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PUBLIC ACCESS OMBUDSMAN

TESTIMONY IN SUPPORT OF HB 502

February 11, 2020

Health and Government Operations Committee

Dear Chair Pendergrass, Vice Chair Pena-Melnyk, and Members of the Committee:

I am Maryland's first Public Access Ombudsman ("Ombudsman"), a position I have held since March 2016.<sup>1</sup> In this position, I have witnessed the importance of State and local government agencies in the lives of citizens, and the importance of compliance with the Public Information Act ("PIA") for building trust and confidence in those agencies. I also regularly see the destructive effects of protracted or unresolved PIA disputes on both requestors and agency personnel—effects that erode public trust in governmental transparency, and sap agency morale and productivity.

House Bill 502, which tracks the recommendations made jointly by my Office and the PIA Compliance Board ("Board") in our *Final Report on the PIA*, published in December 2019, addresses these problems by providing for expanded Board authority to review and decide PIA disputes that cannot be resolved through voluntary mediation with the Ombudsman. The Bill also requires agencies to track and self-report basic information about their PIA caseload, and to develop realistic policies for proactive records disclosure.

These measures will strengthen the PIA overall, promote increased agency efficiency and transparency, enable the Ombudsman and Board to operate in an effective and complimentary fashion, and provide a much needed and cost-effective administrative review and decisional remedy for disputes and issues that cannot be resolved by Ombudsman mediation alone.

As further background, the Legislature in 2015 created the current Board and Ombudsman programs, authorizing the Board, on the one hand, to review and decide only those complaints about the reasonableness of PIA fees that exceed \$350, and on the other, directing the Ombudsman to make "reasonable attempts" to resolve a broad range of PIA disputes, but only on a voluntary and non-binding basis.

Now, after nearly four years of operation, several deficiencies in the current system are clear:

1. A significant and consistent number of PIA disputes across State and local agencies cannot be resolved by the Ombudsman's efforts alone; as reflected in the *Final Report*, roughly a

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<sup>1</sup> For the Committee's information, I attach a statistical summary of the Ombudsman program since inception.

quarter of my caseload—or about 60 matters per year—are likely in need of the proposed Board remedy;

2. The current Board and its staff are underutilized due to the Board's extremely limited jurisdiction; while the Ombudsman program has handled some 903 mediation requests through December 31, 2019, the Board has received only 31 complaints within its narrow jurisdiction;
3. The natural synergy that should exist between the Ombudsman and Board due to their complimentary processes and aims is almost completely lacking; the Board lacks jurisdiction to review and decide the vast majority of PIA disputes, and thus does not provide an incentive for parties to engage meaningfully with the Ombudsman or prioritize PIA compliance; and
4. The Ombudsman program and Board, as currently configured, are falling far short of their real potential to provide meaningful and accessible remedies for PIA disputes in a cost-effective manner.

In contrast, HB 502, if enacted, will benefit all PIA stakeholders by:

- 1) Preserving and enhancing the benefits of the current Ombudsman program without altering its character as a purely voluntary, informal, confidential, and non-binding process of facilitated dispute resolution;
- 2) Providing a comprehensive and accessible dispute resolution remedy for both requestors and agencies where none presently exists, without altering existing judicial remedies;
- 3) Facilitating the further development and articulation of the PIA through written Board decisions; and
- 4) Maximizing public resources by enabling the Board and Ombudsman to interact in a fully complimentary and synergistic fashion, while at the same time utilizing both programs and staff to their fullest potential.

For all of these reasons, I urge the Committee to issue a favorable report on HB 502.

Respectfully submitted,



Lisa Kershner  
Public Access Ombudsman

**MARYLAND PUBLIC INFORMATION ACT (PIA)**

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

# Public Access Ombudsman

Since Inception (45 mo.)  
March 30, 2016 — December 31, 2019



Since Inception - 45 Months

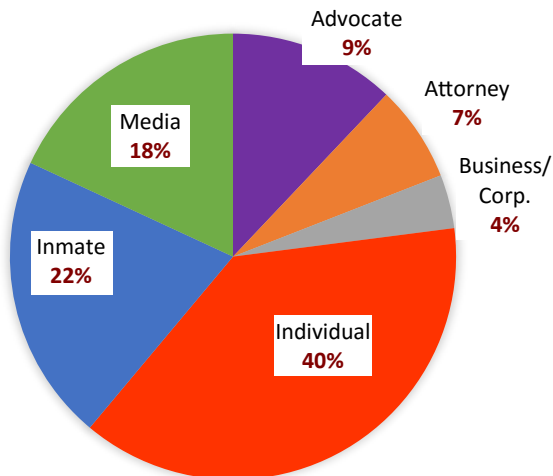
**1410** since March 30, 2016

- ◆ 903- Mediation requests
- ◆ 507+ - 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.*

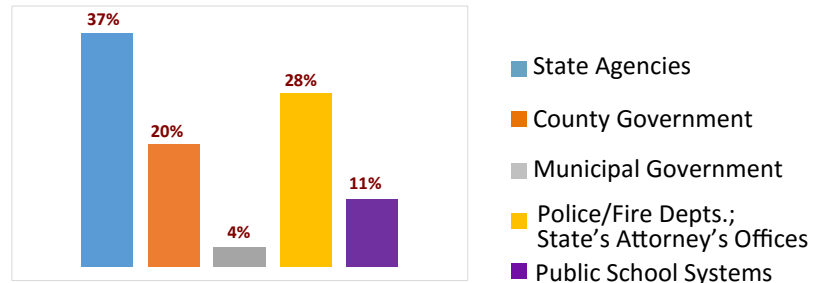
## The Requestors



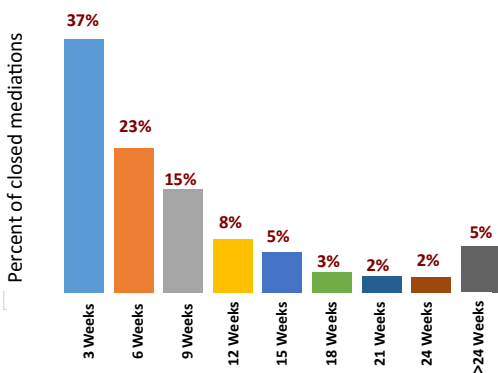
## The Agencies

**248** unique agencies participated in mediation matters with the PIA Ombudsman since the beginning of the program. Agency jurisdictions are state level, **19** different counties, **23** municipalities, and Baltimore City.

### What Agencies are Participating in Mediation?

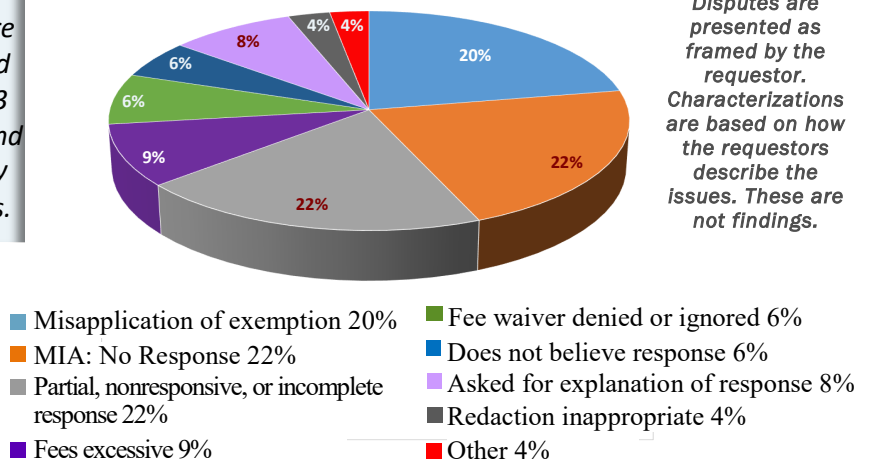


### How Long does Mediation Take?



Range: 1 – 519 days. **37%** of the cases are resolved within 3 weeks and **60%** 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.*

Mediation March '16 – August 2019	
New/Incoming cases between 3/31/16–12/31/19	903
Closed as of 12/31/19	859

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**Ombudsman's Website:**

<http://piaombuds.maryland.gov>

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

## 2019 Legislation & Court Opinions

- *SB 5 (2019) requires notification to “person-in-interest” when certain 911 records requested. Awaiting*

## Ombudsman’s Blog — Open Matters

- *Highlights From The PIA Compliance Board’s Opinions. 8/14/19*
- *Ombudsman and PIACB Seeking Comments on Research Project. 8/1/19*
- *Where Are My Records? 7/12/19*
- *Assessing Fees for PIA Requests, 7/03/19*
- *Public Access Ombudsman Adopts Regulations, 6/18/19*
- *Tips for Agency Transparency in the PIA Process, 04/15/19*
- *Proposed Regulations Noticed – Ombudsman Operations, 03/29/19*
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- *Let the Sun Shine In: Maryland Public Access Ombudsman Program, 03/15/19*
- *Proactive Disclosure Saves Time and Money, and It’s the Law, 1/28/19*

## RESOURCES/LINKS

- ♦ **MD Office of the Attorney General—PIA Manual 14<sup>th</sup> Edition:** [http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA\\_manual\\_printable.pdf](http://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf)  
*All of the resources below can be found in the PIA Manual.*
  - List of Public Record Custodians: Appendix “J”
  - Overview of the Public Information Act: Appendix “I”
- ♦ **MD State Archives:** <http://msa.maryland.gov> is a resource for custodians’ record management and retention practices. **Records Management Guide:** [http://msa.maryland.gov/msa/intromsa/html/record\\_mgmt/pdf/nagara/making\\_mgmtsuccess.pdf](http://msa.maryland.gov/msa/intromsa/html/record_mgmt/pdf/nagara/making_mgmtsuccess.pdf)
- ♦ **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>

## Outreach 2019

### Presentations, Workshops, Trainings, and Other Outreach 2019

- PIA Compliance Board, Discussion of PIA Research Report, December 17
- PIA Compliance Board, Discussion of Preliminary Findings for PIA Research Report, November 5
- Maryland Association of Counties, County Attorneys, November 13
- Maryland Association of Counties, Winter Conference, November 20
- Wicomico County Public Schools, October 17
- Maryland State Bar Association, October 25
- Local Government Insurance Trust, October 31
- Veterans of Jessup Correctional Institution, September 25
- Maryland Municipal Clerks Association, September 19
- Open Government Advocacy Network meeting hosted by the ACLU, September 19
- PIACB Annual Meeting Presentation on PIA Research Report, August 19
- Maryland Association of Counties, Summer Conference, August 14
- Veterans of Jessup Correctional Institution, July 10
- Bowie Police Department, June 11
- Harford Co. State’s Attorney’s Office, June 7
- MDDC Press Association, May 10
- Prince George’s County Law Office. April 25
- Wicomico County State’s Attorney’s Office, April 5
- Stakeholder Survey, Online and via Post, February –March 2019
- Town of Boonsboro. February 7

### Select Publications

- **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
- **Report on the Public Information Act: Preliminary Findings and Recommendations.** *Submitted by the PIA Compliance Board and the Public Access Ombudsman.* November 6, 2019
- **Where Are My Records?** Office of the Public Defender, Post Conviction Newsletter, Summer 2019
- **Public Access Ombudsman’s Interpretive Regulations:** <https://tinyurl.com/y2cuqp55>, June 2019
- **Ombudsman comments, included as an Appendix to the 2019 Annual Report of the PIA Compliance Board.** September 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

