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LISA A. KERSHNER
Public Access Ombudsman

**STATE OF MARYLAND
OFFICE OF THE
PUBLIC ACCESS OMBUDSMAN**

**Testimony of Public Access Ombudsman, in Support of S.B.554
Public Information Act – Frivolous, Vexatious, or Abusive Requests – Remedies
Submitted by Lisa Kershner, Public Access Ombudsman
To the Education, Energy, and the Environment Committee
February 18, 2025**

Dear Chair Feldman, Vice Chair Kagan, and Committee Members,

I submit this letter of support for S.B. 554, which, among other things, would enable a custodian to seek relief directly from an appropriate court when faced with a Public Information Act (“PIA”) request or pattern of requests that is frivolous, vexatious, abusive, or made in bad faith.

I have served as Maryland’s Public Access Ombudsman since the program began in 2016. The program’s core service is to mediate or make other reasonable attempts to resolve PIA disputes between records requestors and custodians.

Each year since the inception of the program, my office has handled hundreds of requests for mediation and other types of assistance. These activities are further described in the Ombudsman’s Annual Report, published each year since 2016, as an Appendix to the Annual Report of the State Public Information Act Compliance Board. For the Committee’s reference, a summary of the data reported by the Ombudsman for FY 2024 and since inception is attached to this letter.

Beginning in July 2022, those with certain types of PIA disputes not resolved through the Ombudsman – including a complaint that a PIA request or pattern of requests is frivolous, vexatious, or made in bad faith – can submit the dispute to the Board for review and decision. While the Board is authorized to decide these disputes and must order certain types of specific relief, it has no authority or means to enforce its own decisions and orders.¹

In my experience as Ombudsman, the number instances in which a PIA request or pattern of requests is truly frivolous, vexatious, made in bad faith, or abusive are comparatively rare. The vast majority of PIA requests – though they may sometimes present legal issues or practical problems for custodians – are legitimate requests made for purposes that are consistent with the

¹ For example, if the Board finds that a custodian improperly denied inspection of a public record, it must issue an order directing the custodian to produce the requested record. If the Board determines that a PIA request (or pattern of requests) is frivolous, vexatious, or made in bad faith, it may order that an agency need not answer a specific request or requests made by the requestor. The Board’s regulations also provide that it may direct that a custodian may ignore future PIA requests that are substantially the same. COMAR 14.02.07.04D.

intent of the PIA. In line with this assessment, since July 2022, my office has mediated only a few matters involving allegations by an agency that a *pattern* of PIA requests is frivolous, vexatious, or made in bad faith, and have received *no requests* for assistance on these grounds based on a single PIA request. This suggests that not only are frivolous, vexatious, bad faith, or abusive PIA requests rare, but that agencies also have been reluctant or restrained in their use of these provisions and invoke the mediation remedy sparingly or as a last resort.²

Unfortunately, however rare instances of egregious misuse of the PIA have been, when they do occur, they disrupt the custodian's performance of regular duties and require inordinate amounts of staff time to address. Thus, frivolous, vexatious, or bad faith PIA requests can prevent or interfere with the ability of a custodian to give full attention to the many other PIA requests that are received.

Further, conduct that rises to the level of bad faith, abuse, or harassment is unlikely to be resolved by voluntary mediation. This is because the conduct involved, almost by definition, is deliberate and intended to harass, disrupt or cause other types of harm to the agency or its staff. In these circumstances, where the nature of a pattern of conduct demonstrates that the PIA is deliberately being used to cause harm or for other improper purposes, it is unlikely that the requestor will have the interest, desire or ability to actually engage the mediation process in good faith with the aim of reaching an outcome that is acceptable to both parties. For mediation to be effective, both parties must genuinely want to resolve the dispute and must participate in good faith in the mediation. For these reasons, I believe that mediation and even Board review following unsuccessful mediation, often prove insufficient to resolve problems involving a pattern of intentional and persistent abuse of the PIA.

Finally, I note that S.B. 554 would provide a potential remedy under the PIA for my office, and for the Board, should either be the target of frivolous, vexatious, abusive, or bad faith PIA requests. Neither my office, nor the Board, has access to the administrative remedy. The Ombudsman cannot mediate matters with her own office, as would be required to file a complaint with the Board, and the Board cannot resolve any complaints it might have about PIA requests it receives.

Therefore, I ask the Committee to issue a favorable report on S.B. 554, which would add provisions to the PIA allowing custodians to pursue a direct judicial remedy for frivolous, vexatious, bad faith, or abusive PIA requests. Thank you for your consideration and please let me know if I can provide any additional information that may be useful to the Committee.

Respectfully submitted,
Lisa A. Kershner
Public Access Ombudsman

² Our reported data reflects that the Ombudsman has received and attempted to mediate three frivolous, vexatious, or bad faith PIA matters on the request of an agency. During the same period, the Ombudsman received hundreds of other requests for mediation or assistance with other issues, including, from time to time, requests from an agency that the Ombudsman assist in reframing or narrowing a PIA request. Though all of these matters involved PIA requests or responses to PIA requests that were viewed as problematic in some respect, they did not involve any allegation that a requestor was deliberately acting in bad faith for improper purposes.

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

FY 2024 - Annual Report
July 1, 2023 to June 30, 2024



Annual Report
FY 2024

636 2024

- ♦ 299 - Mediation requests
- ♦ 337 - 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.

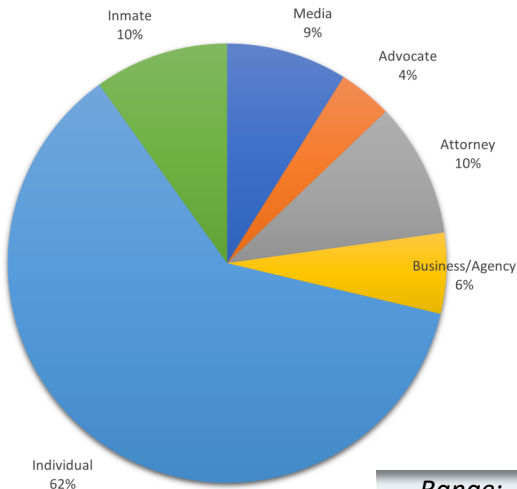
Total Mediation Cases, as of June 30, 2024	
Carry over from FY 2023	53
New/Incoming cases in FY 2024	299
Total Number of Mediation cases	352
Total Mediation cases Closed FY 2024	273
Mediation cases carried over to FY 2024	79

The Agencies

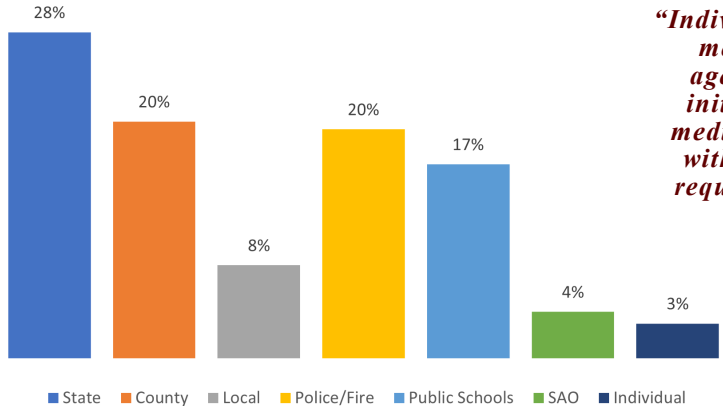
143 unique agencies participated in mediation matters with the PIA Ombudsman in Fiscal Year 2024, including agencies at the state, county, and municipal levels.

The Requesters

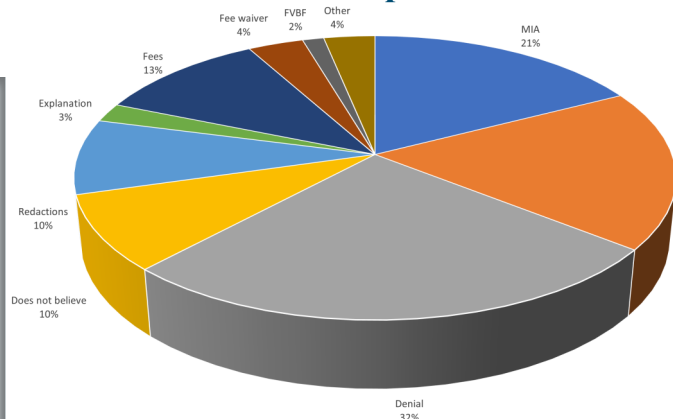
Requesters: Professional/Occupational requesters make up **28%** of requests for assistance, and all individuals make up **72%**.



"Individuals" means agency-initiated mediations with PIA requesters

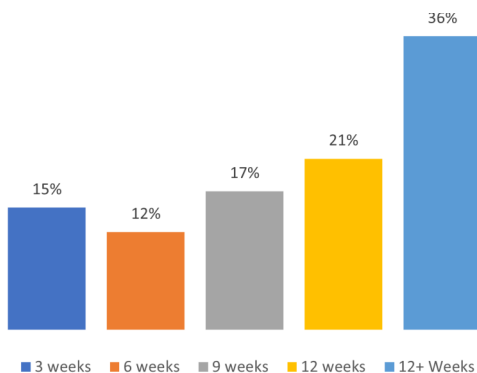


What are the PIA Disputes?



Disputes are presented as framed by the requester. Characterizations are based on how the requesters describe the issues. These are not findings.

How Long Does Mediation Take?



Range: 1 – 186 days.
15% of the cases are closed within 3 weeks and **83%** by 90 days.

- Misapplication of exemption - 42%
- Redaction inappropriate - 10%
- Entire record withheld - 32%
- MIA: No Response - 21%
- Partial, nonresponsive, or incomplete response - 22%

- Fees excessive - 13%
- Fee waiver request denied or ignored - 4%
- Does not believe response - 10%
- Asked for explanation of response - 3%
- Other - 4%
- Frivolous, Vexatious, Bad Faith Request - 3%

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<http://piaombuds.maryland.gov>

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—June 30, 2024



99 Months
Since
Inception

3647 March 30, 2016

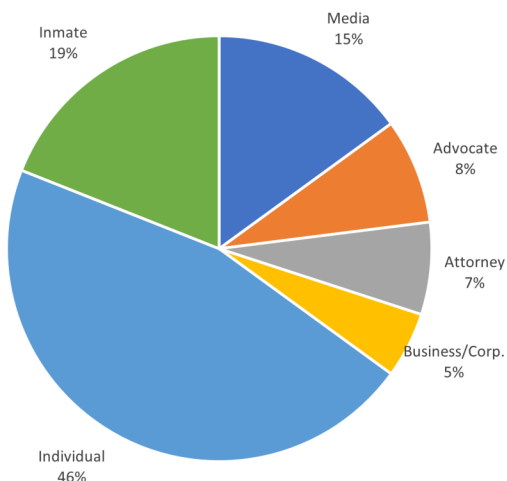
- ♦ 2055 - Mediation requests
- ♦ 1592 - Other / "help-desk" inquiries

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 Requesters

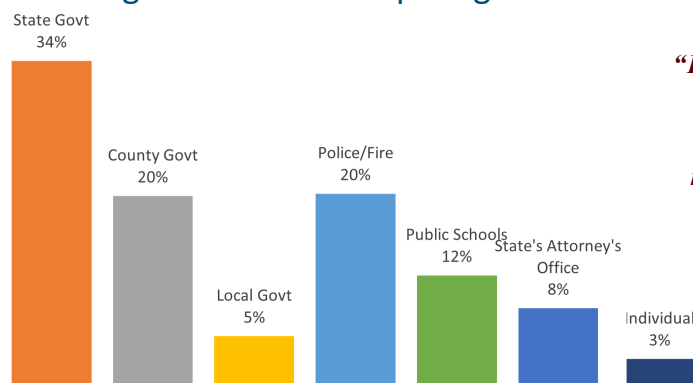
Aggregated Requesters: Professional/Occupational categories make up **35%** of requests for assistance and all individuals make up **65%**.



The Agencies

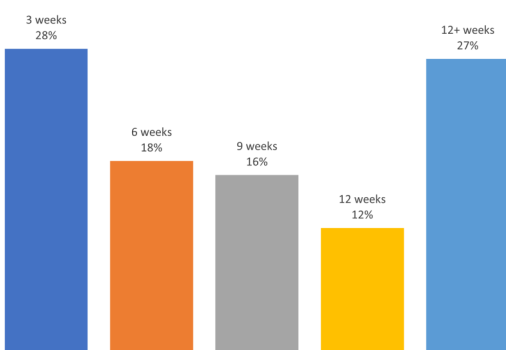
Approximately **390** unique agencies participated in mediation matters with the PIA Ombudsman since the beginning of the program, including agencies at the state, county and local levels.

What Agencies are Participating in Mediation?



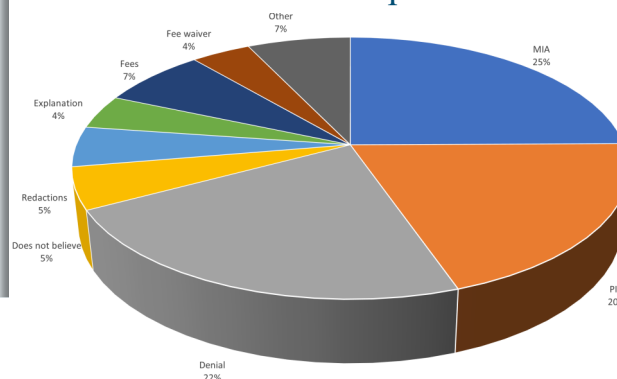
"Individuals" means agency-initiated mediations with PIA requesters

How Long Does Mediation Take?



28% of Ombudsman matters are closed within 3 weeks and **74%** by 90 days.

What are the PIA disputes?



Disputes are presented as framed by the requester. Characterizations are based on how the requesters describe the issues. These are not findings.

Mediations

March 30, 2016 – June 30, 2024

New/Incoming Cases between 3/30/16–6/30/24	2055
Closed as of 6/30/24	1976

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