by nonprofit, public interest organizations, and indigent requesters. With some of MDE’s offices closed to the public, there is often no other way to safely and responsibly access files than to have MDE prepare and send the files. Organizations or individuals seeking to obtain documents cannot go in person to scan documents when the offices are closed. Further, with cases of COVID-19 on the rise in Maryland and the Governor encouraging everyone to stay at home, it is unnecessary and irresponsible to ask members of the public to drive to an MDE office that is open and to spend several hours indoors in a public space to review and scan documents. This presents risks to both the public, and more so, to agency staff. In recognition of these risks to agency staff, we have been mindful of what sorts of records we request and how we tailor our requests for information in order to make the process as efficient as possible. These risks do not, however, change our statutory right to this information.

### **2. MDE Should Apply Fee Waiver Criteria Uniformly**

Furthermore, we request MDE provide clarity and consistency on the evaluation criteria it uses to decide whether to grant a fee waiver request. Our organizations consistently provide the same type

of information in support of PIA fee waiver requests, but MDE is inconsistent with its approval/denial of such requests and MDE does not provide justification when denying a request.

In our recent conversation, MDE staff suggested that the fee waiver decisions are based on internal agency guidance that states that, in order to grant a request, the agency must find that an applicant is both indigent **and** seeking the information for a public purpose. This, however, is contrary to Maryland General Provisions Code § 4-206(e) which specifies that fee waivers should be granted when the applicant asks for a waiver and: (1) if the applicant is indigent, **or** (2) the waiver is in the public interest.

When a PIA request is submitted from a 501(c)(3) nonprofit organization seeking the information in order to participate in a public process such as a general permit reissuance or to better understand and educate its members about the pollution impacts of a facility in significant noncompliance with a permit, the request is squarely in the public interest and a fee waiver should be granted. For most, or perhaps all, requests submitted by our organizations, our interest in the public records are fully consistent with the Department's mission and with the statutory duties MDE is charged with carrying out; as such, we are acting as partners with the Department in utilizing the requested records.

### **3. Electronic Documents Must be Provided Whenever Possible**

Maryland General Provisions Code § 4-205 requires documents to be provided to requesters in electronic format when available in that format. This relatively recent amendment to the Public Information Act was established in recognition of the widespread understanding that electronic communications and records production are the default way in which agencies should and do operate in the 21st century, and that agencies' implementation of the Public Information Act should reflect this understanding.

We are concerned that we have been told by the Department that electronic materials are not available, only to then receive a printed copy of an electronic document during a file review process or receive such materials in electronic format from another source. For example, a printed version of an email that can be more easily downloaded or printed as a PDF versus an actual printed document. We urge MDE to collect, store, manage, and disseminate information electronically for the sake of public health in the short term and administrative efficiency in the longer term.

Of course, this issue is broader than the requirement to merely provide materials in an electronic format and speaks to a larger and more important issue of diligently and dutifully fulfilling the requirements of the Public Information Act. If records are to be withheld from the public, the requesters are owed an explanation for that withholding. If the improper withholding of records is

unintentional, we urge the Department to provide more staff and resources for staff charged with overseeing PIA compliance. The omission of a public record lawfully requested is a serious violation of the Act (GP 4-362) and erodes the public's confidence in the ability and willingness of an agency to serve the public.

#### **4. Information Should be Made Publicly Available Online**

We sympathize with the resource constraints faced by the Department and its staff. In fact, we and our partners have been vocal advocates for the Department for many years, showing up each legislative session to ask for more funding for core agency priorities. We understand that mistakes are made by staff faced with unreasonable workloads. We urge the Department to share with the Governor, Department of Budget and Management, and the budget committees of the General Assembly the difficulties its staff is facing, including in fulfilling basic agency functions such as providing access to public records and complying with legal obligations. Just as a lack of funding does not excuse violations of the environmental laws your agency is charged with administering, a lack of funding likewise cannot excuse noncompliance with the Public Information Act.

In addition to advocating for more budgetary resources for PIA compliance, we also urge the Department to continue taking actions within its authority to enhance transparency and accessibility of data and public records. Obviously, it would substantially reduce workloads for PIA officers and other agency staff if the Department's website contained a wealth of the data and other records the public is seeking, organized in an easily accessible manner. Numerous states around the country have successfully posted such data on publicly accessible websites. Specifically, the type of information that can and should be proactively placed online includes:

- Accurate and complete DMRs and other monitoring reports for non NPDES discharge permits
- Inspection reports
- Notices of violation
- Informal and formal enforcement actions: settlement agreements, consent orders/consent decrees
- Permit Applications and Permit Packages for new and renewal applications, including: NPDES Permits; Groundwater Discharge Permits; Nontidal and Tidal Wetlands Permits; Clean Air Act Permits; and Solid Waste Management Permits

#### **5. MDE Should Employ a Consistent Process for Electronic Document Retention**

In conversations with MDE staff, our organizations have learned that programs within MDE have widely varying processes for document retention. We routinely experience significant delays in

receiving documents with the explanation that staff could not find documents. It should be no surprise to MDE that PIA requests are likely to be made for things such as NPDES permit renewals and enforcement. MDE can reduce the burden on its staff and to the public by requiring staff to retain electronic documents in such a way that makes it easy to fulfill anticipated PIA requests.

We would appreciate a response to the issues raised in this letter.

Thank you,

Angela Haren, Director of Legal Innovation  
Chesapeake Legal Alliance

Mary Greene, Deputy Director  
Environmental Integrity Project

Kristin Reilly, Director  
Choose Clean Water Coalition

Jon Mueller, Vice President, Litigation  
Chesapeake Bay Foundation

Laurie Ristino, Interim Executive Director  
Center for Progressive Reform

Cc: Ben Grumbles, Secretary, Maryland Department of the Environment  
Brian Frosh, Maryland Attorney General  
Lisa Kershner, Maryland Public Access Ombudsman

# **SB449 Public Information Act - Revisions - MPIA Re**

Uploaded by: Kagan, Senator Cheryl

Position: FAV

CHERYL C. KAGAN  
Legislative District 17  
Montgomery County

---

Vice Chair  
Education, Health, and  
Environmental Affairs Committee

---

Joint Audit Committee  
Joint Committee on Federal Relations



Miller Senate Office Building  
11 Bladen Street, Suite 2 West  
Annapolis, Maryland 21401  
301-858-3134 · 410-841-3134  
800-492-7122 Ext. 3134  
Fax 301-858-3665 · 410-841-3665  
Cheryl.Kagan@senate.state.md.us

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**SB449: Public Information Act - Revisions**  
**Senate Education, Health and Environmental Affairs Committee**  
**Tuesday, February 23, 2021, 1:00 PM**

Fifty-one years ago, the Public Information Act (PIA) Compliance Board and the Office of the Public Access Ombudsman were established to ensure sound management of requests for information on state government activities and decisions. Access to public information remains a key issue to ensure government accountability. This bill would help the Board and the Ombudsman perform their duties better by enacting recommendations outlined in their *Final Report on the Public Information Act*.

The Board is an independent, five-member body tasked with deciding certain fee disputes under the Public Information Act. The Ombudsman is an independent office that seeks to resolve PIA disputes on a voluntary basis so as to reduce disputes that end up in the courts. Both the Ombudsman and Board are supported by the Office of the Attorney General.

The Board and the Ombudsman were asked to collect data from State agencies concerning their PIA caseloads, and practices and make recommendations relating to PIA management. Their findings indicated that the 2015 authorization for these entities produced disproportionate caseloads. The Ombudsman has handled 903 cases and the Board has handled only 31 in a 15-month span and created a dynamic that leaves many requestors with no alternative to a court case.

SB449 would implement the *Final Report on the Public Information Act's* recommendations. The Board would be authorized to review and would also decide certain disputes that go unresolved by the Public Access Ombudsman. Additionally, it would expand the Board's jurisdiction to waive or reduce various fees. The bill would also instruct custodians to post an annual report on the number of requests received, fulfilled, and denied. It would also set a staffing level minimum of four employees to support the Board and the office of the Public Access Ombudsman.

Implementing these changes would ensure that everyone has access to public information. Going to court is costly, time-consuming, and complicated. Requestors should have an effective and efficient way to resolve disputes.

There have been recent conversations with the University System of Maryland. We are collaborating with them to ensure that government entities are capable of responding to requests for public information in a timely manner.

I urge a favorable report on SB449.

**022321TestimonySB449.final.pdf**

Uploaded by: Kershner, Lisa

Position: FAV

LAWRENCE J. HOGAN, JR.  
Governor

BOYD K. RUTHERFORD  
Lt. Governor



LISA A. KERSHNER  
Public Access Ombudsman

STATE OF MARYLAND  
OFFICE OF THE  
PUBLIC ACCESS OMBUDSMAN

**Testimony of Lisa Kershner, Public Access Ombudsman, in support of S.B. 449**  
*Submitted to*  
**Education, Health, and Environmental Affairs Committee**  
**February 23, 2021**

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

I serve as Maryland's Public Access Ombudsman, a position I have held since the program began in 2016. I submit this testimony in support of S.B. 449, which strengthens the Maryland Public Information Act ("PIA") and enhances transparency and good government by providing:

1. an accessible administrative remedy, where none currently exists, that will be available to both requestors and agencies to decide PIA disputes that cannot be resolved through mediation alone;
2. for the development by agencies of policies of proactive disclosure of their public records, a measure that will greatly increase public access and at the same time reduce agency workload in responding separately to routine PIA requests; and
3. for the annual reporting by an agency subject to the Act of certain data regarding the PIA requests it receives and the disposition of those requests, thereby increasing transparency regarding actual PIA performance and providing reliable data that can inform future resource allocations and other improvements to the law.

**A. *Need for Administrative Remedy for Disputes that Cannot be Resolved by Mediation Alone***

The purpose of the PIA is to make public records broadly available upon request with the least cost and delay possible unless an exemption from disclosure provided by the Act applies. The animating premise of the Act is that transparency is essential to build trust in government and to the functioning of a healthy democratic system of governance—principles which have never been more important—or more in jeopardy—than they are today. The legislature recognized in 2015, when it created the Office of the Public Access Ombudsman and the PIA Compliance Board, that in order to fulfill the purpose of the PIA, it was necessary to establish readily accessible dispute resolution mechanisms that would be broadly available to and accessible by the many diverse requestors who seek access to public records as well as to state and local agencies that are subject to the Act.

To achieve these goals, the Office of the Public Access Ombudsman was created and given a broad mandate to try to resolve a wide range of disputes regarding access to public records under the PIA, but only on a purely voluntary basis. At the same time, the legislature also created a separate program to provide an administrative remedy for PIA disputes via the PIA Compliance Board ("Board"), a five-member volunteer Board whose members are nominated by stakeholder organizations, such as the press, open government advocacy communities, MACO and MML.



Unlike the Ombudsman program, the Board was given decisional authority, but ultimately under 2015's H.B. 755/S.B. 695 as enacted, its jurisdiction was limited to a tiny fraction of actual PIA disputes, namely, PIA fee disputes over \$350.<sup>1</sup> This configuration of the two existing extra-judicial PIA dispute resolution programs has resulted in a Board that is severely under-utilized and of no value in resolving more difficult and protracted disputes such as those involving denials of access to public records, denials of fee waiver requests, and other disputes that are central to the proper implementation of the PIA. While the Ombudsman has broad authority to try to mediate all of these types of disputes, she has no ability to decide or compel any action, and in too many cases, simply is unable to even induce parties to engage with the mediation process in a meaningful way.

S.B. 449 addresses these defects by restoring to the Board the full plenary jurisdiction that was envisioned when it was originally proposed in 2015. One difference is that, under S.B. 449, in order to proceed to Board review, the complaining party must first attempt to mediate the dispute through the Ombudsman, who must then certify that following good faith efforts to mediate, specific issues remain unresolved.

In 2019 and again in 2020, the Office of the Ombudsman performed a detailed review of the Ombudsman's caseload in order to determine the number of disputes, and their level of complexity, that are likely to be in need of a Board remedy.<sup>2</sup> The data is highly consistent: whether examined on an annual or "since inception" basis, approximately a quarter of the Ombudsman's caseload—or some 50 to 60 new matters—are likely to go to the Board for review and decision each year. Additionally, based on our knowledge of the issues present in these matters, we believe that about half of the new matters going to the Board will be subject to summary disposition, with the other half likely to involve some additional work such as research and/or review of additional documentation, for example, record indices or descriptions of privileged records. Based on this evaluation, we believe that the full Board remedy provided by S.B. 449 can be implemented with the addition of two new staff, one of whom would be an attorney and the other, an administrator or paralegal.<sup>3</sup>

---

<sup>1</sup> Prior to the changes enacted in 2015, requestors denied access to records by certain State agencies had the ability to challenge those denials administratively through the Office of Administrative Hearings ("OAH"). While H.B. 755 / S.B. 695 originally provided the Board with plenary jurisdiction to decide PIA disputes, the bill was amended to limit the Board's jurisdiction to fee disputes over \$350. Consistent with the original proposed full Board jurisdiction, the bill also eliminated the jurisdiction of OAH to decide PIA disputes. When the bill was amended to provide for the Board's current very limited jurisdiction, the authority of OAH was not reinstated. This history and its impact on dispute resolution under the PIA is described in a 2019 report jointly authored by the Board and Ombudsman. See *Final Report on the Public Information Act* at 9-17 (Dec. 27, 2019), <https://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2019/12/Final-Report-on-the-PIA-12.27.19.pdf>.

<sup>2</sup> For more details about the case review conducted for all matters handled by the Ombudsman from the start of the program in March 2016 through September 30, 2019 (42 months), please see *Final Report on the Public Information Act* at 13-17. In preparation for submitting this testimony concerning S.B. 449, a similar case review was performed for all matters handled by the Ombudsman from September 30, 2019 through December 31, 2020 (15 months). Thus, our caseload projections and staffing needs assessment are based on a detailed review of specific matters handled by the Ombudsman over 57 months. As further background for the Committee, the Ombudsman's statistical report for 2020, as well as since the start of the program in 2016 are attached to this testimony.

<sup>3</sup> The Board and Ombudsman currently are supported by two staff of the Office of Attorney General ("OAG"), an Administrator and Assistant Attorney General. Thus, the provision in S.B. 449—§ 4-1A-03(d)(2)—that calls

If S.B. 449 is enacted, the full Board remedy it provides will maximize the efficiency and effectiveness of the current Ombudsman program and significantly reduce the number of unresolved public record disputes and the resulting frustrations, suspicions and other negative fallout of unresolved, protracted and proliferating disputes with agencies that erode trust in government and sap the productivity and morale of agency staff.

***B. Need for Proactive Disclosure of Public Records***

S.B. 449 directs agencies to develop practical policies that they can implement to proactively disclose—for example, via a website or other media—their public records in advance of receiving an actual PIA request. Many agencies do this to some degree already. The bill directs that policies be developed at the agency level to implement proactive disclosure to the extent practicable, taking into account the type of records maintained by the agency. Doing so will reduce agency workload by relieving staff of the need to separately answer many routine record requests and will afford requestors greater ease of access to many important agency records.

***C. Need for Agency Tracking and Self-Reporting of PIA Data***

S.B. 449 also calls for agencies to track and report annually certain basic data about PIA requests and the dispositions of those requests. This tracking and reporting can be done via something as simple as an Excel spreadsheet and/or by maintaining the data and report in any manner that is convenient to the agency and also ensures that the tracking data is either proactively disclosed or readily available on request. Most agencies with any sizeable caseload already do some PIA tracking, and those with a *de minimis* caseload can readily implement such tracking on a going forward basis.<sup>4</sup> Tracking and annual reporting of PIA data will have several important benefits that cannot be reliably achieved by any other means: 1) it will provide data on agency PIA performance and compliance on a regular and systematic basis; 2) it will assist agencies in spotting areas for improvement and staff training; and 3) it will allow agencies to make a data-based case for the provision of more resources that might be needed to adequately and timely respond to PIA requests.

**Conclusion**

Right now, there is a pressing need to restore peoples' trust and faith in their government. Allowing people to see and better understand what their government is doing will go a long way toward restoration of trust and faith. The provisions of S.B. 449 will play a critical and much needed role in insuring that the promise of the PIA is actually fulfilled and functions properly. I thank the Committee for its consideration of this testimony in support of S.B. 449 and look forward to addressing any questions Committee members may have. For all of the reasons discussed above, I ask that the Committee issue a favorable report on S.B. 449.

Respectfully Submitted,



Public Access Ombudsman

---

*footnote continued.* for the Board and Ombudsman to be supported by a total of four staff of the OAG, actually provides for the hiring of only two new additional staff.

<sup>4</sup> *Final Report on the Public Information Act* at 32-33.

## MARYLAND PUBLIC INFORMATION ACT (PIA)

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

# Metrics Handout Office of the Public Access Ombudsman

Since Inception Report  
March 30, 2016—December 31, 2020



57 Months  
Since  
Inception

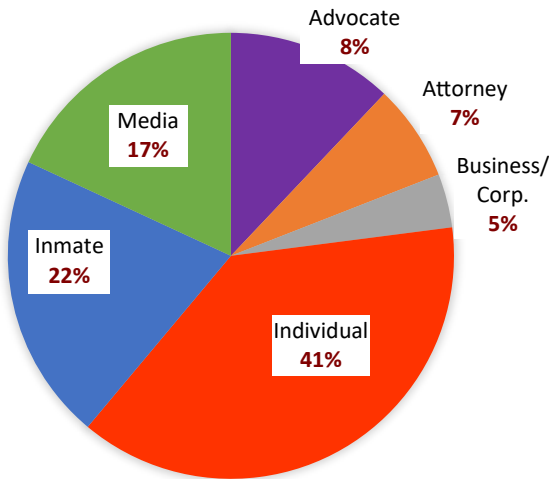
**1887** since March 30, 2016

- ◆ 1153 - Mediation requests
- ◆ 734+ - 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.

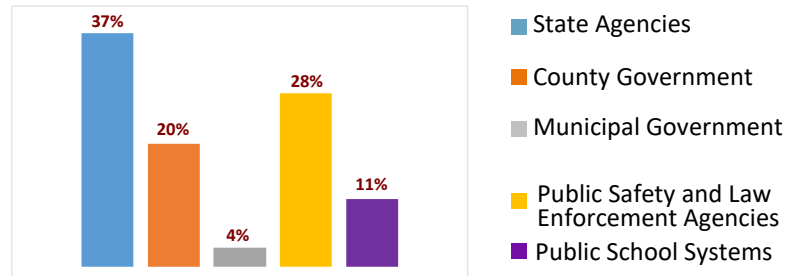
## The Requestors



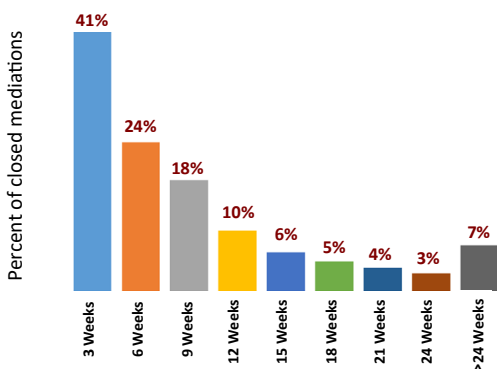
## The Agencies

281 unique agencies participated in mediation matters with the PIA Ombudsman since the beginning of the program. Agency jurisdictions are state, county and local level.

### What Agencies are Participating in Mediation?

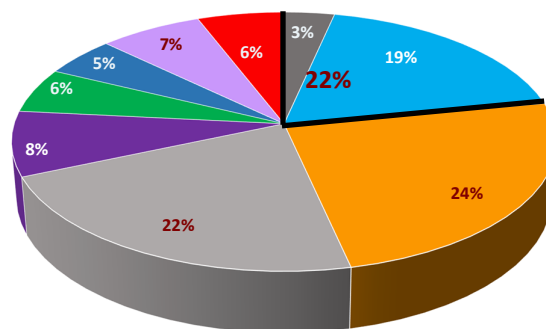


### How Long does Mediation Take?



41% of Ombudsman matters are closed within 3 weeks and 65% 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.

Mediations March 30, 2016 – December 31, 2020	
New/Incoming cases between 3/30/16–12/31/20	1153
Closed as of 12/31/20	1071

- Misapplication of exemption 22%
- Redaction inappropriate 3%
- Entire Record withheld 19%
- No Response in any form 24%
- Partial, nonresponsive, or incomplete response 22%
- Fees excessive 8%
- Fee waiver denied or ignored 6%
- Does not believe response 5%
- Asked for explanation of response 7%
- Other 6%

**Lisa Kershner**

200 St. Paul Place,  
25th Floor  
Baltimore, MD 21202

Phone: 410-576-6560  
Email: pia.ombuds@oag.state.md.us  
Twitter: @MPIA\_Ombuds

Ombudsman's Website:

<http://piaombuds.maryland.gov>

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

# Mediation Metric Report of the Public Access Ombudsman

2020 Annual Report—12 Months  
 January to December 31, 2020



**2020  
 12 Month  
 Report**

**477** in 2020

- ◆ 250 -Mediation requests
- ◆ 227 -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.*

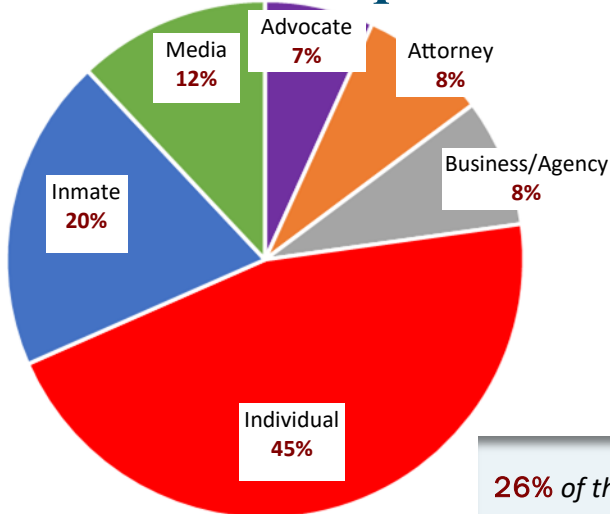
### Total Mediation Cases 2020

Carry over from 2019	46
New/Incoming cases in 2020	250
<b>Total Number of Mediation cases</b>	<b>296</b>
Mediation cases currently open	82
Total Mediation cases closed	214

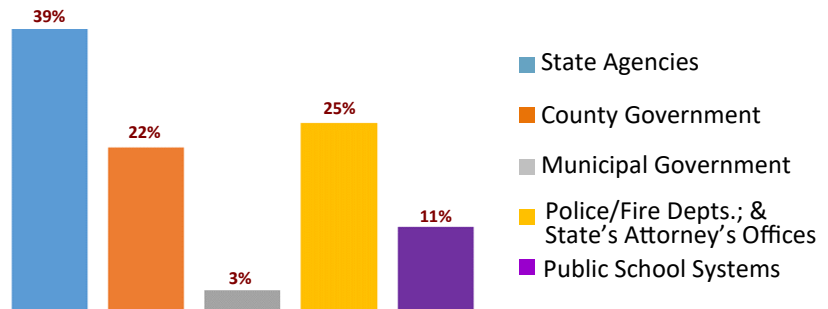
## The Agencies

**110** unique agencies participated in new mediation matters with the PIA Ombudsman in 2020. Agency jurisdictions include state, county and local level.

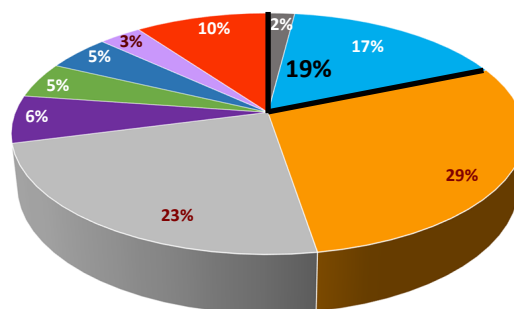
## The Requestors



## What Agencies are Participating in Mediation?

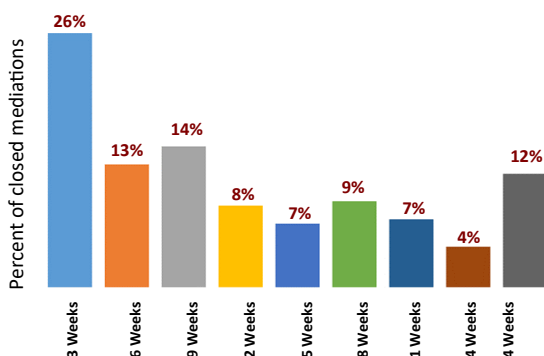


## What are the PIA disputes?



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

## How Long does Mediation Take?



**26%** of the cases are closed within 3 weeks and **39%** by 6 weeks.

**Lisa Kershner**

200 St. Paul Place,  
 25th Floor  
 Baltimore, MD 21202

Phone: 410-576-6560  
 Email: pia.ombuds@oag.state.md.us  
 Twitter: @MPIA\_Ombuds

**Ombudsman's Website:**

<http://piaombuds.maryland.gov>



**MPIA Ombudsman  
on Twitter**  
@MPIA\_Ombuds

## 2020 Legislative Session

Multiple bills were introduced during the 2020 Legislative session that would have impacted the PIA. The session was terminated early due to COVID-19 State of Emergency. None of the PIA legislation was passed including HB 502/SB590, which was based on the recommendations of the Public Access Ombudsman and PIA Compliance Board in its *2019 Report on the PIA* published December 27, 2019.

## Open Matters: Blog of the Public Access Ombudsman

- **Discretionary Exemptions Series: Investigative Records.** Open Matters Blog, posted 12/28/20
- **New Court Rules Govern Access to Judicial Records .** Open Matters Blog, posted 7/30/20
- **What Criminal Records Can I Get Under the PIA?** Open Matters Blog, posted 07/09/20
- **Update on Agency PIA Practices during the Pandemic.** Open Matters Blog, posted 5/28/20
- **Importance of Accurate PIA Custodian Contact Information.** Open Matters Blog, posted 4/06/20
- **Ombudsman's PIA Guidance During COVID-19 State of Emergency.** Open Matters Blog, posted 3/23/20
- **Ombudsman and members of the PIA Compliance Board unanimously support HB 502/SB590.** Open Matters Blog, posted 2/14/20
- **MSA – Records Management and the Public Information Act.** Open Matters Blog, posted 1/7/20

## Outreach 2020

### Presentations, Workshops, Trainings, and Other Outreach

*Due to the COVID-19 State of Emergency the Public Access Ombudsman's Office canceled three scheduled trainings in the second quarter of 2020.*

- Health and Government Operations Committee, Testimony HB502, February 11.
- Education, Health, and Environmental Affairs Committee, Testimony SB590. February 13.
- PIACB Annual Meeting Presentation, Ombudsman's Report, July 29.
- Maryland Municipal League, Academy for Excellence in Local Government, October 9.
- Government Operations and Health Facilities Subcommittee, Open Government Briefing, October 28.
- Carroll County Sheriff's Office, PIA 101 for Law Enforcement, November 17.
- Maryland Association of Counties, Winter Conference, December 16.

### Select Publications

*Publications can be found on the Ombudsman's Website at <https://news.maryland.gov/mpiaombuds/paoresources/>.*

- **Ombudsman comments**, included as an Appendix to the 2020 Annual Report of the PIA Compliance Board. September 2020
- Testimony of the Ombudsman and PIA Compliance Board submitted to the House Health and Government Operations Committee concerning 2020 HB 502. February 2020
- **Final Report on the Public Information Act.** Submitted by the PIA Compliance Board and the Public Access Ombudsman and pursuant to Committee Narrative in the Report on the Fiscal 2020 State Operating Budget and the State Capital Budget. December 27, 2019
- **Public Access Ombudsman's Interpretive Regulations:** <https://tinyurl.com/y2cuqp55>, June 2019
- **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

## RESOURCES/LINKS

- ♦ **MD Office of the Attorney General—PIA Manual 15<sup>th</sup> Edition (2020):** [http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA\\_manual\\_printable.pdf](http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf)  
*The PIA Manual includes Appendix J a List of Public Record Custodians.*
- ♦ **MD State Archives:** <http://msa.maryland.gov> is a resource for custodians' record management and retention practices.
- ♦ **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:** <https://news.maryland.gov/mpiaombuds/request-mediation>
  - \* **Interpretive Regulations:** <https://tinyurl.com/y2cuqp55>
- ♦ **DC Office of Open Government:** <https://www.open-dc.gov/office-open-government>



**Ltr to Sen Pinsky 2 19 21\_0001.pdf**

Uploaded by: Plymyer, David

Position: FAV

David A. Plymyer  
Attorney at Law  
717 Maiden Choice Lane #207  
Catonsville, MD 21228-6114  
dplymyer@comcast.net  
410-979-2505

February 3, 2021

Hon. Paul G. Pinsky, Chair  
Education, Health, and Environmental Affairs Committee  
2 West, Miller Senate Office Building  
Annapolis, Maryland 21401

**SUBJECT: SB 449 - Favorable**

Dear Senator Pinsky:

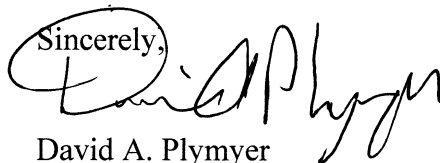
I urge favorable consideration of SB 449. It is a superb bill based on recommendations made to the General Assembly by the Public Information Act Compliance Board and Public Access Ombudsman after extensive study and consideration. It will substantially improve access to public records by Maryland citizens without significantly increasing the administrative burdens on local and state agencies.

The proposal to establish an administrative remedy for resolving disputes over access to public records is long overdue, and it makes absolute sense to give that role to the Compliance Board. The body of law on interpretation of the MPIA is relatively small and lends itself perfectly to resolution by an administrative panel.

Not only will there be a tremendous savings in time and money to applicants *and* custodians, over time there will be a collection of reported decisions to guide applicants and custodians. And hopefully the new process will dissuade government agencies from denying meritorious applications in the knowledge that few applicants can afford to go to court to compel compliance, an unfortunate practice by some agencies.

As to the record keeping and reporting requirements of the bill, they are indispensable to accountability. I retired as Anne Arundel County Attorney in 2014 after a long career in local government. I learned to appreciate that openness and transparency are not secondary concerns - ***they are part of the core mission of government***, an essential check and balance promoting accountability of government officials. Without transparency there is no accountability, and without accountability performance inevitably suffers.

Thank you very much for considering my written testimony in support of SB 449.

Sincerely,  
  
David A. Plymyer

**Testimony - written for SB449 PIA.pdf**

Uploaded by: Powers, Laurie

Position: FAV



February 19, 2021

**SB 449 Public Information Act – Revisions (Equitable Access to Records Act)**

Education, Health and Environmental Affairs Committee

Witness:

**Laurie Powers**

415 Water Street, POB 37  
St. Michaels, MD 21663

Testimony in **SUPPORT** of SB 449 –

This bill is very important to me as a Maryland citizen who has experienced the problems inherent in the current Public Information Act - that the public does not have equitable access to publicly-available information.

My recent experience with the handling of PIA requests by several Dept. of Labor licensing/regulatory agencies (and their attorneys) was very disappointing. With one exception, those custodians were dismissive and uncooperative, and my PIA requests went largely ignored or unsatisfied.

The PIA requests concerned the processing of my complaints by the involved regulatory agencies against licensees in related home purchase, inspection and improvement transactions. Those agencies are tasked with consumer protection. However, they demonstrated a surprising lack of transparency and due process in their review, investigation and decision making regarding my complaints, and appeared to be biased toward protecting their licensees instead of the public.

My attorney and I worked with the Office of the Public Access Ombudsman in mediation attempts with the involved three Dept. of Labor agencies regarding unresolved PIA disputes. The disputes concerned the lack of production of meaningful documents generated from those agencies' processing of my complaints, as requested.

Unfortunately, the result of those mediation efforts was unsatisfactory, but not because of a lack of effort by the Ombudsman. The Ombudsman is in an impossible position of having no enforcement authority if agencies refuse to cooperate with citizens; the mediation process is strictly voluntary and therefore largely ineffective and a waste of time and effort, as well as money when attorneys are involved.

Likewise, the only other current option of a lengthy court appeal process is cost-prohibitive, and therefore not accessible or realistic for the average citizen.

Therefore, the modifications proposed in SB 449 based on the recommendations of the 2019 Final Report on the PIA need to be adopted. The public is not being served as things currently stand. As indicated in the Report, there is widespread lack of compliance among custodians and no accountability for non-compliance. Agencies take advantage of the lack of consequences for non-compliance if they're so inclined, as was the case with my PIA requests and disputes. PIA compliance is mandatory, not optional, but without enforcement, as a practical matter it becomes optional, and that is unacceptable and not as the Legislature originally intended.

The public's right to information about government activities lies at the heart of a democratic government. The public needs to be assured that the PIA is taken seriously and that it will increase government transparency through a robust review and disclosure process, but that isn't happening. The law currently has no practical enforcement arm and therefore no teeth; as a result, transparency and disclosure are not being ensured and the government and law are failing its citizens.

My negative experience with multiple agencies' non-compliance with the PIA as well as their lack of transparency, due process, fairness and integrity in processing my complaints against unscrupulous licensees under their jurisdiction caused me to lose trust in my state government's willingness to protect me and other consumers as those agencies are tasked with doing. What I have witnessed is a disturbing disregard or even contempt for their customers, stonewalling and other CYA behavior, bureaucracy at its finest, obfuscation and unchecked procedural abuse by executive directors and their attorneys on down.

The modifications as proposed in SB 449 are necessary to provide transparency and accountability in our state government. Working toward those important goals will increase the public's faith in its government's willingness to disclose public information and to protect its citizens' interests.

The main provisions of the bill that provide for expanded PIA Compliance Board jurisdiction and self-reporting by Maryland agencies regarding the PIA are critical to developing a robust law that ensures government transparency and disclosure of information to the public about its activities as originally intended a half century ago when the PIA was created.

I therefore urge you to give your full support to the necessary modifications as proposed in this important bill.

Thank you.

# **HB0183 Testimony.pdf**

Uploaded by: Ross, Kyle

Position: FAV

I am giving testimony on HB 0183 on February 11, 2021. My name is Kyle Ann Ross. I live in Baltimore City. I want to have more options to get one public record: the autopsy report of Officer Jimmy Dale Halcomb. Officer Halcomb died in Baltimore City on April 16, 1976 and his autopsy report exists at the Maryland Medical Examiners office. I believe Halcomb's autopsy report proves that the man in prison for the past forty-five years is in prison for a murder he did not commit. I want to be wrong. I want to see the autopsy. The man in prison, Mr. John Earl Williams, was convicted by a jury, in 1977, of "murdering" Officer Halcomb. The conviction was thrown out due to procedural error in 2014? and in 2018, Marilyn Mosby's office, the Baltimore City prosecutor, offered a plea bargain or a new trial to Mr. John Earl Williams. In 2018, John Earl Williams, assuming he had caused this murder, assuming his public defender in 1977 had done a good job, pleaded guilty to murder of Officer Jimmy Dale Halcomb. When I told John Earl Williams in 2019 that I thought someone else had shot Jimmy Dale Halcomb and why, John said it was the first time he was hearing this.

The results of my request for Halcomb's autopsy from the Medical Examiners office in Maryland was a denial. I went to the Public Ombudsman of Maryland's Attorney General's office for voluntary arbitration and the request was denied again because the medical examiner said the Baltimore City was "still investigating" Halcomb's death. So I talked to the former detective investigating the case in 1976 and the former prosecutor in the Halcomb murder trial and they said nothing about a continuing investigation. Marilyn Mosby's office told me I could sue the medical examiner's office for the autopsy. When I told her the medical examiner was telling me ( her Baltimore

city office, the prosecutor and police ) were still investigating I got NO answer from Mosby. I went to a lawyer to pursue suing for the record which I believe I have a right to have: Halcomb's autopsy report. I believe the accused also has a right to see evidence used against him during his trial. I believe John Earl Williams deserves also to see this autopsy report. He is still in prison and I believe the report proves his innocence. I want to see transparency. Millions of investment spent on John's time in prison is what I need to understand. The medical examiner is trying to tell me that the Baltimore city prosecutor is telling their office, this case is open. Open for whom? The police officer who stood next to Halcomb when he got killed, seems to think this case is closed. The wife of deceased Officer Halcomb also appears to think this case is closed.

I went to visit a lawyer and get a price quote on going to circuit court and suing for the autopsy report of Halcomb. We already paid for it with our tax dollars. The lawyer said she charges \$425.00 dollars per hour. I don't think I should have to pay thousands of dollars to pay for what we paid for. Is this a cover up? Everything I have researched about this death has pointed me to ask this question. I tried to get autopsy from Maryland Archives in case it was still in trial record but it was not in the archives.

I encourage the options available to me in HB 0183 although the prosecutors in America have a long history of being above any type of action against them. I am not sure how HB 0183 will help me to get to more transparency but I will try to take the next option. I already took the voluntary arbitration and nothing was resolved.

Thanks, Kyle Ann Ross, [kyleannross@yahoo.com](mailto:kyleannross@yahoo.com), 410 366-1543 land line,  
3811 Canterbury Road, Apt. # 205, Baltimore, MD 21218

**MDDC Support SB 449.pdf**

Uploaded by: Snyder, Rebecca

Position: FAV



**Maryland | Delaware | DC Press Association**

P.O. Box 26214 | Baltimore, MD 21210

443-768-3281 | [rsnyder@mddcpress.com](mailto:rsnyder@mddcpress.com)

[www.mddcpress.com](http://www.mddcpress.com)

**To:** Education, Health & Environmental Matters Committee  
**From:** Rebecca Snyder, Executive Director, MDDC Press Association  
**Date:** February 23, 2021  
**Re:** **SB 449 – Support**

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of media organizations, from large metro dailies such as the Washington Post and the Baltimore Sun, to publications such as The Daily Record and online only outlets such as Maryland Matters and Baltimore Brew.

The press works to shine light and share information on topics that affect us all. By accessing available public information, journalists are able to provide people data points to help them make more informed decisions. Information under the PIA belongs to all of us. There is a side of the story that doesn't get told if public information is withheld. Journalists connect the dots in their storytelling and help readers better understand a topic.

The bill builds on the successful implementation of the Public Information Act Compliance Board and the Ombudsman programs begun in 2015. It provides the PIA Compliance Board with comprehensive jurisdiction to review and decide PIA disputes that are not resolved through mediation with the Ombudsman. The bill also requires custodians to adopt a policy of proactive records disclosure, and to annually track and report information about their PIA requests and responses.

This proposed legislation—especially the provisions expanding the Board's jurisdiction—would implement the primary recommendations in the Ombudsman and Board's published Final Report on the Public Information Act (<https://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2019/12/Final-Report-on-the-PIA-12.27.19.pdf>). As stated in the Report, providing the Board with comprehensive jurisdiction in this way is expected to improve the PIA dispute-resolution process by both enhancing the Ombudsman's mediation program, and by providing an accessible administrative process for reviewing and deciding matters that can't be solved through mediation alone.



**We believe a strong news media is  
central to a strong and open society.**

Read local news from around the region at [www.mddcnews.com](http://www.mddcnews.com)

Specifically, the bill:

- Increases the topical jurisdiction of the Board's review and issued opinions to include denials of inspection, fee waivers and timely response and lowers the floor for fee disputes from \$350 to \$200. The Board will continue to issue written opinions, which have been helpful in clarifying the law.
- Authorizes the Board to order the custodian to rectify violations, including waiving fees, adjusting costs of producing records and producing records for inspection. Only matters that have been offered mediation through the Ombudsman's office will be considered by the Board. Additionally, custodians who allege an applicant's pattern of requests are frivolous, vexatious or in bad faith, may petition the Board to review the requests and issue a written opinion potentially authorizing the custodian to ignore the request or respond to a less burdensome version of the request.
- Requires proactive disclosure of public records to save custodians time and effort in fulfilling commonly-requested items and an annual report on the requests received, fulfilled and denied during the calendar year.
- Adjusts the expertise of the members of the Public Information Act Compliance Board to include two members that are attorneys admitted to the Maryland Bar (statute currently requires one) and one who is knowledgeable about electronic records and technology.
- Increases staffing to four staff members to support the board and the office of the Public Access Ombudsman (currently, staffing levels are unspecified)

I hear regularly from members about PIA problems. For some journalists, PIA requests are ignored or information clearly available under the PIA is denied. For others, exorbitant fees and uneven waivers make accessing the records difficult, if not impossible. Under current PIA law, there is no recourse other than the courts if there is a dispute over a denial or an overbroad exemption. The reforms of 2015 brought positive change to the PIA, in the form of the Ombudsman and the PIA Compliance Board. We believe it is time to enhance the jurisdiction of the PIA Compliance Board to create a stronger body of precedent through its opinions and to provide more clarity to both requestors and custodians about the application of the law.

We also applaud the enforcement mechanism in the bill which would prohibit the charging of fees for a records request if the custodian does not meet the deadlines for response. This means that if a custodian does not produce records within 30 days or ask for an extension within the allotted time period, they will not be able to charge for the records. We hope this will incentivize custodians to prioritize records management and PIA requests.

The Press Association encourages a favorable report on SB449.



# **SB 449 Public Information Act – Revisions (Equitab**

Uploaded by: Soreng, Nancy

Position: FAV



**TESTIMONY TO THE SENATE EDUCATION, HEALTH AND ENVIRONMENTAL AFFAIRS  
COMMITTEE**

**SB 449 Public Information Act – Revisions (Equitable Access to Records Act)**

**POSITION: Support**

**BY: Lois Hybl and Richard Willson – Co-Presidents**

**Date: February 23, 2021**

The League of Women Voters believes that democratic government depends upon informed and active citizen participation and requires that governmental bodies protect citizens' right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible. This has been a principle of the League since our founding in 1920.

Custodians of public documents should not be in the business of making it difficult for people who have the right to see them to access these materials. Yet, we know that all too often this is exactly what happens. This legislation requires custodians to adopt a **policy of proactive disclosure**. It allows for the policies to vary depending on the type of document and resources of the governmental unit. It requires increased access to public documents by making them more available via the agency's website. This will save time and expense for the custodian and the person seeking access because once posted, agency staff will not have to spend time and expense retrieving and duplicating them.

SB 449 adds accountability to the custodians by requiring them to publish an annual report that includes the number of PIA requests received, the outcome of these requests and the time frame for granting or denying requests as well as the reasons for requests that took more than 30 days to process. It also requires documentation of fees charged and fees waived. This bill improves the make-up of the Public Information Act Compliance Board by requiring at least one member be knowledgeable about electronic records and at least two members shall be attorneys admitted to the Maryland Bar. Additional staff to assist the Public Access Ombudsman, which will increase the efficiency of this office is part of this bill. It also requires detailed reporting of the disputes handled by the Ombudsman and their outcome.

All of these provisions will serve the public well and improve the transparency of Maryland's public bodies.

We urge a favorable report on SB 449.

**SB 449\_FAV\_ACLU\_Spielberger.pdf**

Uploaded by: Spielberg, Joe

Position: FAV



**Testimony for the Senate Education, Health, and Environmental  
Affairs Committee  
February 23, 2021**

**SB 449 – Public Information Act – Revisions (Equitable Access to  
Records Act)**

JOSEPH SPIELBERGER  
PUBLIC POLICY COUNSEL

**FAVORABLE**

AMERICAN CIVIL  
LIBERTIES UNION  
OF MARYLAND

3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
or 240-274-5295  
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS  
JOHN HENDERSON  
PRESIDENT

DANA VICKERS SHELLEY  
EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

The ACLU of Maryland supports SB 449, which would strengthen Maryland’s Public Information Act (“PIA”) and codify into law the main recommendations from the PIA Compliance Board and Public Access Ombudsman’s 2019 report.<sup>1</sup>

In particular, this bill would advance a policy of proactive disclosure by:

- expanding the PIA Board’s jurisdiction,
- issuing new guidance and reporting requirements for agency custodians, and
- improving timeliness, efficiency, and transparency in records requests.

In doing so, this bill underscores that the PIA is grounded in the principle that “Government of the people, by the people, and for the people must be open to the people.”<sup>2</sup>

The ACLU of Maryland believes strongly in open and transparent government, because a true democracy demands it. The PIA is a necessary tool for Marylanders to provide checks and balances on elected officials and government agencies. Filing PIA requests and obtaining information is a meaningful step toward keeping our government accountable. When this avenue becomes unavailable, it undermines confidence in fair government and prevents individuals from engaging in meaningful and informed debate about matters of public interest.

Our organization’s intake department has taken calls and requests for assistance from residents across the state who face barriers accessing public information, whether due to agency mismanagement, confusion, miscommunication, or unwillingness to help.

---

<sup>1</sup> State of Maryland Public Information Act Compliance Board, and Office of the Public Access Ombudsman, *Final Report on the Public Information Act*, December 27, 2019, available at:

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

<sup>2</sup> Office of the Attorney General, *Maryland Public Information Act Manual*, 14<sup>th</sup> Ed. (2015).



Some recent examples include:

- A man sought dash camera video of his police encounter; he got one response stating the video was available for a \$15 fee, and another denying the request because all dash cameras were inoperable.
- A man incarcerated in Alleghany County had his fee waiver denied despite indigency, and was charged \$509 for records from his own facility.
- A Baltimore City woman sought public records regarding her son's fatal vehicle collision but was unable to obtain forms and received no help or guidance from the State's Attorney's Office.
- A Harford County man's request for records to reveal government misconduct in taxation were denied because the custodian considered his request "questions" instead of specific record requests.
- Bethesda parents sought records to bolster their case to improve an intersection adjacent to the local high school to prevent vehicle collisions, but multiple requests were denied.

Regardless of whether these cases were handled properly, it is clear state agencies need better guidance, systems, and accountability.

The underlying principle of the PIA is "All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees [and the Act] shall be construed in favor of allowing inspection of a public record, with the least cost and least delay."<sup>3</sup>

Marylanders must have reliable access to information about how state agencies are responding to their individual cases, and acting on matters of public interest. Excessive fees contribute to an inequitable system in which the right to petition is only available to those with means. By codifying the PIA Ombudsman's main recommendations that were based on extensive research, data analysis, interviews, and recognized best practices, SB 449 will help ensure that the PIA is implemented consistently with its original intent, and that Maryland state government remains of the people, by the people, for the people, and open to the people.

For the foregoing reasons, we urge a favorable report on SB 449.

---

<sup>3</sup> GP § 4-103(a)-(b).

**PIACB.SB449.Testimony.2.23.21.pdf**

Uploaded by: Wigfield, Darren

Position: FAV

**LAWRENCE J. HOGAN, JR.**  
*GOVERNOR*

**BOYD K. RUTHERFORD**  
*LT. GOVERNOR*



**JOHN H. WEST, III, ESQ.**  
*Chair*

**CHRISTOPHER EDDINGS**  
**DEBORAH MOORE-CARTER**  
**RENÉ C. SWAFFORD, ESQ.**  
**DARREN S. WIGFIELD**

**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*,<sup>1</sup> 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*

---

<sup>1</sup> 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>.



**TU letter SB449.pdf**

Uploaded by: Maloney, Kathleen

Position: FWA



Office of the  
General Counsel  
8000 York Road  
Towson, MD 21252

February 23, 2021

The Honorable Paul Pinsky  
Senate Education, Health and Environmental Affairs Committee  
Miller Senate Office Building, 2 West  
Annapolis, MD 21401  
Via: Email

Re: Senate Bill 449

Dear Chairman Pinsky:

Towson University (the "University") writes in support of Senate Bill 449 (Public Information Act-Revisions-Equitable Access to Records Act ) with amendments.

Towson University is the largest public institution of higher education in the Baltimore area and the second largest institution in the University System of Maryland. The Towson University Office of General Counsel houses vast amounts of private and confidential state personnel, student, and research-related records (in both electronic and hard-copy form) by numerous different custodians that must be maintained in compliance with various state and federal privacy laws, including, but not limited to, the federal Family Educational Rights and Privacy Act (FERPA) and the Higher Education Act (HEA). The University maintains such records for tens of thousands of current and former students, and thousands of current and former employees. The University also maintains numerous other records subject to legal privileges and specific enumerated exemptions under the MPIA.

We participated with USM and other campus representatives in a series of discussions with the House bill sponsor to address our concerns and we respectfully request the Senate Bill Sponsor and the Senate Education, Health and Environmental Matters Committee adopt the amendments to Senate Bill 449.

Thank you for your consideration of our views.

Sincerely,

Sara Slaff  
Vice President, Legal Affairs and General Counsel

CC: Members, Senate Education, Health and Environmental Affairs Cmte

**2a - SB 449 - EHEA - BoP - LoC.pdf**

Uploaded by: Bennardi, Maryland Department of Health /Office of Governmen

Position: UNF



# Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary (Acting)

---

## 2021 SESSION POSITION PAPER

**BILL NO:** SB 449 – Public Information Act – Revisions (Equitable Access to Records Act)  
**COMMITTEE:** Education, Health, and Environmental Affairs  
**POSITION:** Letter of Concern

---

**TITLE:** Public Information Act – Revisions (Equitable Access to Records Act)

**BILL ANALYSIS:** Requires each official custodian to adopt a policy of proactive disclosure of public records; requiring each custodian to publish an online report on the requests received in the preceding year for inspection of public records; requiring the Public Information Act Compliance Board to receive, review, and resolve certain complaints from applicants.

**POSITION AND RATIONALE:**

SB 449 introduces several new requirements for state agencies that receive requests for records under the Public Information Act. The Board of Physicians (the “Board”) is committed to transparency and access to public information. However, the Board is concerned that, as written, SB 449 would create operational difficulties and undue costs.

The Board receives hundreds of Public Information Act requests annually. These requests are often complicated and require significant steps and staff time to complete, including conferring with Board counsel, requesting off-site records from the state’s storage facilities, waiting for transcription services, and redacting records. The Board fulfills the majority of its Public Information Act requests within days, but the process is often costly and requires significant staff time. SB 449 would introduce multiple new steps that would further increase these costs.

First, the Board would be responsible for establishing a policy of “proactive disclosure.” The term “proactive disclosure” has not been defined, and the Board would need to work closely with counsel to ensure that its policy aligned with that of the Public Information Act Compliance Board and the Public Access Ombudsman, who may have their own definitions of proactive disclosure.

Second, the Board would be responsible for collecting and publishing information regarding the number of Public Information Act requests it receives, the number of requests that were denied, the amount of time it took the Board to fulfill the requests, the fees collected for these records, the number of fee waivers granted, the outcomes of the requests, and the efforts made to “proactively

disclose” information. Collecting, recording, and publishing this data would add several new steps to an already lengthy process, and would require dedicated staff to complete.

Finally, the expanded language found on page 7, line 22 of SB 449 would allow for the investigation of any complaint alleging that the Board charged more than \$200 to complete a Public Information Act request and qualifies such fees as “unreasonable.” While the Board makes every effort to produce records in the most cost-effective manner possible, large or complex requests can easily exceed \$200. For example, the Board received a single request in 2019 that included 12 boxes of records. Many of the costs associated with fulfilling Public Information Act requests, such as transcription fees and the costs of consulting with counsel, are outside of the Board’s control.

The Board remains committed to providing public information in the quickest and most cost-effective way possible and efforts to improve transparency. However, for the reasons listed above, the Board respectfully submits this letter of concern regarding SB 449.

For more information, please contact Wynee Hawk, Manager, Policy and Legislation, Maryland Board of Physicians, 410-764-3786.

**The opinion of the Board expressed in this document does not necessarily reflect that of the Maryland Department of Health or the Administration.**

**2b - SB 449 - EHEA - MBON - LoC.pdf**

Uploaded by: Bennardi, Maryland Department of Health /Office of Governmen

Position: UNF



# Board of Nursing

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Acting Secretary

February 23, 2021

The Honorable Paul G. Pinsky  
Chair, Education, Health, and Environmental Affairs Committee  
2 West Miller Office Building  
Annapolis, MD 21401-1991

**RE: SB 449 – Public Information Act – Revisions (Equitable Access to Records Act) – Letter of Concern**

Dear Chair Pinsky and Committee Members:

The Maryland Board of Nursing (“the Board”) respectfully submits this letter of concern for SB 449 – Public Information Act – Revisions (Equitable Access to Records Act). This bill requires an official custodian to adopt a policy of proactive disclosure of public records, and requires a custodian to publish an annual report on the website of the governmental unit. Additionally, this bill works to expand the authority of the Public Information Act Compliance Board to resolve disputes between an applicant and an official custodian.

While the Board commends the efforts of increasing transparency of public agencies and due process for the public, the Board remains concerned for a number of reasons. As the bill is written, the term ‘proactive disclosure’ of public records is not formally defined. This creates a sense of ambiguity because the Compliance Board, Public Access Ombudsman, and each Health Occupations Board may interpret this statement differently. There is also no mention of how ‘proactive disclosure’ will be measured or determined.

This bill would decrease revenue for the Board for two reasons. The first being the fee change for requesting a public record to be no more than \$200. This fee change does not appropriately reflect the time and effort an official custodian makes in processing complex inquiries from the public. The second reason for decrease in Board revenue would be due to the expansion of the Compliance Board’s ability to change the amount or waive an applicant’s fee.

The Board would like to request data reports to showcase dispute resolutions for official custodians employed by varying Health Occupations Boards, including disputes seen by the Public Information Act Compliance Board and Public Access Ombudsman.

For the reasons discussed above, the Board of Nursing respectfully submits this letter of concern for SB 449.

I hope this information is useful. For more information, please contact Iman Farid, Health Policy Analyst, at (410) 585 – 1536 ([iman.farid@maryland.gov](mailto:iman.farid@maryland.gov)) or Rhonda Scott, Deputy Director, at (410) 585 – 1953 ([rhonda.scott2@maryland.gov](mailto:rhonda.scott2@maryland.gov)).

Sincerely,

A handwritten signature in black ink, appearing to read "G. Hicks", with a long horizontal flourish extending to the left.

Gary N. Hicks  
Board President

***The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.***



**2c - SB 449 - EHEA - BOPCT - LOC.pdf**

Uploaded by: Bennardi, Maryland Department of Health /Office of Governmen

Position: UNF



Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Acting Secretary

**Board of Professional Counselors and Therapists**  
**4201 Patterson Avenue**  
**Baltimore, MD 21215**  
**Phone: 410-764-4732**

February 23, 2021

The Honorable Paul G. Pinsky  
Chair, Education, Health, and Environmental Affairs Committee  
2 West Miller Office Building  
Annapolis, MD 21401-1991

**RE: Senate Bill 449 – Public Information Act – Revisions – Letter of Concern**

Dear Chair Pinsky and Committee Members:

The Maryland Board of Professional Counselors and Therapists (the “Board”) is submitting this letter of concern for Senate Bill (SB) 449, Public Information Act – Revisions.

This bill requires that the Board publish an annual report of Public Information Act (“PIA”) requests on its website. The Board currently does not maintain a tracking log of its PIA requests. Additionally, this bill decreases the response time for Board staff to adequately respond to PIA requests. The PIA is already restrictive, and this bill will create additional restrictions for overburdened staff.

Thank you for your consideration of the Board’s concerns regarding SB 449. The Board respectfully asks that you strongly consider this information and urges an unfavorable report on SB 449. If you have questions or need more information, please contact Danielle Vallone, Acting Executive Director, at 410-764-4734 or [Danielle.Vallone@maryland.gov](mailto:Danielle.Vallone@maryland.gov).

Sincerely,  
**DANIELLE VALLONE**

Danielle Vallone  
Acting Executive Director

*The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.*

**SB449\_USM\_UNF.pdf**

Uploaded by: Hogan, Patrick

Position: UNF



## **SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE**

Senate Bill 449

Public Information Act - Revisions

February 23, 2020

Unfavorable Report

Chair Pinsky, Vice Chair Kagan and committee members, thank you for the opportunity to share our thoughts on Senate Bill 449. The bill expands the jurisdiction of the Public Information Act (PIA) Compliance Board to include additional types of disputes; institutes an integrated PIA complaint resolution process that includes the Public Access Ombudsman; and requires a custodian to adopt a proactive disclosure policy.

Implementing these changes will require the University System of Maryland to devote significantly more resources to this task. In attempting to meet this broad array of mandates, given the consistently high volume and complexity of PIA requests received, information technology and legal services would need significant investments in resources. For fiscal year 2021, the combined estimated fiscal impact for one USM institution is expected to be \$775,000 – not including benefits.

The required proactive disclosure of records and the required recordkeeping and reporting will simply create additional work for institutions. The expanded jurisdiction of the PIA Compliance Board to include disputes over fee charges over \$200, disputes over withheld documents, and disputes over missed deadlines will increase the workload of institutions that will have to respond to complaints filed with the Board. Moreover, the Board's authority to waive fees will result in reduced recovery of the value of time spent in fulfilling requests, as fee payments will go down.

Senate Bill 449 gives the Board the authority to review and resolve complaints of agencies regarding requesters whose "request or pattern of requests is frivolous, vexatious, or in bad faith." While this is a potentially positive development, USM institutions still receive multiple and/or repetitive requests over extended periods of time from specific individuals. The remedies as proposed in the bill are inadequate; there are less intrusive and burdensome methods to address this narrow problem.

In sum, the alleged benefits of the bill are far lower than the significant costs which will result should the legislation pass. Thank you for allowing the USM to share our thoughts regarding Senate Bill 449 and urge an unfavorable report.

**2021-02-18--JHSnider--Testimony.pdf**

Uploaded by: Snider, Jim

Position: UNF

Feb. 18, 2021

Dear Committee Staff:

If I'm not chosen to present oral testimony, I will provide the committee with written testimony.

Sincerely,

J.H. Snider

**SB449\_MDE\_LOI.pdf**

Uploaded by: abbott, tyler

Position: INFO



February 23, 2021

The Honorable Paul G. Pinsky, Chair  
Education, Health, and Environmental Affairs Committee  
2 West, Miller Senate Office Building  
Annapolis, Maryland 21401

**Re: Senate Bill 449 – Public Information Act – Revisions (Equitable Access to Records Act)**

Dear Chairman Pendergrass and Members of the Committee:

The Maryland Department of the Environment (“MDE” or “Department”) has reviewed Senate Bill 449, entitled Public Information Act (PIA) – Revisions (Equitable Access to Records Act) and would like to offer a letter of information.

First it is important to provide you with some background on the MDE PIA Program. This is important because the Act leaves many aspects of implementation up to the organization, such as fees, methods of tracking and interpretation of fee waiver basis.

MDE receives the most PIA requests out of any state agency in Maryland. Currently the Department processes approximately 4,000 – 5,000 requests annually. The actual number of requests is not easily obtained for the purpose of reporting data because the Department aggregates requests that come in, during similar time frames and from the same requester, under one tracking number to help process requests faster and more efficiently.

MDE receives different types of requests from a variety of requesters. Responsive records to PIA requests can be anywhere from a single page document to numerous floor-to-ceiling rolling filing shelves. In addition to citizen requests or NGOs seeking clarity about risk, MDE receives requests from law firms, media outlets, interest groups, realtors, and other government entities. The majority of requests are from environmental consulting firms conducting environmental screenings on behalf of their clients. Oftentimes, the Department receives requests from multiple environmental consulting firms for the same property(s) in an effort to compete for a contract. For example, the PIA request will ask for research about an undeveloped lot to determine if there are any environmental concerns such as asbestos, permitted piers or even licensed x-ray machines.

MDE is currently employing the following staff to handle the considerable amount of PIA requests received annually:

- One PIA Coordinator - residing in MDE’s Office of Communications overseeing the entire program and leading employees working on PIA in MDE’s three technical Administrations. The PIA Coordinator has additional job responsibilities beyond PIA.
- Four PIA Liaisons - residing in MDE’s three technical Administrations overseeing the requests at an administrative level and leading the employees working on PIA as a regular part of their job duties. All except one Liaison has additional job responsibilities beyond PIA.



- 33 File Custodians - residing in MDE's technical programs and responsible for responding to PIA requests on behalf of their programs. Some of these File Custodians are responsible for more than one program's records and have other responsibilities in addition to processing PIA requests.

MDE offers all approved PIA filers a file review room located off the main lobby with a copy machine with scanning capabilities. Scanning is free of charge. Often the requester will review the records and only scan the portions they need MDE has found this to be a welcomed customer service approach that expedites the request and saves the cost of s from paying duplication fees.

Under Senate Bill 449, *“each official custodian shall adopt a policy of proactive disclosure of public records that are available for inspection under this title. Include publication of public records on the website of the governmental unit, to the extent practicable, or publication of prior responses to requests for inspection made under this title.”*

The presumption of the Bill excludes the fact that most requests for information originate with the business community seeking information needed to bid for a contract. In addition, MDE needs clarity because:

- The proposed act does not identify a timeframe for how far back a governmental unit must go back to publish prior responses.
- It is not clear from the bill text if this would be required of the agencies moving forward or already completed/closed requests.
- In situations where the requester prefers to conduct an in-person file review, instead of paying to have the documents duplicated, MDE does not document which records the requester selected.

Under Senate Bill 449, MDE personnel would be responsible for adopting and implementing a policy to proactively publish public records, available for inspection, on the MDE website. MDE maintains billions of records, within 50 plus subject areas. Historic records which can date back more than 100 years, include microfilm and bound materials. Publishing every public record available for inspection would be extremely time consuming and costly to MDE. MDE would most likely need to procure a contractor to complete the procurement bidding process and complete the scanning and digital organization of all of MDE records.

MDE is diligently working to publish more information on its website. This effort is currently being piloted with the Water Compliance Program. Once the pilot is complete, the remaining MDE technical programs that store data on the Environmental Tracking System, the department's primary database, will produce public portals to increase transparency. As some MDE programs involve public health information and other interface with federal agencies, the Department will work with these entities to determine how to best improve transparency within the technical legal restrictions of these areas.

Under Senate Bill 449, *“On or before July 1 each year, each official custodian shall publish on the website of the governmental unit, to the extent practicable, a report on the requests received during the immediately preceding calendar year under this title for inspection of public records of the governmental unit.”* MDE has concerns with numerous reporting items within the proposed bill. Every governmental unit is responsible for creating its own tracking database and requiring MDE to upgrade the existing database to track twelve new metrics would be time consuming and costly.

Lastly, the basis for granting a fee waiver under the Act, as it currently stands, is not clear and should be reevaluated before granting the Maryland Public Information Act Compliance Board with the authority to make determinations on whether governmental units are unreasonably failing to waive fees. Therefore, the proposed 4-1A-04 (a)(1) (III) *unreasonably failed to waive a fee under § 4-206(e) of this title; and (3) (III) if the Board finds that the custodian unreasonably failed to waive a fee under § 4-206(e) of this title, waive all or part of the fee or reconsider the fee waiver request; should be reconsidered.*

Currently, 4-206(e) states *The official custodian may waive a fee under this section if: (1) the applicant asks for a waiver; and (2) (i) the applicant is indigent and files an affidavit of indigency; or (ii) 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.* The Act is leaving the discretion up to the governmental unit to determine if the applicant has the “*ability to pay*”, and if the fee waiver is “*in the public interest*”. Therefore, allowing the Maryland Public Information Act Compliance Board to determine if a governmental unit is unreasonably failing to waive fees without revising the existing Act with clarifying parameters would be arbitrary and capricious.

Thank you for your consideration. We will continue to monitor Senate Bill 449 during the Committee’s deliberations, and I am available to answer any questions you may have. Please feel free to contact me by e-mail at [tyler.abbott@maryland.gov](mailto:tyler.abbott@maryland.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott

**SB0449 - LOI -PIA.docx.pdf**

Uploaded by: Beskid, Jennifer

Position: INFO



## Department of Public Safety and Correctional Services

STATE OF MARYLAND

### Office of the Secretary Office of Government and Legislative Affairs

45 Calvert Street, Suite B7A-C, Annapolis MD 21401  
410-260-6070 • Fax: 410-974-2586 • www.dpscs.state.md.us

LAWRENCE J. HOGAN, JR.  
GOVERNOR

BOYD K. RUTHERFORD  
LT. GOVERNOR

ROBERT L. GREEN  
SECRETARY

RACHEL SESSA  
CHIEF OF STAFF

CHRISTOPHER McCULLY  
DEPUTY SECRETARY  
ADMINISTRATION

WAYNE HILL  
ACTING  
DEPUTY SECRETARY  
OPERATIONS

CAROLYN J. SCRUGGS  
ASSISTANT SECRETARY

GARY McLHINNEY  
ASSISTANT SECRETARY

CATHERINE KAHL  
ACTING DIRECTOR

**BILL: SENATE BILL 449**

**POSITION: LETTER OF INFORMATION**

**EXPLANATION:** This bill will require the Department of Public Safety & Correctional Services (Department) to adopt a policy of proactive disclosure of public records and publication of an annual report. The bill requires specific information to be reported on an annual basis that the Department does not currently track.

### **COMMENTS:**

- The Department's Division of Correction (DOC) operates approximately 17 State correctional facilities that house offenders sentenced to incarceration for 18 months and longer. The Department also runs the Baltimore City Pretrial Complex which houses pretrial detainees and inmates sentenced to incarceration for 18 months and less.
- The Department does utilize a Public Information Act (PIA) tracking system; however, this system does not have the capability to capture the data required by SB 449. The PIA requests received are often very involved and require outreach to multiple divisions within the Department.
- To meet the reporting requirements of SB 449, including the number of requests received, the outcomes of the request, the amount of fees collected or waived, and the outcomes of the Department to fulfill the request; would result in a manual search of the Department's PIA records.
- There will be a fiscal impact to the Department to implement the requirements of SB 449 including a new administrative position to manage the requests and data, and an additional Assistant Attorney General position will be required in order to review every PIA request prior to posting it on the Department's website, due to the confidential and sensitive nature of requests. In addition, modifications to the PIA tracking system will be necessary.

- Finally, SB 449 does not specify the number of years of data must be included. The Department maintains data in accordance with a record retention schedule as well as data that is maintained in perpetuity. Without knowing the extent of data that will be required to be collected and published may result in an additional operational and fiscal impact.

**CONCLUSION:** For these reasons, the Department of Public Safety and Correctional Services respectfully requests the Committee consider this information as it deliberates Senate Bill 449.

**SB0449 (HB0183) - LOI.pdf**

Uploaded by: Fahrig, Landon

Position: INFO



**TO:** Members, Senate Education, Health, & Environmental Affairs Committee  
**FROM:** Mary Beth Tung – Director, MEA  
**SUBJECT:** SB0449 - Public Information Act – Revisions (Equitable Access to Records Act)  
**DATE:** February 23, 2021

---

### **MEA Position: Letter of Information**

MEA has been heralded for the transparency provided by its annual Strategic Energy Investment Fund Report; itemizing each and every grant provided by MEA and highlighting the efficacy of its bevy of programs. MEA is working to continue this record of transparency, and to exceed its statutory mandate by creating new methods of communicating with legislators and the public.

The goals of Senate Bill 449 are laudable, but the proposed statutory changes may pose challenges for MEA and its programs. Prematurely disclosing information could be problematic as our grant applications contain contact information, other personally identifying information, and confidential business information that would preclude us from sharing this "computer record" proactively. Additionally, many MEA grants are competitive. If MEA is required to publicly post certain completed grant applications on our website, we would not likely see full subscription of certain grant programs. Organizations that seek funding but must retain sensitive information for the success and longevity of their business would therefore opt out of energy savings and emission reductions.

The bill may frustrate the confidential nature of certain Public Service Commission (PSC) filings as well. MEA and other entities filing before the PSC are permitted to mark items as "confidential". This would be frustrated by the altered authority of the State Public Information Act Compliance Board (the "Board"), as MEA (and other agencies) would be required to submit the confidential information to the Board that could then release said information to the public. While MEA believes the Board is likely to respect the advice and wishes of the PSC, it will not be required under statute. The Board consists of not a judge, but a number of individuals, some of whom represent public interest groups.

MEA urges the committee to consider this information when reporting on Senate Bill 449.

**2021-02-23 SB 449 (Letter of Information).pdf**

Uploaded by: Jung, Roy

Position: INFO



**BRIAN E. FROSH**  
*Attorney General*



**ELIZABETH F. HARRIS**  
*Chief Deputy Attorney General*

**CAROLYN QUATTROCKI**  
*Deputy Attorney General*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

February 23, 2021

TO: The Honorable Paul G. Pinsky  
Chair, Education, Health, and Environmental Committee

FROM: Office of the Attorney General

RE: SB 449 Public Information Act – Revisions (Equitable Access to Records Act) (**Letter of Information**)

---

The Office of the Attorney General (the “Office”) is committed to the principles of open access to information and to promoting a consistent application of the Act throughout State and local government. Indeed, the Office has long played a special role under the Public Information Act (“PIA”) and has long worked toward ensuring the correct implementation of the Act through, among other things, publication of its Public Information Act Manual. Although the Office does not have a position on Senate Bill 449 at this stage, the Office submits this letter to provide information regarding operational matters for the Committee’s consideration.

As an initial matter, the bill requires the Office to provide two additional staff members (on top of the two staff that the Office already provides) to support the Public Access Ombudsman and the PIA Compliance Board. However, the bill neither guarantees funding for those two new positions nor makes that requirement subject to the appropriation of funds in the budget for the positions. As the Ombudsman and PIA Compliance Board explained in their 2019 report, the Compliance Board will depend heavily on its counsel and support staff to help handle its expanded caseload given that the Compliance Board is to continue to be composed of purely volunteer members. *See* Final Report on the Public Information Act, at 37 (Dec. 27, 2019) (“PIA Final Report”). The complexity of the matters decided by the Compliance Board will also increase dramatically. Thus, for the Compliance Board to succeed in its mission, it is critical that the bill be accompanied by sufficient funding to hire the necessary attorneys and support staff. Particularly during this time of fiscal uncertainty, the Office needs assurances that it will be provided the funding for the personnel necessary to support the Ombudsman and Compliance Board.

The Office also believes that the bill may be underestimating how much the Compliance Board’s caseload will increase and, as a result, the attorney and staff support that the Attorney General will have to provide. The 2019 report by the Ombudsman and Compliance Board on

which this bill is based estimated that the Compliance Board’s caseload would grow to approximately 61 cases per year (significantly more than the 14 complaints received in fiscal year 2019) and that two new staff members could handle this increased caseload. That estimate, however, is based on the assumption that the Ombudsman’s caseload will remain more or less the same after the changes in this bill are enacted, *see* PIA Final Report at 14, an assumption that is questionable. Although it is difficult to predict precisely how much the Board’s caseload will increase, one of the common concerns that PIA requesters currently have about the Ombudsman’s process is that she is unable to provide for any binding administrative relief. *See* PIA Final Report at 18. As a result, some requesters who do not think mediation would be helpful choose not to utilize the Ombudsman at all. But if the Ombudsman becomes the first step in a process by which those requesters can obtain binding administrative relief from the Compliance Board, it is likely that more requesters will seek mediation than before. And if the Ombudsman’s caseload increases, then the Compliance Board’s caseload is, in turn, likely to increase even more than the substantial increase that has already been anticipated. For those reasons, this Office believes that *three* new positions (for a total of five positions) would be the minimum to adequately staff the Ombudsman and Compliance Board under the proposed changes in this bill.

The total cost of providing three new positions to support the Ombudsman and Compliance Board—that is, two new lawyers and one new administrative staff person—would likely be \$290,000, the first year. And if the Office of the Attorney General is not provided with an adequate level of funding for that expanded role, we may need to transfer resources from other units of the Office (e.g., the Consumer Protection Division, the Antitrust Division) that are already understaffed themselves.

In addition, there are a few other operational aspects of the bill that the General Assembly may wish to clarify:

- Although the bill provides that a complainant must file a complaint with the PIA Compliance Board within 45 days after a final determination by the Ombudsman that the dispute was not resolved, the bill does not include any deadline by which a party must submit a request for dispute resolution with the Ombudsman. As such, the bill could be read to allow a requester or a custodian to delay seeking assistance from the Ombudsman for an extended period of time and yet still take any dispute that the Ombudsman cannot resolve to the Compliance Board. That stands in stark contrast to the process as it currently exists, which provides that a complainant must seek administrative review from the Compliance Board within “90 days after the action that is the subject of the complaint occurred.” Md. Code Ann., Gen. Prov. § 4-1A-05(b)(5) (West 2020).
- The bill adds to the definition of “public record” that a “public record” does not include “a record or any information submitted to the [PIA Compliance] Board under Subtitle 1A of this Title.” Although it appears that the purpose of this change is to protect the confidentiality of any documents that might be submitted to the Compliance Board for *in camera* review, the language may be broader than intended, as it would seem to mean that even the complaint and response (and other similar non-sensitive materials) submitted to the Compliance Board are not subject to the PIA.

- The bill is not clear about whether the new Compliance Board jurisdiction will apply to matters that are pending before the Ombudsman at the time the bill goes into effect or to PIA requests that were already submitted and responded to before the bill's effective date. The General Assembly may wish to clarify the extent to which the bill is intended to apply retroactively.
- In some cases, the categories for reporting in proposed § 4-105 may be confusing and could lead to inconsistent reporting. For example, for the number of requests granted or denied within 10 business days, a custodian will often grant or deny *part* of the request within 10 business days and the rest of the request within 30 days. But it is not clear how such a matter should be reported under the language of the bill. Also, requiring custodians to report on both the total number of requests granted in part and the total number of requests for which redacted records were provided could lead to confusion and inconsistent reporting, because requests where redacted records are provided are, by definition, requests that are granted in part.

In closing, the Office of the Attorney General shares the goal of improving compliance with the Public Information Act. We hope that the Committee will consider our thoughts on these operational matters, and we are happy to work with you on amendments.

cc: Members of the Education, Health, and Environmental Committee

# **SB0449 - TSO - PIA - Equitable Access to Records A**

Uploaded by: Westervelt, Patricia

Position: INFO



Larry Hogan  
Governor  
Boyd K. Rutherford  
Lt. Governor  
Gregory Slater  
Secretary

February 23, 2021

The Honorable Paul G. Pinsky  
Chair, Senate Education, Health, and Environmental Affairs Committee  
2 West Miller Senate Office Building  
Annapolis MD 21401

**RE: Letter of Information – Senate Bill 449 – Public Information Act – Revisions (Equitable Access to Records Act)**

Dear Chair Pinsky and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 449 but offers the following information for the Committee's consideration.

MDOT is committed to being open, transparent, and collaborative with the public and the communities we serve. Allowing the public to request and inspect documents under the Public Information Act (PIA) is a vital element of the public's trust in our governmental institutions. The goal of this process is to ensure requested records are identified and processed in the shortest amount of time and at the lowest cost to all parties. Under current law, requesters are incentivized to work with governmental entities to reduce the labor and other costs associated. As drafted, Senate Bill 449 may remove that incentive and increase the costs.

MDOT averages 1,000 formal PIA requests annually, in addition to the millions of records provided regularly. While more than two-thirds of PIA requests are processed in under ten days with little to no cost to requesters, we receive numerous broad and expansive record requests that may include email, construction project, procurement, or other larger fields that could involve hundreds of reports and tens of thousands of pages. The costs MDOT is not able to recover are paid by the Transportation Trust Fund and Authority funding; MDOT is mindful of the dual responsibility to balance transparency and cost recovery whenever legally permissible.

MDOT is concerned about the confidential and sensitive nature of many of the records and information maintained by the Department, including many governed by federal laws and regulations prohibiting their release, even to the Compliance Board or Ombudsman. For example, MDOT has a legal responsibility to maintain the privacy of records with HIPAA and/or PII information as well as critical infrastructure and homeland security records. As written, these provisions may lead to disagreements regarding determinations, which once again could require judicial oversight.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 449.

Respectfully submitted,

Melissa Einhorn  
State Legislative Officer  
Maryland Department of Transportation  
410-865-1102