

**2025 OPD Testimony SB296.pdf**

Uploaded by: Danielle Stakel

Position: FAV



**NATASHA DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**HANNIBAL KEMERER**  
CHIEF OF STAFF

**ELIZABETH HILLIARD**  
DIRECTOR OF GOVERNMENT RELATIONS

## POSITION ON PROPOSED LEGISLATION

**BILL: SB296-Public Information Act - Public Access Ombudsman - Delegation of Powers**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: 2/4/2025**

---

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on SB296.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB296.**

### **Delays during the Mediation Process with the Public Access Ombudsman**

Our experience with the mediation process facilitated by the Office of the Public Access Ombudsman has been consistently characterized by fairness and thoroughness. The Ombudsman demonstrates a commitment to ensuring a comprehensive review of each case, which is commendable. However, it is important to note that the office's substantial caseload has led to significant delays in processing. As a result, the duration of the process has been slower than anticipated and slower than is fair to the individuals being forced to wait for justice. Many of our clients are facing pending hearing dates, and, regrettably, the prospect of engaging in a mediation process that spans three to four months is no longer a feasible option for them. This lengthy timeline presents significant challenges, especially given the urgency of resolving these matters in a timely manner. Our hope is that additional personnel will enable the Ombudsman to speed up the process thereby making it a more viable option for our office and our clients.

Since July 1, 2022, all complaints under the Maryland Public Information Act (MPIA) have been required to undergo mediation through the Ombudsman's office prior to being submitted to the Public Information Act Compliance Board. This legislative change has, without question, resulted in a significant increase in the volume of mediation requests filed with the Ombudsman's office. The mandated mediation process aims to facilitate the resolution of disputes before formal complaints are escalated to the Compliance Board, which, while beneficial in promoting early resolution, has undoubtedly contributed to a substantial rise in case filings, placing additional strain on the Ombudsman's office resources.

In certain instances, this procedural requirement presents an unnecessary obstacle and contributes to congestion in the Ombudsman's schedule. For example, our office is currently involved in an ongoing MPIA matter with an agency that routinely issues blanket denials in response to our requests. In 2023, after receiving one such denial, we pursued the mediation process and successfully resolved one specific issue. Despite the resolution, our subsequent MPIA requests on behalf of other clients have been denied using the same generalized reasoning. Unfortunately, the continued recurrence of this issue with the agency renders it both daunting and impractical to pursue the mediation process for each and every MPIA request. The need for a more efficient and effective resolution to these recurring issues is critical, as the current process is overly burdensome and constitutes a waste of valuable resources.

Pursuant to GP § 4-362, a party may seek judicial review by filing an action in circuit court. In some instances when the mediation process proves to be unduly lengthy or ineffective in resolving a dispute regarding public records access, the Maryland Office of the Public Defender has filed an action in the Court. While judicial review serves as an essential mechanism for ensuring compliance with the Maryland Public Information Act, the necessity of resorting to

litigation places additional burdens on both the courts and the parties involved. Increasing resources allocated to the Ombudsman's Office could help streamline the mediation process, reducing delays and facilitating more efficient resolutions. Strengthening the Ombudsman's office would not only expedite resolutions for requesters but also alleviate the burden on the courts, promoting a more efficient and accessible process for addressing public records disputes.

### **Obstacles to Maryland Public Information Act Requests**

#### **a. Delays**

In response to our MPIA requests, we frequently encounter instances of noncompliance and, at times, a blatant disregard for the custodial obligations as outlined in the Maryland Public Information Act. Despite the clear requirements established by the Act, many custodians fail to fulfill their responsibilities in a timely and transparent manner, hindering the proper functioning of the law. This consistent lack of adherence not only undermines the intent of the MPIA but also creates unnecessary delays and obstacles in accessing public records, which ultimately impedes the efficiency of public information requests and frustrates the principle of transparency.

The Maryland Public Information Act spells out specific timelines for the Custodial agency to comply with:

1. Once an application is submitted to an agency, the custodian shall grant or deny it within 30 days or less of receiving the application. GP § 4-203(a)(1)
2. If a custodian reasonably believes that it will take more than 10 working days to produce the public record, the custodian shall indicate in writing or by electronic mail within 10 working

days after receipt of the request: the estimated time of completion, the estimated range of fees, and the reason for the delay. GP § 4-203(b)(2)

3. Any time limit imposed under this section, with the consent of the applicant, may be extended for not more than 30 days. GP § 4-203(d)(1)

We frequently encounter agencies that fail to respond to our requests within the 10 working days mandated by the Maryland Public Information Act (MPIA). This lack of timely response undermines the efficiency and transparency intended by the Act and significantly delays the process of obtaining public records. More problematic, we often face situations where agencies take months, and in some cases, over a year, to fulfill our record requests. It is not uncommon for our follow-up emails seeking updates to go unanswered or to receive delayed responses. Many agencies cite staffing shortages as the primary reason for these delays, but the ongoing lack of responsiveness severely impedes the timely access to public information.

The MPIA Manual acknowledges that if an agency is making a “good faith” effort to process a request, a reviewing court may not consider such delays as a knowing and willful violation of the Act. Specifically, the MPIA Manual (p.4-4) states: “Every effort should be made to follow the PIA’s time limits. However, if an agency can show that it is exercising due diligence in responding to a request, courts have allowed the agency additional time. See *Leopold*, 223 Md. App. at 124.” While this provision offers some flexibility for agencies, it also creates a broad interpretation of what constitutes a “good faith” effort, leaving room for further delays without significant consequences. Unfortunately, despite the provisions of the MPIA, the Act often appears to lack sufficient enforcement mechanisms, rendering it ineffective in ensuring timely compliance. As a result, both we and our clients find ourselves at the mercy of the

custodian's discretion, with little recourse when delays persist or agencies fail to meet their legal obligations.

**b. High fees**

A significant challenge our office encounters when submitting Maryland Public Information Act (MPIA) requests is the excessively high fees imposed by various agencies. Under GP § 4-206, an official custodian may charge reasonable fees for the “actual costs” for the search and preparation of records for inspection and copying. In 2024 alone, our division submitted over 70 MPIA requests to multiple State's Attorney's Offices and law enforcement agencies. In response to these requests, we frequently receive fee estimates that exceed several hundred dollars. When requesting body-worn camera footage from certain law enforcement agencies, the quoted fees can be particularly prohibitive, sometimes reaching several thousand dollars. Unfortunately, our division routinely is forced to abandon MPIA requests when charged high fees.

For example, in response to a request for internal affairs disciplinary records concerning a law enforcement officer at a Sheriff's Office, our office was presented with a prepayment request of \$3,000 and an estimated total fee ranging from \$4,500 to \$5,500. The agency cited an estimated 70 hours of work to fulfill the request, which included 200 pages of records and approximately eleven hours of audio and video recordings. Due to the excessive cost, our office was compelled to withdraw the request. The prohibitive nature of these fees significantly hampers transparency and public access to information. As a result, our division is often forced to rescind MPIA requests due to financial constraints.

Pursuant to the Maryland Public Information Act (MPIA), the official custodian has the discretion to waive any fee or cost associated with an MPIA request if the applicant requests a waiver and either demonstrates indigency or if the custodian determines that granting the waiver would serve the public interest (§ 4-206(e)). Our office submits MPIA requests on behalf of clients who are indigent, and in each request, we explicitly cite their indigent status and formally request a fee exemption. However, despite our consistent efforts, we have only been granted a fee waiver on a single occasion during my three years in this role at the Office of the Public Defender.

In a 2023 opinion, the Maryland Public Information Act Compliance Board (PIACB) acknowledged the significant barriers posed by fees, particularly for indigent requesters. The Board stated:

*"At the same time, in circumstances such as these, where an indigent requester's access to public records is hindered by the imposition of even modest fees, we encourage custodians to grant indigency-based fee waivers when properly requested under § 4-206(e). As one scholar has explained, the purpose of open records laws, 'to provide citizens with access to government records, supports granting fee waivers to indigent [people] because, whereas denying a non-indigent [person's] fee-waiver request merely determines that [they] will bear the cost of access to agency records, denying an indigent [person's] fee-waiver request determines that [they] will have no access to the agency records at all.'"*

— John E. Bonine, *Public-Interest Fee Waivers Under the Freedom of Information Act*, 1981 Duke L.J. 213, 260 (1981); PIACB23\_025 p. 6.

The infrequent granting of fee waivers poses a significant obstacle to ensuring equal access to public records, particularly for indigent individuals who rely on such information to protect their rights. Despite statutory provisions permitting waivers, the practical application of these provisions remains inconsistent, effectively undermining the intended purpose of the MPIA and restricting transparency for those most in need.

**c. Required documentation**

Lastly, some law enforcement agencies have recently implemented additional documentation requirements in response to our MPIA requests. These requirements often include, but are not limited to, our client's photo identification and agency-specific forms signed by our clients. The agencies assert that these documents are necessary to establish proof of legal representation. In an effort to comply, we offered to provide Notices of Appearance by Defense Counsel that have been formally filed in Maryland Courts, but were informed that this would not suffice to meet the agency's stipulations.

This additional documentation requirement presents a significant burden on our office. The process of obtaining the requested materials from our clients—such as photo identification and completed forms—often takes at least four weeks, if not longer, due to the time required for mailing and receiving the documents. The delays involved in this process are not only time-consuming but also impede the timely resolution of our clients' cases. Given the extended timeframe required to fulfill these requirements, the overall efficiency of the MPIA request process is severely compromised, placing undue strain on both our office and the clients we serve.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.**



Authored by:  
Danielle Stakel  
Paralegal - OPD Post Conviction Division  
217 E. Redwood Street, Suite 1020  
Baltimore, MD 21202  
(410) 209-8674  
[danielle.stakel@maryland.gov](mailto:danielle.stakel@maryland.gov)

## **2.4.25.Ombuds.Test.S.B.296.Ombuds.Delegation.Power**

Uploaded by: Lisa Kershner

Position: FAV

**WES MOORE**  
*Governor*

**ARUNA MILLER**  
*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. 296  
Public Information Act – Public Access Ombudsman – Delegation of Powers**

*Submitted to*

**Education, Energy and the Environment Committee**

**February 4, 2025**

Dear Chair Feldman, 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. The program’s core service is to mediate or make other reasonable attempts to resolve disputes between applicants and custodians under Maryland’s Public Information Act (“PIA”). S.B. 296 strengthens and adds flexibility to the Ombudsman program by expressly allowing the Ombudsman to delegate any of the powers and duties already granted to the Ombudsman to a staff member of the Office of the Public Access Ombudsman.

Importantly, the bill does not alter the scope or character of the Ombudsman’s powers, duties or services. The bill does ensure, however, that mediations and other program services will continue uninterrupted if the Ombudsman is unavailable and will help reduce the time many requestors and agency representatives must wait to obtain assistance.

As additional background, the Ombudsman is authorized to try to resolve a wide array of PIA disputes on an entirely voluntary basis and through a confidential process aimed at reaching an agreement that is acceptable to both parties.<sup>1</sup> By statute, the Ombudsman generally has 90 days to conclude a mediation (absent an extension) and at the conclusion of the process, must issue a “Final Determination.” General Provisions Article § 4-1B-04(b).<sup>2</sup> The ability to address PIA disputes promptly is a critical factor in the likelihood that mediation will be effective in resolving the dispute. S.B. 296 will help the Ombudsman and her staff resolve disputes faster and will strengthen the program by affording the Ombudsman greater flexibility and making the program more resilient.

---

<sup>1</sup> Disputes include issues about denials of access to records, fees or the denial of a request to waive fees, the failure of an agency to timely or fully respond to a PIA request as well as complaints by agencies concerning overly broad or repetitive requests and, on occasion, complaints that “a request or pattern of requests from an applicant is frivolous, vexatious or made in bad faith.” General Provisions Article § 4-1B-04(a).

<sup>2</sup> The Final Determination must be submitted with any complaint filed with the PIA Compliance Board as it provides the basic information needed by the Board to determine whether it has jurisdiction to decide the complaint.

Thank you for considering this testimony in support of S.B. 296. I look forward to addressing any questions the Committee members may have.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lisa Kershner". The signature is fluid and cursive, with the first name "Lisa" and last name "Kershner" clearly distinguishable.

Lisa Kershner

Public Access Ombudsman

**SB 296 MDDC Support.pdf**

Uploaded by: Rebecca Snyder

Position: FAV



**Maryland | Delaware | DC Press Association**

P.O. Box 26214 | Baltimore, MD 21210

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

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

To: Senate Energy, Education & the Environment Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

Date: February 4, 2025

Re: **SUPPORT SB 296**

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

The Press Association with the ACLU, Common Cause MD and Public Justice Center write in support of SB 296, which would allow the Public Access Ombudsman to delegate any of the powers and duties granted to the Ombudsman.

Recognizing that the Public Access Ombudsman has responsibility for many time-sensitive and important public information act mediations and discussions, we believe that allowing delegation of powers to the others within the office will help the office run more effectively and respond to inquiries more quickly. The rising number of cases the Ombudsman's office handles is a testament to the efficacy and need for the role; it is important that responses to complainants are addressed quickly and completely.

We urge a favorable report.



**Klemm Testimony SB 296.pdf**

Uploaded by: Sara Klemm

Position: FAV



**CAROLYN A. QUATTROCKI**  
*Chief Deputy Attorney General*

**LEONARD J. HOWIE III**  
*Deputy Attorney General*

**CARRIE J. WILLIAMS**  
*Deputy Attorney General*

**ZENITA WICKHAM HURLEY**  
*Chief, Equity, Policy, and Engagement*

**PETER V. BERNS**  
*General Counsel*

**CHRISTIAN E. BARRERA**  
*Chief Operating Officer*

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

**ANTHONY G. BROWN**  
*Attorney General*

**Testimony of Sara Klemm, Assistant Attorney General, Public Access Unit**  
**In SUPPORT of Senate Bill 296**  
**Submitted to: Education, Energy, and the Environment Committee**  
**February 6, 2025**

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

I am an Assistant Attorney General in the Office of the Attorney General (“OAG”). I serve as counsel to the Public Access Ombudsman and the Public Information Act Compliance Board. The work of the unit is entirely focused on Maryland’s Public Information Act (“PIA”). I urge support of **Senate Bill 296**, which would enact a minor technical change to allow the Ombudsman to delegate her powers and duties to staff of the Office of the Public Access Ombudsman, who work independently of the OAG, thus ensuring that the program operates more efficiently and effectively.

By statute, the Ombudsman and Compliance Board are independent entities. Both are fully supported by the OAG. The Ombudsman is a full-time State employee, while the Board comprises five volunteer members. The OAG currently provides two administrators (one contractual, one full-time regular) to support their work, as well as office space for the Ombudsman. As noted above, I also provide legal advice and counsel to both entities. The PIA charges the Ombudsman with attempting to resolve disputes that arise under the PIA, which the Ombudsman typically does through voluntary, confidential mediation. If mediation is not successful, then a party may file a complaint with the Compliance Board, assuming the dispute falls within the Board’s jurisdiction. The Board issues written decisions and binding orders, which are subject to appeal in the circuit courts.

In July 2022, legislation that expanded the Board’s jurisdiction went into effect. That same legislation also integrated the Ombudsman’s program with the Board’s process, making it necessary to attempt to resolve a dispute through the Ombudsman before filing a complaint with the Board. Since July 2022, both the Ombudsman and Board have seen their caseloads increase significantly.



Since the program's inception, there has been only one Ombudsman to carry out the duties assigned to the role. The OAG staff assigned to support the Ombudsman cannot perform the programmatic duties of the Ombudsman, e.g., conducting mediations or issuing final determinations. *See* General Provisions Article § 4-1B-04(b) (requiring the Ombudsman to issue a final determination, generally within 90 calendar days). In my role as legal counsel to both entities, I also cannot perform the programmatic duties of the Ombudsman. When the Ombudsman is out of the office for a period of time for any reason, the work of her office largely comes to a halt, which then can have a ripple effect, given that a party must have a final determination from the Ombudsman to file a complaint with the Board. *See* General Provisions Article § 4-1A-05(a).

**Senate Bill 296** would allow the Office of the Public Access Ombudsman to continue to carry out its dispute resolution duties under the PIA even when the Ombudsman is out of the office for a period of time. It simply provides that program staff in the Ombudsman's office may carry out those same dispute resolution duties, under her supervision. The bill would also generally increase the efficiency and effectiveness of the Ombudsman's program day-to-day as it allows the Ombudsman's office to take on staff, meaning that individuals and agencies seeking the Ombudsman's assistance will not need to wait as long to receive that assistance. The OAG has already provided an attorney-mediator, who will report directly to the Ombudsman, to help manage the increased demands of the Ombudsman's office. This bill clarifies that that attorney-mediator may perform the same duties and functions that the Ombudsman does.

Please support **Senate Bill 296**. I look forward to answering any questions you may have.

Sincerely,

Sara Klemm  
Assistant Attorney General  
Public Access Unit