

**Appendix****APPENDIX****REPORT OF THE PUBLIC ACCESS OMBUDSMAN**

The General Assembly created the Office of the Public Access Ombudsman through the same statute that created the Public Information Act Compliance Board. The Ombudsman's duties involve making reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records under the PIA, including issues involving exemptions, redactions, failure to respond timely, overly broad requests, fee waivers, and repetitive or redundant requests. *See* § 4-1B-04 of the General Provisions Article of the Maryland Code.

This report describes the Ombudsman's principal activities during 2018, and suggestions for possible improvements to the PIA scheme. A summary statistical report concerning PIA mediations and other Ombudsman program activities for calendar year 2018 to date is included at the end of this Appendix.

**ACTIVITIES OF THE OMBUDSMAN**

The Office of the Public Access Ombudsman began operations on March 30, 2016. During 2016 and 2017, the Office was largely occupied with start-up tasks necessary to establish the program, the Ombudsman's investigation of the Howard County Public School System's compliance with the PIA pursuant to H.B.1105 (completed in December 2016), a significant backlog of mediation matters, and responding to requests for training and other assistance. Calendar year 2018 has seen the Office reach a new level of operational and programmatic efficiency.

During 2018, the Ombudsman continued and/or expanded mediation and outreach activities, and was able to:

- clear a substantial portion of protracted mediation matters, thereby reducing the mediation queue;
- expand online training and resource material, including the "Open Matters" blog and a digest of recent Maryland appellate decisions involving the PIA;
- engage with additional agencies and organizations around the state that request PIA trainings, and/or that confer proactively with the Ombudsman program to avoid PIA problems and disputes;
- refine case management processes and procedures.

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The Ombudsman anticipates introducing a number of institutional and operational improvements in the coming year, including:

- a robust relational database to more efficiently track and manage mediation matters;
- a repository of governmental agency “best practices” for PIA intake and response procedures; and
- proposed interpretive regulations that elaborate on the mediation process, including the Ombudsman’s duty to maintain confidentiality, and the ground rules that mediation participants are expected to follow.

#### **LEGISLATIVE RECOMMENDATIONS**

Based on the Ombudsman’s mediation work, and her cooperation with the Public Information Act Compliance Board, she recommends the following legislative changes:

##### ***Expand Board jurisdiction to include review of fee waiver denials***

Many of the complaints received by the Board and the Ombudsman involve an agency’s denial of a request for PIA fee waiver. This issue is not currently within the jurisdiction of the Board, and the Board often forwards these disputes to the Ombudsman for possible mediation assistance. Although the Ombudsman can request that an agency reverse its waiver denial and/or reduce its fee, she does not have enforcement authority and cannot require an agency to reconsider its position. The Board is particularly suited to address fee waiver denials, because it is already charged with reviewing the reasonableness of fees, and the two issues are often closely entwined. Moreover, the Board has the authority to require a particular outcome. Accordingly, the Ombudsman believes that expanding the Board’s jurisdiction to include review of fee waiver denials would provide the public with an efficient extra-judicial mechanism to resolve all PIA fee-related disputes.

The availability of this mechanism would also enhance the Ombudsman’s mediation process in two ways. First, the decision of the Board would be enforceable, so it would provide an effective forum for those fee-related disputes that have proven to be irresolvable in mediation. Second, and relatedly, it would provide an incentive for parties to reach an agreement voluntarily so as to avoid this forum.

##### ***Entitle indigent inmates to own case files***

A significant portion of the Ombudsman’s mediation caseload involves inmates who are seeking their case files from law enforcement agencies, including

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state's attorney's offices and police departments, but who cannot afford the agency's fee. The Ombudsman agrees with the Board's recommendation that an indigent inmate should be entitled to records in their own case file free of charge, and that amending the PIA to grant a one-time fee-waiver could achieve that result. However, the Ombudsman recommends that the Legislature consider amending the post-conviction and/or criminal discovery laws to give inmates access to their own case files without resorting to the PIA process. The Ombudsman frequently works with law enforcement agencies that are on the receiving end of such PIA requests. She has perceived that dealing with post-conviction requests for criminal case files through a discovery-like process, and not through the PIA process, could alleviate some of the burdens associated with these requests, for both inmate requesters and responding agencies.

**CONCLUSION**

The Ombudsman wishes to thank the Attorney General for appointing her to this important position. In addition, the Ombudsman thanks the PIACB for providing this forum for sharing her experience and offering suggestions for improvement. Please note that throughout the year, the Ombudsman posts statistical reports, helpful tips, and PIA-related news on the Ombudsman's website ([piaombuds.maryland.gov](http://piaombuds.maryland.gov)) and on Twitter (@MPIA\_Ombuds).

Respectfully submitted,

*Lisa A. Kershner*

Public Access Ombudsman

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