



SB695/HB755: Public Information Act Reform Summary

SB 695/HB 755 is a historic bill that reformed the 45-year-old Public Information Act, giving Marylanders better access to government information. This bill will ensure that fees and exemptions are not used to deny public access to data and will create an oversight body with authority to mediate disputes regarding public requests for data.

Public Information Compliance Board

This reform creates a five-member **Public Information Compliance Board**, which will review and rule on fee complaints. 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. It also will **issue written opinions**, study issues that arise in its work and report back to the General Assembly with recommendations for improvements.

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. Those meetings may be done by teleconference or in a location convenient for the parties.

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.

The **Governor appoints the volunteer Board through an open application process.** The goal is to create neutrality and diversity among the Board members. There will be 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. The Board will be supported with staff from the Attorney General’s office.

Public Access Ombudsman

The **Attorney General will appoint a Public Access Ombudsman** and provide office space and staff. Steps will be taken to ensure autonomy and neutrality of the position. The Ombudsman will have a 4-year term and will be admitted to the State bar.

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.

The Ombudsman cannot compel a custodian to disclose public records in the custodian’s physical custody.

Timelines to respond to a PIA

If the custodian believes production of a document may take more than 10 days, the **custodian must contact the requester** by writing or email indicating:

- **how long** the custodian thinks it will take to produce documents;
- an **estimate with the fee range** for how much the requester will be charged; and
- the **reason for the delay**

If a custodian does not send a reply within 30 days of receipt of the request, the request is considered denied.

Denials

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

- **A brief description of the undisclosed record** that will enable the applicant to assess the applicability of the legal authority for the denial; and
- 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.

Exemptions

If an applicant files a complaint with the Ombudsman regarding the use of an exemption, the **custodian must show that the denial is clearly applicable to the record in question**, and, if it is a discretionary exemption, that the harm from disclosure would outweigh the public interest in accessing the information.

Judicial Review

Administrative review of PIA request dispute through the Office of Administrative Hearings **has been replaced by the Board and Ombudsman review**.

The reform 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. Assessing the costs of litigation against a defendant governmental unit remains discretionary.

If a case is brought for judicial review, the court may charge **statutory damages, the total not to exceed \$1,000**.

Fees and Fee Waivers

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

The custodian can only charge the **actual costs for search, preparation and production of a public record**. The staff and attorney review costs must be prorated to reflect the true cost for the time spent responding to a request.

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 (mirroring the definition used by courts, defined as an individual's household income is than 50% of the median family income for the state).

All other grounds for waivers (media, public interest) remain in place.

Pilot Program Study

The Office of the Attorney General, in consultation key stakeholders, will make an interim report in December 2016 and a final report to General Assembly by December 2017 on findings and recommendations for improving the PIA, including:

- 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;
- The merits and feasibility of merging the State Open Meetings Law Compliance Board with the State Public Information Act Compliance Board;
- 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;
- An **analysis of the denial process** used by custodians;
- A **survey of public records** generated in connection with the transaction of public business that are **held by non-governmental custodians**, and what solutions can be developed to ensure that such records are available for disclosure; and
- An **analysis of State law exemptions** outside of the PIA.

Marylanders for Open Government a network of diverse organizations connected by an interest in demanding fair and open access to government-funded data and information. Members of the network include environmental and public health groups, good government groups, consumer advocates and social justice organizations. More information and a list of member organizations can be found at www.MdOpenGov.org.