



What's In the Public Information Act Bill?

[March 30, 2015](#) [Les Knapp](#) [Public Information and Ethics](#)

As [previously reported](#) on *Conduit Street*, MACo negotiated with other stakeholders on a set of substantial amendments to [HB 755/SB 695](#), which will make major changes to Maryland's Public Information Act (PIA). The Senate has already unanimously passed the bill, and a subcommittee of the House Health and Government Operations Committee is set to take up the bill on March 31. Below is a summary of the many changes to PIA law made by the amended bill.

State Public Information Act Compliance Board

The bill would create a State Public Information Act Compliance Board. The Board would consist of 5 members: one records custodian representative nominated by MACo and the Maryland Municipal League, one nonprofit representative nominated by representatives of the open government and news media communities, and three "neutral" representatives selected by the Governor.

The Board would review and resolve complaints alleging that a custodian charged an "unreasonable" fee. The fee must be over \$350 for the Board to consider the case. If the Board finds that the fee was unreasonable, the Board must order the fee reduced to a reasonable amount and (if already paid) have the custodian refund the difference.

The Board may decide a case on written statements provided by requestor and custodian or after holding an informal conference where both parties may testify. Compliance with an order by the Board does not constitute evidence of a PIA violation and either party may appeal a decision by the Board to circuit court.

Public Access Ombudsman

The bill would also create a Public Access Ombudsman within the Office of the Attorney General. The Ombudsman will be selected by the Attorney General and must be admitted to practice law in the state.

The Ombudsman will attempt to mediate and resolve PIA disputes between applicants and custodians, including:

1. The custodian's application of an exemption;
2. Redactions of information in the public record;

3. The failure of a custodian to produce a public record in a timely manner or to disclose all records relevant to the request;
4. Overly broad requests for public records;
5. The amount of time a custodian needs to fulfill a records request, given available staff and resources;
6. A request for or denial of a discretionary fee waiver; and
7. Repetitive or redundant requests from an applicant.

An Ombudsman cannot compel a custodian to disclose public records in the custodian's physical custody.

If an applicant files a complaint with the Ombudsman challenging a denial or application of an exemption, the custodian must demonstrate that:

1. The denial of the exemption is clearly applicable to the requested public record; and
2. For a discretionary denial, the harm from disclosure of the public record is greater than the public interest in access to the information in the public record.

Time Limits for Responding to Records Requests

If a custodian reasonably believes that it will take more than 10 working days to produce a public record, the custodian must respond to an applicant within 10 working days after receipt of the request with the following information:

1. The amount of time the custodian anticipates it will take to produce the record;
2. An estimate of the fees (can be a range) that may be charged; and
3. The reason for the delay.

Failure to produce public records within 30 days (as required under current law) now constitutes a denial of application that may not be considered the result of a *bona fide* dispute unless the custodian has complied with the 10-day response requirement and is working with the applicant in good faith.

If an applicant asks the Ombudsman to resolve a records dispute, the required time limits shall be extended pending resolution of that dispute.

Denial of Public Records

For denials of public records, a custodian must now provide:

1. A brief description of the undisclosed record that will enable the applicant to assess the applicability of the legal authority for the denial; and
2. For discretionary denials, a brief explanation of why the denial is necessary.

A custodian may not ignore an application to inspect public records on the grounds that the application was intended for purposes of harassment.

Fees for Public Records

The bill revises how a custodian may charge fees for a public records request.

For a record provided in standard format, the custodian may charge for the actual costs of the search, preparation, and reproduction of the record, including media and mechanical processing costs. The staff and attorney costs included in the actual costs shall be prorated for each individual's salary and actual time attributable to the search and preparation of the record.

If an applicant wants a record prepared in a customized format, the custodian may charge a reasonable fee for the search, preparation, and reproduction of that record.

Per current law, a custodian may not charge a fee for the first 2 hours that are needed to search for a public record.

A custodian has discretion to waive a fee if an applicant is indigent and files an affidavit of indigency (defined as a family household income of less than 50% the median family income for the state)

Administrative and Judicial Review

The bill deletes current law allowing a complainant to seek administrative review of a PIA request dispute through the Office of Administrative Hearings.

The bill also modifies current law regarding appeals to the circuit court. A defendant governmental custodian can be liable for actual and statutory damages if a court finds that the defendant knowingly and willfully failed to disclose or fully disclose a record the plaintiff was entitled to inspect or provide a copy or image of a public record that the plaintiff requested. The current law requirement that the court's finding be based on clear and convincing evidence has been deleted.

In addition to actual damages, a court may now impose statutory damages against a defendant governmental unit, not to exceed \$1,000.

Public Information Act Reports

The Office of the Attorney General, in consultation with MACo and other key stakeholders, must file interim and final reports on findings and recommendations for improving the PIA, including:

1. Whether the neutrality and duties of the State Public Information Act Compliance Board are appropriate, including whether the Board should be authorized to impose statutory damages and whether the functions of the Board and Ombudsman should be modified;
2. The merits and feasibility of merging the State Open Meetings Law Compliance Board with the State Public Information Act Compliance Board;
3. The use of fee waivers in general and for reasons of indigency, including how often waivers are requested, denied, or granted, to include the amount of fees that have been waived as a result;
4. An analysis of the denial process used by custodians;

5. An analysis of requested public records that are held by a nongovernmental custodian and the appropriate remedies to ensure public access to those records; and
6. An analysis of State law exemptions outside of the PIA.

The interim report is due December 31, 2016, and the final report is due December 31, 2017.