

**From:** Post Conviction Defenders Division <pcdefenders@opd.state.md.us>  
**Sent:** Wednesday, May 16, 2018 8:00 AM  
**To:** [REDACTED]  
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## post conviction defenders division

Maryland Office of the Public Defender | Justice & Hope for Maryland's Incarcerated

Issue 11

Spring, 2018



### **Congratulations to the 2018 PCD Award Winners!**

Melissa McDonnell - Tenacious Advocacy Award (2 time winner!)

Brendan Costigan - Post Conviction Attorney of the Year (Culture of Excellence)

Natalie Novak, Client Centered Award

Brittany Bennett, Spirit Award (United in our Mission)

### **PIA OMBUDSMAN: FEE ESTIMATES, FLAT FEES & WAIVER OF FEES**

Ms. Kershner, who took office as Maryland's first Public Information Act ("PIA") Ombudsman on March 30, 2016, has been working with agencies and advocates throughout the state to improve the operation of the PIA, and improve effective access to the PIA process by persons who are incarcerated. This article focuses on fees and the remedies available to PIA requestors.

#### **PIA Fees - What Fees Are Allowed?**

Fees are governed by section 4-206 of the PIA. An agency is allowed to charge a reasonable fee for the search for and preparation of requested records. "Reasonable fee" means the fee must be tied to the agency's actual costs in responding to the request, including the prorated salaries of the employees involved in searching for, preparing, and reviewing the records, and the costs of reproducing the records. **An agency must provide the first two hours of work for free.**

#### **Flat Fee**

Often, agencies charge a flat fee for making copies, such as 15 cents per page. This practice is allowed as long as the price per page bears a reasonable relationship to the actual cost of making the copies.

Sometimes, agencies may charge a flat fee for a specific record or set of records, such as a case file. Again, the agency is allowed to do this if it can show that the flat fee is reasonably related to the actual cost of producing the record or records. **In short, any flat fee must still be related to the agency's actual costs, and cannot be set artificially high simply to deter PIA requests.**

#### **Fee Estimates**

An agency is allowed to request prepayment of a fee before it performs all of the work to search for, prepare, and produce a requested record. This preliminary fee is often just an estimate, because the agency has not done all of the actual work yet. **The agency should provide enough detail to show how the estimate is calculated, and should provide the opportunity for a refund if the actual cost of producing the record is less than the estimate.**

#### **Can Fees be Waived?**

Under section 4-206 of the PIA, an agency is **obligated to consider a fee waiver request by an individual that is supported by an Affidavit of Indigency. However, the agency has broad discretion to determine whether or not it is in the public interest to grant the waiver request.** Although the agency has broad discretion to deny a waiver request, it must be able to show that its decision was not arbitrary or capricious, but was instead based upon a consideration of the applicant's ability to pay and other relevant public interest factors.

#### **What is the Role of the Ombudsman?**

If you do not receive a written response to your PIA request or the records you requested, you have the option to ask for the Ombudsman's help in mediating the request, or in cases of fees exceeding \$350, to submit a complaint to the PIA Compliance Board. (These options, which were created by the legislature in 2015, are in addition to judicial remedies, which remain in place.) **The Ombudsman's mediation process is voluntary, and attempts to get the parties to agree to a reasonable solution. The Ombudsman does not have authority to decide or compel any party to do anything.** For example, the Ombudsman cannot compel an agency to reconsider a fee waiver request even if the requestor has proven his/her indigency. Rather, the Ombudsman tries to help the parties reach a voluntary agreement. All information provided to

the Ombudsman as part of the mediation process is maintained in confidence, and can only be disclosed to another with advance written permission of the parties.

If you are seeking mediation assistance with a PIA request, please send your request to the Ombudsman and include with your correspondence, (1) a copy of your request and/or (2) a copy of the written response you received to your request. Also, if possible, provide the name of and contact information for any person you wish the Ombudsman to communicate with on your behalf about your PIA request.

If you are unable to provide the Ombudsman with the PIA request you submitted or the response you received, please submit the following with your request for mediation: 1) the date when you made the PIA request; 2) the agency, and contact person, to whom you sent your PIA request; 3) the records you have asked the agency to produce; 4) the date(s) of any written response(s) you received from the agency, and the substance of the response; and finally, 5) any additional pertinent information, e.g., your case # when seeking trial or investigative files, whether you requested a fee waiver, whether you submitted an affidavit of indigency, etc.

#### **What is the Role of the PIA Compliance Board (PIACB)?**

The PIA Compliance Board hears complaints involving an agency's imposition of fees for a PIA request. **Specifically, a requester who is assessed a fee of more than \$350, and who believes that the fee is unreasonable may file a complaint with the Board.** The agency will have an opportunity to respond to the complaint, after which the Board may hold an informal conference to hear from both the requester and the agency. The Board will issue a written opinion and, if the Board finds that the custodian charged an unreasonable fee, may order the custodian to reduce the fee to a reasonable amount or refund the excessive portion of a fee that was paid.

**The Board cannot hear complaints that involve fees less than \$350, or that arise out of an agency's handling of a PIA request. Disputes involving these and other aspects of the PIA may be referred to the Public Access Ombudsman for mediation.**

To file a complaint with the Board, consult the information on the board's website at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/piacb.aspx#MeetingNotices> or email a complaint to the board at [piaopengov@oag.state.md.us](mailto:piaopengov@oag.state.md.us). The Board's procedures, meeting notices, minutes, and opinions also appear on the Attorney General's website.

*~This article was submitted by the Public Access Ombudsman and her staff.*

## Public Defender Spotlight Karla Showalter

Karla Showalter is the Director of the Parole Revocation Unit and also handles post conviction matters.



She graduated with her bachelor's degree from West Virginia University in 1996. In 2001, she graduated with honors from the University of Maryland School of Law. Ms. Showalter served as the law clerk to the Honorable William O. Carr, former administrative judge of the Harford County Circuit Court from 2001-2002. Ms. Showalter began working at the Office of the Public Defender in 2003. She worked in the Baltimore City Juvenile Division from 2003 to 2011. She has been an attorney in the Post Conviction Defenders Division since 2011 and won the 2017 Client Centered Award.

In her free time, Ms. Showalter loves to cook and bake. She enjoys free time with her family and her two dogs.

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