



MARYLAND  
*Association of*  
COUNTIES

# *Legal Issues for Finance Officers*

**2015 MDGFOA Summer  
Conference**

2015-06-18



# *2015 Changes to Maryland Public Information Act (PIA)*

-  **HB 755 (Chapter 136) and SB 695 (Chapter 135) of 2015 driven by open government groups (Common Cause), nonprofits, and the media**
-  **Bills passed with substantial amendments from MACo, the Maryland Municipal League (MML), the Office of the Attorney General (OAG), and the Administration**
-  **A “sea change” to the PIA**
-  **Part of a larger trend for transparency and open government**



# *2015 Changes to PIA*

## **State Public Information Act Compliance Board**

-  Five members (one local government, one nonprofit, three “neutral”)
-  Review complaints of “unreasonable fees”
-  Scope (> \$350)
-  Appeals to circuit court

## **Public Access Ombudsman**

-  Maryland lawyer selected by Attorney General and housed within OAG
-  Authority to mediate and attempt to resolve PIA disputes
-  Cannot compel disclosure of public records
-  Burden of proof for custodian



# *2015 Changes to PIA*

-  **Time Limit for Responding to Records Requests**
  -  Custodian must respond if reasonably believes request will take more than 10 days with estimated time, cost, and reason for delay
  -  Failure to produce records within 30 days now constitutes denial with no bona fide dispute unless custodian has complied with 10-day response requirement
  -  Extended if applicant goes to Ombudsman
-  **Denial of Public Records**
  -  New informational requirements for denials
  -  Brief description of undisclosed record
  -  For discretionary denials, brief explanation of why the denial is necessary



# *2015 Changes to PIA*

## Fees for Public Records

-  For records in standard format, can now only charge for actual costs of record search, preparation and reproduction
-  For records in custom format, may continue to charge a “reasonable fee”
-  First 2 hours of staff time remain free; subsequent personnel costs prorated based on salary and time spent
-  Optional fee waiver for indigency

## Administrative Review

-  Administrative appeals of PIA cases through Office of Administrative Hearings deleted



# *2015 Changes to PIA*

## **Judicial Review Through Circuit Court and Penalties**

-  **Governmental custodian liable for actual and (new) statutory damages if custodian knowingly and willfully failed to fully disclose or copy a record the plaintiff was entitled to inspect or requested**
-  **Statutory damages up to \$1,000**

## **PIA Reports**

-  **OAG, in consultation with MACo and other key stakeholders must file interim report (due 2016-12-31) and final report (due 2017-12-31) on various aspects of PIA**



# *Open Data*

- 🏰 **State has convened a Council for Open Data that is creating recommendations to have more State agencies put information and documents online and have them be freely accessible to the public**
- 🏰 **Recommendations to date have recognized local autonomy and been viewed as local “options”**
- 🏰 **Benefits**
  - 🏰 **Allows citizens to conduct own document searches**
  - 🏰 **Perception of being more open and transparent**
- 🏰 **Drawbacks**
  - 🏰 **Infrastructure and maintenance costs**
  - 🏰 **Data security**
- 🏰 **Many states trending in this direction**



# *State and Local Liability Caps*

- 🏛️ **Driven by lead paint cases in Baltimore City and local and national police misconduct cases**
- 🏛️ **HB 113 of 2015 (Chapter 131) for local governments**
  - 🏛️ **Increased damage caps under Local Government Tort Claims Act from \$200,000 to \$400,000 per individual claim and from \$500,000 to \$800,000 for all claims arising from same occurrence**
  - 🏛️ **Increased plaintiff notice requirement from 6 months to 1 year (plaintiff exceptions for good cause and lack of prejudice in case law are maintained)**



# *State and Local Liability Caps*

- 🏛️ **HB 114 of 2015 (Chapter 142) for state government**
  - 🏛️ **Increased damage cap under Maryland Tort Claims Act from \$200,000 to \$400,000 to a single claimant for injuries arising from a single incident or occurrence)**
  - 🏛️ **Modified the State's 1 year plaintiff notice requirement to create a good cause/lack of prejudice exception**
  - 🏛️ **On motion by plaintiff showing good cause for failing to provide notice, court may entertain an action against the State unless State can affirmatively show that its defense has been prejudiced by plaintiff's failure to submit a claim**
- 🏛️ **More legislation likely in 2016 Session**



# *Discussion Issue*

-  **Citizens Recording Interactions With Government Officials**
  -  **Security and Privacy Concerns**
  -  **Maryland Wire Tap Law – permission needed for audio recording (but not video if in public place)**
  -  **Open Government and Transparency Perceptions**



# *Contact Information*

**Leslie (Les) Knapp, Jr.**

**Legal and Policy Counsel**

**Maryland Association of Counties**

**[lknapp@mdcounties.org](mailto:lknapp@mdcounties.org)**

**Phone: 410.269.0043**