

Title 14, Subtitle 37 – Office of the Public Access Ombudsman

Chapter .01 – General Provisions

.01 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

- (1) “Act” means the Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland.
- (2) “Applicant” has the meaning stated in General Provisions Article, § 4-101(b), Annotated Code of Maryland.
- (3) “Custodian” has the meaning stated in General Provisions Article, § 4-101(d), Annotated Code of Maryland.
- (4) “Dispute” means a point of contention between an applicant and a custodian arising from a request for public records under the Act, including those matters stated in General Provisions Article, § 4-1B-04(a), Annotated Code of Maryland.
- (5) “Exemption” means a denial of inspection of a public record or part of a public record pursuant to General Provisions Article, Title 4, Subtitle 3, Annotated Code of Maryland.
- (6) “Final determination” means the written document issued by the Public Access Ombudsman pursuant to General Provisions Article, § 4-1B-04(b), Annotated Code of Maryland, stating that a specific dispute has been resolved or partially resolved or not resolved.
- (7) “Identifying information” means any information that identifies a party or other person.
- (8) “Mediation” has the meaning stated in Courts and Judicial Proceedings Article, § 3-1801(b), Annotated Code of Maryland.
- (9) “Mediation communication” has the meaning stated in Courts and Judicial Proceedings Article, § 3-1801(c), Annotated Code of Maryland.
- (10) “Mediation Confidentiality Act” means the Maryland Mediation Confidentiality Act, Courts and Judicial Proceedings Article, Title 3, Subtitle 18, Annotated Code of Maryland.

DRAFT REVISIONS – OMBUDSMAN REGULATIONS – 12/9/2022

(11) “Mediation information” means all information made and received as part of the Ombudsman’s mediation process and the decision to participate in mediation, including documentary materials and mediation communications.

(12) “Mediator” has the meaning stated in Courts and Judicial Proceedings Article, § 3-1801(d), Annotated Code of Maryland.

(13) “Office” means the Office of the Public Access Ombudsman.

(14) “Ombudsman” means the person appointed to the position of the Public Access Ombudsman pursuant to General Provisions Article, § 4-1B-03, Annotated Code of Maryland.

(15) “Party” means a participant or potential participant in the Ombudsman’s mediation process, including an applicant and a custodian.

(16) “Public record” has the meaning stated in General Provisions Article, § 4-101(k), Annotated Code of Maryland.

(17) “Sociological information” means any of the following information concerning a person that may be contained in a record of the Ombudsman:

- (a) Social security number;
- (b) Personal mailing address;
- (c) Personal phone number;
- (d) Personal email address; and
- (e) Date of birth.

(18) “Standards of Conduct for Mediators” means the Maryland Standards of Conduct for Mediators, Arbitrators and Other ADR Practitioners adopted by the Maryland Judiciary’s Mediation and Conflict Resolution Office.

(19) “Written guidance” means nonbinding guidance that advises parties on the interpretation of the Act and the application of the Act to specific facts.

.02 Objective.

The objective of the Office of the Public Access Ombudsman is to make reasonable attempts, including mediation, to resolve disputes between applicants and custodians relating to requests for public records under the Act.

Chapter .02 Process

.01 Requesting Dispute Resolution.

A. An applicant or custodian may request the Office’s assistance in resolving a dispute by contacting the Office via telephone, mail, email, or website submission.

B. If possible, an applicant or custodian shall complete the form entitled Request for Mediation Assistance available on the Office website.

.02 Documents.

A. An applicant or custodian requesting dispute resolution through the Office shall provide the Office with:

- (1) A copy of the applicant’s written request for public records;
- (2) The custodian’s 10-day letter (if applicable);
- (3) The custodian’s final response, if any; and
- (4) A brief description of the dispute.

B. An applicant or custodian may provide the Office with:

- (1) Any records produced to the applicant by the custodian;
- (2) Any relevant correspondence between the applicant and custodian.

C. Upon the Office’s request, an applicant or custodian may provide the Office with any other documents that the Ombudsman believes may facilitate the mediation process.

D. The failure of an applicant or custodian who is requesting assistance to provide the Office with the documents identified in § A of this regulation may result in the Office declining to open a file.

.03 Written Mediation Agreement.

The Ombudsman may request that the parties enter into a written agreement if, in the Ombudsman’s discretion, such agreement would facilitate the mediation process.

.04 Timing.

A. Ordinarily, the Ombudsman will handle matters in the order in which a request for dispute resolution is received and the file opened.

DRAFT REVISIONS – OMBUDSMAN REGULATIONS – 12/9/2022

B. The Ombudsman has discretion to handle a matter out-of-order if there is a compelling reason to do so.

C. Time for mediation.

(1) The Ombudsman has up to 90 days from the date a file is opened with the Office in which to attempt to resolve a dispute and bring the matter to closure.

(2) The 90-day deadline may be extended if:

(a) An extension is needed and desirable in light of the progress that has already been made to resolve the dispute;

(b) An extension is likely to result in the ultimate resolution of the dispute; and

(c) The applicant, the custodian, and the Ombudsman consent to the extension in writing.

.05 Repetitive Requests for Dispute Resolution.

A. Definitions.

(1) In this regulation, the following terms have the meanings indicated.

(2) Terms Defined.

(a) “Repetitive request for dispute resolution” means a request for the Ombudsman’s assistance to resolve a dispute that relates to a PIA request that has been the subject of mediation through the Office in the past, and in which the dispute is substantially the same.

(b) “Significantly changed circumstances” means:

(i) A change in the law, subsequent to the mediation, that may affect the outcome of the mediation; or

(ii) A change in the custodian or applicant’s position regarding the dispute.

B. In the Ombudsman’s discretion, absent significantly changed circumstances, the Ombudsman may decline to mediate repetitive requests for dispute resolution.

C. If a repetitive request for dispute resolution relates to a mediation matter closed before July 1, 2022, and in which no final determination issued, then the Ombudsman may issue a final determination with or without any further efforts to resolve the dispute.

.06 Process Voluntary – Declining and Withdrawing Requests.

A. The Ombudsman’s mediation process is voluntary for each party.

B. If the applicant or custodian that is the subject of the request for dispute resolution declines to mediate the dispute, the Ombudsman shall, as soon as practicable, issue a final determination stating that the dispute was not resolved and indicating that mediation was declined.

C. Withdrawing a request for dispute resolution.

(1) A party requesting dispute resolution through the Ombudsman may withdraw the request.

(2) If a request for dispute resolution is withdrawn after the Office has opened a file, then the Ombudsman shall issue a final determination stating that the request for dispute resolution was withdrawn.

(3) Renewing request for dispute resolution.

(a) A party that has withdrawn a request for dispute resolution through the Ombudsman may renew the request one time.

(b) If a party renews the request for dispute resolution and withdraws that request again, the Ombudsman may decline to mediate a second or subsequent renewed request for dispute resolution.

.07 Conduct of Ombudsman.

A. The Ombudsman shall read and, consistent with State law, shall abide by the Standards of Conduct for Mediators during the mediation process.

B. The Ombudsman shall remain neutral, impartial, and independent during the mediation process.

C. Conflicts of interest.

(1) The Ombudsman shall disclose to the parties all actual and potential conflicts of interest reasonably known to the Ombudsman.

(2) Notwithstanding an actual or potential conflict of interest, the Ombudsman may proceed to attempt to resolve a dispute if:

(a) The Ombudsman is able to conduct the mediation in a neutral, impartial, and independent manner; and

(b) The applicant and custodian have consented to proceed in writing.

(3) If the Ombudsman is unable to proceed in a neutral, impartial, and independent manner, or if the parties have not consented to proceed in light of an actual or potential conflict, then the Ombudsman shall:

(a) Withdraw from the mediation; and

(b) Issue a final determination stating that the dispute was not resolved through the Ombudsman due to the conflict.

(4) If the Ombudsman withdraws from a mediation, the Ombudsman may suggest to the parties an alternative dispute resolution resource.

D. In addition to or in lieu of mediation, the Ombudsman may engage in other reasonable efforts to resolve or prevent a dispute or potential dispute, such as by answering questions about the Act, by providing trainings on the Act, and by engaging in preliminary conversations with an applicant or custodian about the subject of a dispute or potential dispute.

.08 Conduct of Parties.

A. The Ombudsman may establish written standards of conduct with which the parties will be expected to comply during the mediation process.

B. The Ombudsman shall disclose all written standards of conduct to the parties at the outset of the mediation.

C. A party's failure to abide by a written standard of conduct may result in termination of the mediation process.

.09 Termination of Mediation.

A. The Ombudsman may terminate the mediation process at any time if the Ombudsman determines that mediation will not reasonably lead to resolution of the dispute.

B. In making the determination to terminate a mediation, the Ombudsman may consider, among other factors:

(1) The duration of the mediation process;

(2) The parties' efforts to resolve the dispute;

(3) The Ombudsman's efforts to resolve the dispute;

(4) The likelihood that the parties will change their positions;

(5) A party's failure to abide by the written standards of conduct;

(6) A party’s failure to abide by the party’s confidentiality obligations; and

(7) A party’s use of the mediation process for purposes of delay or harassment.

C. Upon termination of a mediation, the Ombudsman shall issue a final determination stating that the dispute was not resolved or only partially resolved, as applicable, and, without disclosing mediation communications, indicate the reason why mediation was terminated.

.09 Identification of New Dispute.

If, during the course of attempting to resolve a dispute, a new and distinct dispute related to the same PIA request arises, a new file may be opened pursuant to Regulations .01 and .02 of this chapter.

.10 Final Determination.

A. Definitions.

(1) In this regulation, the following terms have the meanings indicated.

(2) Terms Defined.

(a) “Not resolved” means that:

(i) the parties were unable to reach a mutually agreeable resolution of a dispute; or

(ii) the parties have a material difference of opinion as to an important factual issue related to the dispute.

(b) “Partially resolved” means that the parties have reached a mutually agreeable resolution as to one or more, but not all, segregable sub-issues within a dispute.

(c) “Resolved” means that the parties have reached a mutually agreeable resolution of a dispute.

B. At the conclusion of a mediation, the Ombudsman shall issue a written final determination stating that the dispute has been resolved, partially resolved, or not resolved.

C. The written final determination shall include:

(1) The name of the PIA requester, the name of the custodian, and the Office file number;

(2) A brief summary of the matter, including:

DRAFT REVISIONS – OMBUDSMAN REGULATIONS – 12/9/2022

- (a) The date of the PIA request;
 - (b) A description of the records sought;
 - (c) The date of the custodian’s response, if any; and
 - (d) A summary of the custodian’s response, if any;
- (3) A brief description of the dispute for which resolution assistance was sought;
- (4) The date and length of an extension, if one was granted;
- (5) An indication that the dispute was either resolved, partially resolved, or not resolved;
and
- (6) Notice of PIA Compliance Board procedures and contact information.
- D. The Ombudsman shall send the final determination to the relevant applicant and custodian.
- E. Board:
- (1) The Ombudsman does not automatically provide the final determination to the Board.
 - (2) If a complaint is filed with the Board, the Ombudsman may provide the final determination to the Board upon the Board’s request.

Chapter .03 Confidentiality of Mediation Information

.01 General Confidentiality Provisions.

- A. Except as provided in Regulation .02 of this chapter, the Ombudsman shall maintain the confidentiality of all mediation information in accordance with the Act, the Standards of Conduct for Mediators, and the Mediation Confidentiality Act.
- B. The Ombudsman may not disclose or be compelled to disclose mediation information in any judicial, administrative, or other proceeding, in accordance with the Act and with the Mediation Confidentiality Act.
- C. A party may not disclose or be compelled to disclose mediation information in any judicial, administrative, or other proceeding, in accordance with the Mediation Confidentiality Act.

.02 Exceptions to Confidentiality of Mediation Information.

- A. The Ombudsman may disclose mediation information, including mediation communications, in the following situations:

DRAFT REVISIONS – OMBUDSMAN REGULATIONS – 12/9/2022

(1) With Office staff, including an Assistant Attorney General who represents the Office, the Administrative Officer, or any other person working under the direction of the Ombudsman, to carry out the duties of the Office; and

(2) Where the parties have consented in writing to the disclosure.

B. The Ombudsman may transfer basic information about a dispute, including the identity of the applicant and custodian and the nature of the dispute, to the Board if appropriate steps have been taken to protect the confidentiality of mediation communications.

Chapter .04 Disputed Public Records

.01 Ombudsman’s Review of Disputed Public Records.

A. When the dispute involves a custodian’s application of an exemption to a public record or part of a public record, the Ombudsman may request the custodian to submit the disputed public record or part of a public record to the Ombudsman for review.

B. A custodian may not be compelled to disclose to the Ombudsman a public record or part of a public record in the custodian’s custody.

C. A custodian’s voluntary submission of a public record or part of a public record for review under this chapter may not be construed as a waiver of:

(1) Any privilege held by the custodian; or

(2) Any assertion of confidentiality under the Act.

.02 Confidentiality of Disputed Public Records.

A. The Ombudsman shall strictly maintain the confidentiality of any public record or part of a public record submitted for review under this chapter, and may not disclose any such public record or part of a public record to another party without the written permission of the custodian.

B. The Ombudsman shall take reasonable steps to segregate confidential records in such a way that their confidence is maintained.

C. Upon the conclusion of a mediation involving the Ombudsman’s review of disputed public records, the Ombudsman shall return or destroy the disputed public records.

Chapter .05 Written Guidance

.01 Ombudsman May Provide.

A. The Ombudsman may provide written guidance to parties in furtherance of the mediation process.

B. Written guidance may not disclose information that any party claims is confidential.

.02 Ombudsman May Publish.

A. In the Ombudsman’s sole discretion, and to the extent that the Ombudsman believes publication will promote understanding of the Act, the Ombudsman may publish written guidance.

B. Before publishing written guidance, the Ombudsman shall remove all identifying information.

DRAFT