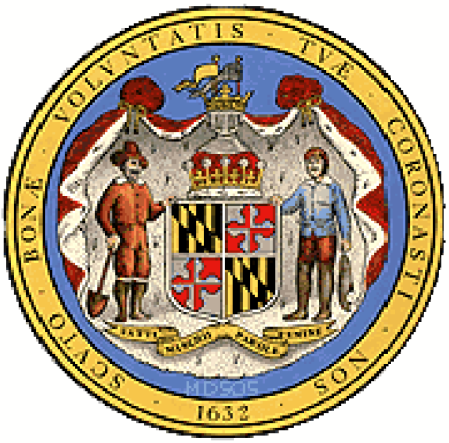
EIGHTH ANNUAL REPORT

OF THE

STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD



BOARD MEMBERS

MICHELE L. COHEN, ESQ.
DEBRA LYNN GARDNER
SAMUEL G. ENCARNACION
NIVEK M. JOHNSON
DEBORAH F. MOORE-CARTER

SEPTEMBER 29, 2023

MSAR #13017

EIGHTH ANNUAL REPORT OF THE STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD

When the General Assembly created the State Public Information Act Compliance Board in 2015, the Board was given narrow jurisdiction to review only allegations that a custodian had charged an unreasonable fee higher than $350 under § 4-206 of the Public Information Act ("PIA"). In 2021, the General Assembly expanded the Board's jurisdiction so that, as of July 1, 2022, the Board also has authority review of denials of inspection, failures to respond to PIA requests, and allegations that a PIA request is "frivolous, vexatious, or in bad faith." 2021 Md. Laws, ch. 658. Fiscal year 2023 thus constitutes the first twelve months of operation under the Board's expanded jurisdiction. Pursuant to § 4-1A-04(d) of the General Provisions Article ("GP"), the Board submits this annual report for the period July 1, 2022, through June 30, 2023 ("FY 2023").

This report contains a description of the Board's activities during FY 2023, including information about the number and nature of complaints filed, and summaries of the Board's decisions. In addition, although the law does not require the Public Access Ombudsman to submit a similar annual report, the Board believes that such a report is useful to understand the current state of alternative dispute resolution under the PIA. This is true especially in light of the more integrated nature of the Ombudsman and Board operations, which are explained in more detail below. For this reason, the Board has included a report from the Ombudsman as Appendix A to this report.

I.
ACTIVITIES OF THE BOARD

A. Responsibilities of the Board

In FY 2023, the duties of the Board included:

- Receiving, reviewing, and resolving complaints that a custodian wrongfully denied inspection of public records, failed to respond to a request for public records, or charged an unreasonable fee higher than $350;
- Receiving, reviewing, and resolving complaints that a requester's PIA request or pattern of PIA requests is frivolous, vexatious, or in bad faith;
- Issuing written decisions as to whether a violation of the PIA has occurred and, if so, ordering an appropriate remedy as provided by the statute;

- Issuing written decisions as to whether a PIA request or pattern of requests is frivolous, vexatious, or in bad faith and, if so, ordering that the custodian may ignore the request or respond to a less burdensome version of the request;
- Studying ongoing compliance with the PIA by custodians of public records; and
- Making recommendations to the General Assembly for improvements to the PIA.

There are currently five members of the Board:

- Michele L. Cohen, Esquire – citizen member; attorney member – first term expires on 06/30/2024
- Debra Lynn Gardner – non-profit / open government / news media nominee; attorney member – first term expires on 6/30/2026
- Samuel G. Encarnacion – citizen member – first term expires on 6/30/2025
- Nivek M. Johnson – citizen member; electronic records knowledge member – first term expires on 6/30/2025
- Deborah F. Moore-Carter – PIA knowledge / Maryland Association of Counties / Maryland Municipal League nominee – second term expires on 6/30/2024

Board membership changed rather significantly during FY 2023. The Board said farewell to John West, III and Darren Wigfield, both of whom had served on the Board since its inception in 2016. Mr. West served two terms as the Board's Chair. Though their terms expired on June 30, 2022, Mr. West and Mr. Wigfield continued to serve in a hold-over capacity, helping the Board navigate the first months under its new operations. In addition, Christopher Eddings's second term came to an end on June 30, 2023. The Board thanks these members for their service and important contributions to the Board.

The Board welcomed new members Samuel Encarnacion, Debra Gardner, and Nivek Johnson. Ms. Gardner succeeds Mr. Eddings as the open government / news media representative on the Board. Though the Senate Executive Nominations Committee's April 10, 2023, Summary Report[1] indicated that Mr. Johnson had been appointed Chair, the Board later learned from the Governor's Appointments Office that this was an error, and that no Chair had been appointed. As of the date of submission of this report, the Board is still without a Chair.

[1] *See* Senate Executive Nominations Comm., Summary Report 157 (Apr. 10, 2023), https://mgaleg.maryland.gov/Pubs/Committee/2023RS-senate-executive-nominations-final-summary.pdf (last visited Sept. 27, 2023).

The Attorney General's Office provides the Board with the services of counsel and an administrator, posts the Board's decisions and other PIA-related materials on its website, and bears the incidental costs of administering the complaint and review process. The Board appreciates the excellent service it has received from the Attorney General's Office in the performance of these tasks. Specifically, the Board thanks Spencer Dove, who serves as the Board's administrative officer, and Assistant Attorney General Sara Klemm, who serves as counsel to the Board.

The Board also extends its thanks to the Public Access Ombudsman, Lisa Kershner. The Ombudsman provides invaluable dispute resolution assistance to both PIA requesters and custodians. Far more often than not, the Ombudsman is able to resolve disputes through the mediation process, thus rendering Board review unnecessary.

B. Processes and procedures

Before complainants (i.e., PIA requesters or custodians) may file a complaint with the Board, they must first attempt to resolve the dispute through the Public Access Ombudsman. Most typically, the Ombudsman conducts dispute resolution through voluntary, confidential mediation. If a dispute is not resolved, the Ombudsman must issue a final determination stating so. Assuming the dispute is within the Board's jurisdiction, a complainant may file a complaint within 30 days of receiving a "not resolved" or "partially resolved" final determination. As noted above, disputes about denials of inspection, failures to respond to PIA requests, unreasonable fees higher than $350, and alleged frivolous, vexatious, or bad faith PIA requests, fall within the Board's jurisdiction.

Most complaints are submitted by email to the Board's dedicated inbox, piaopengov@oag.state.md.us, although the Board does receive some complaints by regular mail. For example, nearly all complaints from incarcerated people are sent by regular mail. Upon receipt of a complaint, Board staff first assign it a file number. Board counsel then makes an initial determination as to whether the complaint meets the statutory pleading requirements—e.g., ensuring that the complaint was timely filed and that there is a final determination stating that the dispute was not resolved or partially resolved. In addition, Board counsel also reviews the complaint to make sure that the allegations fall within the Board's jurisdiction. If the complaint passes this initial review, Board staff forwards the complaint and any attached material to the relevant custodian (or, in the case of complaints about frivolous, vexatious, or bad faith PIA requests, the PIA requester) for a written response. The responding party has 30 days in which to file its response. Typically, once the Board receives the response, it will provide the complainant an opportunity to file a reply within 15 days.

If the written submissions provide sufficient information for the Board to resolve the complaint, then the Board ordinarily issues a written decision within 30 days after receiving the response. If the Board believes it would benefit from hearing from the parties, it may elect to hold an informal conference, *see* COMAR 14.02.04 (regulations governing informal conferences), in which case the Board's written decision must issue within 30 days after the informal conference. The Board may also request additional information if it is needed to resolve the complaint, including a descriptive index of the public records redacted or withheld, or copies of the disputed public records themselves.[2] *See* COMAR 14.02.05 (regulations governing requests for additional information) and COMAR 14.02.06 (regulations governing the Board's treatment and handling of confidential records or information). If the Board requests additional information, then it must issue its written decision within 30 days after receiving that additional information. If the Board is unable to issue its decision within the time periods described above, the Board must state the reasons why in writing and issue a decision as soon as possible, but no later than 120 days after the complaint was filed.

Depending on the nature of the dispute alleged in the complaint, the Board has authority to order certain remedies if it finds a violation of the PIA. If the Board concludes that a custodian wrongfully denied inspection of public records, it must order the custodian to produce those records for inspection. When the Board finds that a custodian failed to respond to a PIA request within the applicable timelines, it must order the custodian to respond. In addition, the Board has discretion to order that the custodian waive all or part of the fee associated with that response, so long as the Board states its reasons for doing so in its written decision. If the Board determines that a custodian has charged an unreasonable fee higher than $350, it must order the custodian to reduce the fee to a reasonable amount and refund the difference, if applicable. Finally, if the Board determines that a PIA request or pattern of requests is frivolous, vexatious, or in bad faith, it may order that the custodian may ignore that request or any future requests that are substantially the same as that request, or respond to a less burdensome version of the request.

Unless the Board's decision states that it is unable to resolve a complaint, an "applicant" (i.e., a PIA requester) or custodian may appeal the Board's decision to one of Maryland's circuit courts in accordance with GP § 4-362(a)(2). An appeal automatically

[2] If the custodian's response to the PIA request indicated that inspection was denied under GP § 4-301(a)(2)(ii) (denial because inspection would be contrary to a federal statute or regulation issued under the statute that has the force of law), then the custodian may not be required to produce the public records for Board review. GP § 4-1A-06(b)(3); *see also* COMAR 14.02.05.03A(1).

stays the Board's decision pending the circuit court's decision. During the 2023 legislative session, the General Assembly amended GP § 4-362 so that now "a party who is aggrieved by a final judgment of a circuit court in a judicial review proceeding . . . may appeal to the Appellate Court of Maryland in the manner that law provides for appeal of civil cases." *See* 2023 Md. Laws, ch. 156 (effective Oct. 1, 2023).

C. Complaint and Decision Activities for FY2023

1. Statistics

- New complaints submitted to the Board: 33
- Complaints dismissed without a decision: 7
  - Not within Board's jurisdiction: 2[3]
  - Complainant did not attempt to resolve the dispute through the Public Access Ombudsman first: 7
- Written decisions issued during FY 2023: 18[4]
  - Carryover from FY 2022 complaints: 0
  - Decisions requiring conference with the parties: 0
  - Decisions requiring *in camera* review of confidential records or information: 5[5]

[3] As explained below, all of the complaints that were dismissed suffered from the complainant's failure to first attempt mediation. In addition, two complaints contained allegations that were not within the Board's jurisdiction.

[4] Two written decisions involved consolidated complaints. *See* PIACB 23-06 & 23-07 (Jan. 4, 2023) and PIACB 23-21 & 23-22 (June 30, 2023).

[5] *See* PIACB 23-02 (Nov. 3, 2022); PIACB 23-06 & 23-07 (Jan. 4, 2023); PIACB 23-11 (Apr. 4, 2023); PIACB 23-15 (June 2, 2023); PIACB 23-32. One decision encompassed two complaints, which the Board consolidated because the complainant and the custodian were the same, as were the allegations. *See* PIACB 23-06 & 23-07 (Jan. 4, 2023). In another matter, the Board requested a copy of the public record but the custodian did not provide it because one of the cited grounds for withholding the record was GP § 4-301(a)(2)(ii). *See* PIACB 23-15 (June 2, 2023); *see also* GP § 4-1A-06(b)(3)(i) ("If the complaint alleges that the custodian denied inspection of a public record under § 4-301(a)(2)(ii) of this title, the custodian may not be required to produce the public record for Board review."). The Board thus concluded that it was unable to resolve the complaint. *See* GP § 4-1A-07(2). The Board's decision in PIACB 23-32 has not issued yet; it is due by October 6, 2023, which is within thirty days of the Board's September 6 receipt of the confidential descriptive index. *See* GP § 4-1A-07(a)(2) (decision due within thirty days after receiving the written response and all additional information requested under § 4-1A-06(b)).

- Complaints submitted in FY 2023 and still pending on 7/1/23: 6
    - **PIACB 23-25:** Custodian Baltimore Police Department, unreasonable fee allegation (decision issued 7/24/23)
    - **PIACB 23-29:** Custodian Frederick County Sheriff's Office, wrongful denial allegation (decision issued 8/14/23)
    - **PIACB 23-30:** Custodian Maryland 529 / Office of the State Treasurer; wrongful denial allegation (decision issued 7/18/23)
    - **PIACB 23-31:** Custodian Baltimore City Board of Ethics; wrongful redaction allegation (decision issued 9/6/23)
    - **PIACB 23-32:** Custodian Department of Public Safety and Correctional Services; wrongful denial allegation (decision to issue by 10/6/23)
    - **PIACB 23-33:** Custodian Washington County; unreasonable fee allegation (decision to issue by 10/28/23)
- Breakdown of allegations in complaints reviewed by the Board:
    - Denial of inspection (includes redactions and constructive denials): 20
    - Failure to respond to PIA request: 3
    - Unreasonable fees: 2
    - Other: 1
- Exemptions invoked for complaints involving denials (some matters involved application of multiple exemptions):
    - GP § 4-301 (mandatory; law outside the PIA): 6
    - GP § 4-311 (mandatory; personnel records): 1
    - GP § 4-325 (mandatory; firearm and handgun records): 1
    - GP § 4-329 (mandatory; medical or psychological info.): 1

- GP § 4-336 (mandatory; information about the finances of an individual): 1
- GP § 4-345 (discretionary; examination information): 1
- GP § 4-344 (discretionary; interagency or intra-agency letters or memoranda): 1
- GP § 4-351 (discretionary; records of law enforcement investigation, intelligence information, security procedures): 7
- GP § 4-352 (discretionary; information related to infrastructure and emergency management): 1

2. Complaints Dismissed without a Written Decision

Seven complaints—or less than a quarter of the total number of complaints received by the Board in FY 2023—were dismissed without substantive review or a written decision. The primary problem with all of these complaints was the complainant's failure to first attempt to resolve the dispute through the Office of the Public Access Ombudsman as required by GP § 4-1A-05(a)(1). All but two complaints alleged violations of the PIA that were clearly within the Board's jurisdiction. Unless otherwise noted, all complainants were referred to the Ombudsman:

- **PIACB 23-01:** Custodian was the Carroll County Public Schools; disputed denial of inspection.
- **PIACB 23-08:** Custodian was the New Carrollton City Council; dispute did not appear to involve a PIA issue but rather an Open Meetings Act issue.
- **PIACB 23-12:** Custodian was the Town of Easton / Easton Police department; disputed denial of inspection and redaction.[6]
- **PIACB 23-13:** Custodian was the Department of Labor / Commissioner of Financial Regulation; disputed that all responsive records were produced.

[6] The complainant ultimately attempted to mediate this dispute through the Ombudsman. The dispute was not resolved and the complainant subsequently filed a complaint for which the Board issued a written decision. *See* PIACB 23-18 (June 7, 2023).

- **PIACB 23-20:** Custodian was the Department of Public Safety and Correctional Services; disputed denial of inspection.[7]

- **PIACB 23-24:** Custodian was Allstate Insurance Company; dispute did not involve a PIA issue but rather related to cancellation of insurance.[8]

- **PIACB 23-26:** Custodian was the Montgomery County Police Department; disputed failure to respond to the PIA request.

3. Complaints for which the Board Issued a Written Decision

When a complaint is within the jurisdiction of the Board and ripe for review, the Board will issue a written decision. During FY 2023, the Board issued 18 decisions.

The Board's decisions appear on the Office of the Attorney General's website: https://www.marylandattorneygeneral.gov/Pages/OpenGov/piaindex.aspx#InplviewHash9271b794-4b75-4046-be3e-d555c31cbb4e. Summaries of the 18 written decisions issued for complaints filed in FY 2023 appear in this report for ease of reference. The summaries are provided in order by complaint number, and not by the date that the decision issued.

- **PIACB 23-02 (Nov. 3, 2022)**

  Custodian: Harford County Sheriff's Office ("HCSO")

  Issue: The HCSO denied the complainant's request for records related to an investigation into sexual assault allegations. The HCSO cited GP § 4-351, a discretionary exemption for certain records related to law enforcement, as authority for the denial.

  Decision: The Board concluded that the HCSO did not violate the PIA. To aid its review, the Board requested a descriptive index of the records that the HCSO withheld.[9] All parties agreed that the complainant was a "person in interest," and thus the HCSO had a heightened burden in denying inspection as "contrary

[7] The complainant ultimately attempted to mediate this dispute through the Ombudsman. The dispute was not resolved and the complainant subsequently filed a complaint for which the Board will issue a written decision by October 6, 2023. *See* PIACB 23-32.

[8] Given that, as a private company, Allstate Insurance is not subject to the PIA, and that the complaint clearly did not raise a PIA-related issue, the complainant was not referred to the Ombudsman.

[9] *See* GP § 4-1A-06(b)(2)(ii)(1); *see also* COMAR 14.02.06 (regulations governing confidential records or information provided to the Board for review).

to the public interest." However, after review of the descriptive index, the Board concluded that the HCSO had met its burden to show that inspection by the complainant would "constitute an unwarranted invasion of personal privacy" of the alleged victim in the case under GP § 4-351(b)(3).

- **PIACB 23-03 (Nov. 2, 2022)**

  Custodian: City of Takoma Park ("City")

  Issue: The complainant disputed the City's proposed method for searching for responsive public records that might exist on the subject elected officials' personal devices.

  Decision: The Board determined that it lacked jurisdiction to review and resolve the allegation, and therefore dismissed the complaint. While an insufficient or inadequate search for public records may, under some circumstances, be characterized as a constructive denial of inspection, here the complainant only speculated that the proposed search method would result in the failure to find—and therefore the constructive denial of—responsive records.

- **PIACB 23-04 (Nov. 9, 2022)**

  Custodian: Frederick County Sheriff's Office ("FCSO")

  Issue: The FCSO denied the complainant's request for records reflecting the "in and out [s]wipes" of the Circuit Court Clerk at the Frederick County Courthouse garage. The FCSO cited GP §§ 4-351(a)(3) and 4-352(a)(2)(ii) as justification for the denial. Both are discretionary exemptions; GP § 4-351 concerns certain law enforcement-related records and GP § 4-352 concerns records and information related to infrastructure and emergency management.

  Decision: The Board concluded that GP § 4-352(a)(2)(ii) did not support denial of inspection, but that the FCSO did not violate the PIA in its application of § GP 4-351(a)(3) to withhold the records. Regarding GP § 4-352, the Board determined that, although the records might fall within the scope of the exemption, the FCSO had failed to demonstrate that disclosure would cause one of the three specific harms enumerated in the exemption as reasons for withholding. Regarding GP § 4-351(a)(3), the Board found that the records constituted records of "security procedures of . . . a sheriff," and that the FCSO had met its burden to explain why disclosure would be contrary to the public interest, as required by GP § 4-343. The complainant was not a "person in interest" as to the records, and thus the FCSO's explanation that disclosure

would compromise security protocols in place to protect courthouse staff was sufficient.

- **PIACB 23-05 (Nov. 23, 2022)**

  Custodian: Prince George's County Police Department ("PGPD")

  Issue: The complainant requested records related to his criminal case. While the PGPD produced records, the complainant alleged that it failed to produce *all* responsive records in its custody.

  Decision: The Board concluded that the PGPD did not violate the PIA. First, the Board rejected the PGPD's argument that the complainant's allegation did not fall within the Board's jurisdiction. Instead the Board found that, in essentially alleging that the PGPD failed to conduct a sufficient search, the complainant had alleged a constructive denial of inspection. However, the Board also found that the detailed information that the PGPD provided about how it searched for responsive records demonstrated that it had conducted the reasonable, good faith search that the PIA requires.

- **PIACB 23-06 & 23-07 (Jan. 4, 2023)**

  Custodian: Montgomery County Public Schools ("MCPS")

  Issue: Through two different PIA requests, the complainant sought records of communications between certain named individuals over the course of certain specified time periods. Though MCPS produced records, many were redacted under GP § 4-301(a)(1) as protected by the attorney-client privilege.

  Decision: Because the two complaints involved the same complainant and custodian, and because the allegations were substantially similar, the Board consolidated the complaints for purposes of its review and decision.[10] After requesting and reviewing unredacted versions of certain records, see *supra*, note 4, the Board concluded that the attorney-client privilege did not apply to shield some of those records from disclosure to the complainant. This was because the communications were not between an attorney and a client; rather, they were between an MCPS attorney and the attorney representing the parent of an MCPS student. The Board ordered MCPS to disclose the unredacted versions of those records to the complainant. The Board also stressed that, because the

[10] *See* COMAR 14.02.01.04.

complainant was a parent of a student, he was entitled to inspect records that would not otherwise be available to the general public under the PIA.

- **PIACB 23-09 (Dec. 28, 2022)**

  Custodian: Office of the Public Defender, Montgomery County ("OPD")

  Issue: The complainant alleged that the OPD failed to respond to his PIA request within the statutory timelines provided in the PIA.

  Decision: The Board concluded that the OPD violated the PIA by failing to respond to the complainant's PIA request "promptly, but not more than 30 days after receiving the [request]," as required by GP § 4-203(a)(1). However, because the OPD responded to the PIA request before the Board issued its decision, and there was no indication that the OPD charged a fee for that response, the Board could order no further relief.

- **PIACB 23-10 (Jan. 17, 2023)**

  Custodian: Baltimore Police Department ("BPD")

  Issue: The complainant alleged that the BPD failed to respond to her PIA request within the statutory timelines provided in the PIA.

  Decision: The Board concluded that the BPD violated GP § 4-203(a)(1)'s requirement that the BPD respond "promptly, but not more than 30 days" after it received the complainant's PIA request. By the time the Board issued its decision, however, the BPD had provided a response and it did not appear that the BPD had charged a fee for that response. Thus, the Board was unable to order any further relief.

- **PIACB 23-11 (Apr. 4, 2023)**

  Custodian: Maryland Institute for Emergency Medical Services Systems ("MIEMSS")

  Issue: MIEMSS denied inspection of records related to an investigation into the Baltimore City Fire Department's response to a certain incident. Among other things, MIEMSS cited GP § 4-301(a)(1) and the medical review committee privilege as codified in § 1-401(d) of the Health Occupations Article ("HO") as authority for the denial.

Decision: After reviewing a confidential descriptive index provided to the Board by MIEMSS, the Board concluded that the records were protected by the medical review committee privilege and that GP § 4-301(a)(1) therefore required that inspection be denied. The descriptive index demonstrated that the records were created or received by a medical review committee as defined by HO § 1-401(b)(4), and that the committee was performing at least one of the functions outlined in HO § 1-401(c). Thus HO § 1-401(d)(1)'s confidentiality provision applied.

- **PIACB 23-14 (Apr. 17, 2023)**

  Custodian: Frederick County Sheriff's Office ("FCSO")

  Issue: The complainant requested records related to immigration detainees housed in FCSO facilities pursuant to an agreement with U.S. Immigration and Customs Enforcement ("ICE"). The FCSO took the position that it was not the custodian of records and advised the complainant that he had to request the records directly from ICE.

  Decision: The Board found that the FCSO's response to the PIA request did not comport with the PIA. The Memorandum of Agreement ("MOA") between the FCSO and ICE provided that the FCSO would coordinate information "regarding actions taken under [the] MOA" with ICE. The FCSO's simple referral to ICE did not comply with the provisions for responding to requests outlined in § 4-203 of the PIA. The Board thus ordered that the FCSO coordinate its response to the PIA request with ICE and disclose all non-exempt records in its custody.

- **PIACB 23-15 (June 2, 2023)**

  Custodian: Baltimore City Fire Department ("BCFD")

  Issue: In response to a request for the recording of a 911 call placed from a Planned Parenthood facility in Baltimore City, the BCFD produced a redacted version of the record, citing GP § 4-329's mandatory exemption for "medical or psychological information about an individual." The BCFD also maintained that the Health Information Portability and Accountability Act ("HIPAA") protected the redacted information and thus GP § 4-301(a)(2)(ii) required the redactions.

  Decision: The Board was unable to resolve the complaint. As urged by the complainant, the Board requested an unredacted version of the 911 call for

confidential *in camera* review. Citing GP § 4-1A-06(b)(3)(i), the BCFD declined to produce the unredacted version of the record to the Board.[11] Given the information that *was* before the Board—including the redacted version of the 911 call—the Board did not seriously question whether the BCFD properly applied GP § 4-329. However, the Board ultimately concluded that it could not definitively resolve the complaint without reviewing the unredacted record.

- **PIACB 23-16 (May 3, 2023)**

  Custodian: Prince George's County Public Schools ("PGCPS")

  Issue: The PGCPS denied the complainant copies of the graded scantrons of eight standardized tests that he had taken while a student in 2020. As authority for its response, the PGCPS cited GP § 4-345's discretionary exemption for testing examination-related information.

  Decision: Though it noted that the PGCPS's response did not comply with the timelines outlined in GP § 4-203, the Board concluded that the PGCPS did not violate the PIA in the way that the complainant alleged. GP § 4-345(b) required the PGCPS to allow the complainant to *inspect* the records he sought, but did not allow the PGCPS to provide the complainant with *copies* of the records. Thus, the PGCPS's belated invitation for the complainant to review the graded results of the tests at the school in a secure environment complied with GP § 4-345(b).

- **PIACB 23-17 (May 25, 2023)**

  Custodian: Baltimore City Fire Department ("BCFD")

  Issue: The BCFD denied inspection of a report of an investigation into allegations that Emergency Medical Technicians ("EMT") employed by the BCFD had improperly responded to a certain medical emergency. The BCFD maintained that the record constituted a personnel record subject to the mandatory exemption found in GP § 4-311.

[11] Section 4-1A-06(b)(3)(i) provides, "[i]f a complaint alleges that the custodian denied inspection of a public record under § 4-301(a)(2)(ii) of [the PIA], the custodian may not be required to produce the public record for Board review." As discussed in the opinion, the Board questioned whether, under the specific facts at issue in the matter—including that the federal law relied upon was HIPAA—this provision truly operated to preclude its review of the unredacted record. *See* PIACB 23-15, at 5-9 (June 2, 2023).

Decision: The Board concluded that the BCFD did not violate the PIA. The record was a report generated after an employer's (BCFD's) investigation into employees' (the EMTs') alleged misconduct, and thus the record clearly fell within the definition of a "personnel record" under Maryland courts' interpretation of GP § 4-311.

- **PIACB 23-18 (June 7, 2023)**

  Custodian: Town of Easton ("Easton") / Easton Police Department ("EPD")

  Issue: The complainant challenged Easton's responses to three separate PIA requests. First, he alleged that Easton failed to produce, and then edited, certain body worn camera footage. Second, he alleged that Easton wrongfully denied inspection of different body worn and dash camera footage. Finally, the complainant alleged that Easton improperly redacted a police report responsive to his third request. Easton cited different subsections within GP § 4-351 to justify the denial of inspection for the second request and the redactions applied to the record responsive to the third request.

  Decision: The Board concluded that Easton did not violate the PIA in any of its three responses to the complainant's PIA requests. Based on the lack of information provided by the complainant regarding his first allegation, the Board concluded that Easton's response to the first request did not violate the PIA. Regarding the second PIA request, Easton's application of GP § 4-351(b)(1) to withhold, in its discretion, records related to an open and ongoing investigation, did not violate the PIA. As to the third PIA request, the Board concluded that Easton's application of GP § 4-351(b)(3) to redact, in its discretion, witnesses' identifying and personal information did not violate the PIA because Easton permissibly determined that disclosure would constitute an unwarranted invasion of personal privacy.

- **PIACB 23-19 (May 30, 2023)**

  Custodian: Baltimore Police Department ("BPD")

  Issue: The BPD denied inspection of body worn camera footage of two police officers who responded to the scene shortly after Det. Sean Suiter was shot, in November 2017. The BPD cited GP § 4-351, which gives a custodian discretion to deny inspection of investigatory records if inspection would be contrary to the public interest, as authority for the denial.

Decision: Finding that the BPD had sufficiently demonstrated that its investigation into Det. Suiter's death was still open and ongoing, the Board concluded that the BPD did not violate the PIA by exercising its discretion to deny inspection of the body worn camera footage under GP § 4-351. Though the complainant was not a "person in interest" with favored status as to the records, GP § 4-351(b)(1)—which justifies denial to a person in interest if disclosure would "interfere with a valid and proper law enforcement proceeding"—applied with equal, if not greater, force.

- **PIACB 23-21 & 23-22 (June 30, 2023)**

  Custodian: Department of Public Safety and Correctional Services ("DPSCS")

  Issue: The complainant filed two separate complaints alleging that DPSCS wrongfully denied inspection of records responsive to two separate PIA requests. In its responses to both PIA requests, DPSCS cited GP § 4-351's discretionary exemption as grounds for the denial. In addition, DPSCS represented that it did not have any responsive records for one part of one of the requests.

  Decision: The Board consolidated the two complaints because they involved the same complainant and custodian. DPSCS did not respond to either complaint. Thus, the Board concluded that, based on the facts before it,[12] DPSCS had failed to justify the denials of inspection. In PIACB 23-21, DPSCS provided no explanation about why inspection would be contrary to the public interest, as it was required to do under GP §§ 4-343, 4-351(a)(3). The Board also determined that it did not have sufficient information or facts to resolve part of the complaint. In PIACB 23-22, DPSCS failed to demonstrate that the records withheld under GP § 4-351(a)(2) had been compiled for a specific investigative proceeding.

- **PIACB 23-23 (June 20, 2023)**

  Custodian: Prince George's County Department of Inspections, Permitting and Enforcement ("DPIE")

  Issue: DPIE produced records in response to two different PIA requests for similar records; DPIE did not indicate that any records were withheld or redacted

[12] *See* GP § 4-1A-06(c) ("If a written response or information requested under subsection (b) of this section is not received within 30 calendar days after the request is sent, the Board shall decide the case on the facts before the Board.").

pursuant to exemptions in the PIA. The complainant believed that DPIE's responses were incomplete, and that DPIE had withheld records.

Decision: The Board construed the complaint as an allegation that DPIE had failed to conduct a reasonable and adequate search for records, and concluded that DPIE's search complied with the PIA. DPIE searched for responsive records in the place they were likely to be found, and its method of searching for records was designed to uncover responsive records. The Board also found that, to the extent that the complainant was asking DPIE to create records in response to his specific questions, the PIA did not require DPIE to do so.

- **PIACB 23-27 (June 16, 2023)**

  Custodian: Town of Berlin ("Berlin")

  Issue: Citing GP § 4-301(a)(2)(i), which requires denial if inspection would be "contrary to" a State statute, Berlin denied inspection of the minutes and recordings from certain closed meetings of the Mayor and Council. Berlin cited § 3-306(c)(3)(ii) of the Open Meetings Act ("OMA") as the operative State statute. Under that section, the minutes of closed sessions must be sealed and not subject to public inspection, unless certain exceptions apply.

  Decision: The Board concluded that Berlin did not violate the PIA. To find that GP § 3-306(c)(3)(ii) did not apply, the Board would have been required to find that Berlin violated the OMA when it closed the relevant meetings. Given that there is a separate administrative body—the Open Meetings Law Compliance Board ("OMCB")—charged with determining OMA violations, and that the submissions demonstrated that the OMCB was currently considering allegations related to the same facts before the Board, the Board concluded that it did not have authority to determine whether the OMA had been violated.[13] Thus, on the facts before the Board, GP § 3-306(c)(3)(ii) of the OMA operated via GP § 4-301(a)(2)(i) to preclude disclosure of the closed meeting minutes and recordings.

- **PIACB 23-28 (June 30, 2023)**

[13] The OMCB ultimately concluded that the meetings in question were not improperly closed. *See* 17 *OMCB Opinions* 73 (2023); 17 *OMCB Opinions* 98 (2023). OMCB opinions are posted on the Attorney General's website. *See* Maryland Attorney General, OMCB Opinions, https://www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx (last visited Sept. 27, 2023).

Custodian: Department of Public Safety and Correctional Services ("DPSCS")

Issue: The complainant alleged that DPSCS failed to respond to his PIA request within the statutory timelines provided in the PIA.

Decision: The Board concluded that DPSCS violated GP § 4-203(a)(1) by failing to respond to the complainant's PIA request "promptly, but not more than 30 days" after it received the complainant's PIA request. The Board ordered DPSCS to respond to the complainant's PIA request within three days of receipt of the Board's order. Given the length of the delay, and the fact that DPSCS failed to respond to either the Ombudsman's outreach or the Board complaint, the Board also ordered DPSCS to waive any fees associated with responding to the PIA request.

II.
RECOMMENDATIONS FOR IMPROVEMENTS TO THE PIA

Section 4-1A-04(c)(3) of the General Provisions Article charges the Board with "mak[ing] recommendations to the General Assembly for improvements to [the PIA]." In addition, the Board's annual report must contain recommendations for "any improvements to [the PIA.]" GP § 4-1A-04(d)(2)(iv). In light of the substantial changes to the PIA that took effect on July 1, 2022, the Board did not make any specific recommendations in its annual report for fiscal year 2022.

At its annual meeting on September 5, 2023, the Board voted to make two specific recommendations in the FY 2023 annual report. Those recommendations are as follows:

Recommendation 1: That additional staff, including a Deputy Ombudsman and an administrator, be provided to support the Ombudsman and the Public Access Unit of the Office of the Attorney General. The additional administrator would support both the Ombudsman and Board.

Board member Deborah Moore-Carter moved this recommendation following an update from the Public Access Ombudsman in which the Ombudsman detailed the increase in her caseload and the amount of administrative work required since House Bill 183 took effect. Board member Michele Cohen clarified that the additional administrative staff should also support the work of the Board. Currently, the Public Access Unit consists of one administrator and one assistant attorney general, both of whom support the work of the Ombudsman and the Board.

Recommendation 2: That the General Assembly amend § 4-1A-04(a) of the PIA to expand the Board's jurisdiction to include authority to review a custodian's denial of a request for a fee waiver.

Board member Debra Gardner moved this recommendation. Though fees represent a small portion of the Ombudsman's caseload and the Board saw only two fee-related complaints in FY 2023,[14] Ms. Gardner noted that fees and denials of requests for fee waivers are an issue in the community and are often an obstacle to access to public records. To that end, Ms. Gardner explained that she is seeing more agencies quoting very large estimates. Fees often result in a delay in access to records and even reduced fees can stand as a barrier to access. Ms. Gardner also noted that, as initially introduced, House Bill 183 gave the Board authority to review disputes about fee waivers, but that that particular provision was not included in the final version of the bill that passed both chambers. Thus, right now, the only recourse is for a requester to go to court, which is costly and time-consuming.

The Board met again on September 18, 2023, to discuss additional fee-related recommendations that were proposed during the September 5 meeting. Those recommendations all advocated legislative changes to the PIA's fee provisions, including: (1) reducing the amount of discretion custodians have to deny public interest fee waivers under GP § 4-206(e)(2)(ii); (2) creating a mandatory indigency fee waiver process under GP § 4-206(e)(2)(i); and (3) setting standards for how fees are paid, e.g., permitting demand of a deposit but not allowing custodians to charge the entire estimated fee in advance.

The Board had a full discussion of each of these proposed recommendations,[15] but ultimately voted to table them in favor of further consideration and discussion. Several members indicated a need for more facts and information about current practices regarding fees and the impact that the recommended changes might have. All members present agreed that the recommendations raised important issues worthy of further discussion. The Board also noted that, during the 2022 session, the Legislature created a task force to study the fees charged by law enforcement agencies in particular. *See* 2022 Md. Laws, ch. 536. To the Board's knowledge, that task force has not been fully appointed or begun its work.

[14] In the first two months of FY 2024, the Board has received two complaints about excessive fees.

[15] To view the meeting, please visit the Board's "Meetings & Minutes" page: https://www.marylandattorneygeneral.gov/Pages/OpenGov/piacb_meetings.aspx (last visited Sept. 27, 2023).

Appendix A. REPORT FROM THE PUBLIC ACCESS OMBUDSMAN

APPENDIX A
REPORT OF THE PUBLIC ACCESS OMBUDSMAN
FY 2023

The General Assembly created the Office of the Public Access Ombudsman ("Office" or "Ombudsman") in 2015 in the same law that created the Public Information Act Compliance Board ("Board" or "PIACB"). *See* 2015 Md. Laws, ch. 135. The Ombudsman's primary duty is to make reasonable attempts to resolve disputes between records custodians and applicants seeking public records under the Maryland Public Information Act ("PIA" or "Act"). Typically, the Ombudsman accomplishes this through voluntary, non-binding, and confidential mediation. The Ombudsman has broad authority to try to resolve a wide variety of PIA disputes such as disputes involving exemptions; the failure of a custodian to issue a timely response; fee disputes; and repetitive, overly broad, and alleged vexatious requests. *See* Md. Code Ann., Gen. Prov. ("GP") § 4-1B-04; COMAR 14.37.02.

In addition to mediating PIA disputes, the Ombudsman also regularly provides informal assistance, resource material, and PIA training on request. These and other activities are published in summary reports that are periodically posted to the Ombudsman's website, https://piaombuds.maryland.gov. This report describes the Ombudsman's activities from July 1, 2022, through June 30, 2023 ("FY 2023"). For context, comparative data concerning prior periods is provided in the tables below. Additional information about Ombudsman program activities is provided in the attachments to this report at Appendix A, page 27 through 30.

ACTIVITIES OF THE OMBUDSMAN

The Attorney General appointed Lisa Kershner as the first Public Access Ombudsman in March 2016 and reappointed her to a second four-year term effective March 30, 2020. The Ombudsman is housed within the Office of the Attorney General ("OAG") and is supported by the same OAG staff that support the PIACB. S. Spencer Dove serves as the program's Administrative Officer and Assistant Attorney General Sara Klemm serves as legal counsel. The Ombudsman thanks the OAG and staff for their exceptional support, skill, and professionalism throughout the year. The Ombudsman could not operate effectively without their support.

Program Operations

Since inception**,** the Ombudsman has tracked certain information about the program's caseload and program users, including caseload volume, time required to bring mediations to closure, types of disputes submitted for mediation, and types of requesters and agencies participating in mediation. In FY 2022 we reported that the impact of the COVID pandemic, particularly on the length of time required to conclude mediations and the number of matters involving an agency's failure to respond to a PIA request (also referred to as MIAs), was slowly abating. This trend continued in FY 2023 with aspects of the Ombudsman's caseload trending toward pre-pandemic norms.

FY 2023 is the first full year in which the Ombudsman and PIACB operated under changes made by Chapter 658 of the 2021 Acts of the Maryland General Assembly (referred to as "H.B.

183" or the "Equitable Access to Records Act"). Thus, the Ombudsman can now report on the implementation and impact of these changes, including, for the first time, mediation outcomes, which are now systematically tracked.[1]

Overall, while the types of disputes and participants in mediation are consistent with prior years, the number of new mediations and other requests for assistance has increased significantly. We believe this increase is likely the result of public perception that the two-tiered integrated PIA dispute resolution process involving the Ombudsman and Board instituted by H.B. 183 is more effective than mediation alone. Likewise, the new requirement that mediations generally must be concluded within 90 days is enhancing the Ombudsman's ability to move mediations forward in a timely fashion. These and other trends are elaborated in our discussion of program metrics below.

Program Metrics

Figure 1: Ombudsman Caseload & Closure Rate

Time Period	Carry-Over from Prior Year	New Mediation Matters	New HD Matters	Total New Matters	Mediations Closed[2]
FY 2023	28	275	251	526	250 or 76%
FY 2022	52	215	168	383	239 or 90%
FY 2021	49	235	212	447	232 or 82%
Since Inception	N/A	1756	1255	3011	1703 or 97%

Figure 1 shows the overall volume of the Ombudsman's caseload, consisting of requests for mediation and informal requests for assistance (referred to as "Help Desk" or "HD" matters). The relatively small number of open mediations that were carried over into FY 2023 (28), was key to the successful implementation of H.B. 183 and resulted from several convergent factors, including:

- the receding effects of the COVID-19 pandemic which allowed agencies to catch up on a backlog of PIA requests and reduce the length of time PIA requests remained unanswered;
- the program's success in bringing protracted mediations to closure and promptly resolving MIAs; and

[1] Effective July 1, 2022, Chapter 658 expanded the jurisdiction of the PIACB and instituted an integrated dispute resolution process that includes the Ombudsman. These changes include requirements that mediation through the Ombudsman be attempted before a party can file a complaint with the PIACB; that mediations be concluded within 90 days unless the parties and Ombudsman agree to an extension; and that at the conclusion of each mediation, the Ombudsman issue a Final Determination reflecting the disputes presented and outcome of the mediation. Depending on the outcome of the mediation and nature of the dispute, a party may be eligible to file a complaint with the PIACB.

[2] Closure rate reflected in the "Mediations Closed" column is obtained by dividing the number of mediation matters closed by the total number of open mediations during the period, which includes both "New Mediations" and those carried over from the prior year. "Help Desk" matters are not reflected in this statistic because they are generally closed quickly, usually within 24 to 48 hours.

- the development and integration of new protocols that enable the Ombudsman to handle mediations more efficiently and to seamlessly implement the new requirements of H.B. 183.

The small number of open matters that were carried over into FY 2023 was also important to the program's ability to effectively manage its increased caseload throughout the year, which was higher for both new mediations and Help Desk matters than in any previous year. Specifically, the program received 275 new requests for mediation and 251 new Help Desk requests in FY 2023. In other words, in FY 2023 our program received 60 more new mediations and 83 more new Help Desk requests compared to FY 2022. Had the number of carry over matters going into FY 2023 been higher, there likely would have been longer waiting periods for program users, lengthier periods to bring open matters to closure, and a diminished capacity to bring mediations to successful resolution. In this respect, the fact that there were 53 open mediations carried over into FY 2024 on July 1, 2023 – almost double the number of open mediations carried over into FY 2023 – signals the need for more resources in order to prevent lengthy queues and waiting periods from compounding over time[3].

Figure 2: Program Use - Individual & Occupational Users

Time Period	Individual	Professional Occupational User
FY 2023	64%	36%
FY 2022	81%	19%
FY 2021	49%	51%
Since Inception	64%	36%

For a full breakdown of program users, please see the Ombudsman's Annual and "Since Inception" Statistical Reports included as a supplement to this report.

Figure 2 reflects the types of requesters using the Ombudsman's program. Most requesters this year, as in all previous years except for FY 2021, were individuals seeking assistance for purposes unrelated to their business or occupation. At the same time, the Ombudsman continued to work with a diverse group of professional and occupational users, including press and media outlets, non-profit organizations, private attorneys, businesses, and others. As shown above, the percentage of occupational program users was higher in FY 2023 (36%) than in FY 2022 (19%), and was largely consistent with all other prior years since inception.

Figure 3: Program Use – Agency Make-Up

Time Period	State	Local*	Other**
FY 2023	27%	27%	45%
FY 2022	30%	24%	46%
FY 2021	45%	17%	37%
Since Inception	35%	25%	40%

**Includes regional, county, and municipal agencies.*
***Includes public school districts, higher education institutions, and law enforcement agencies (police, fire, and state's attorneys' offices)*

Figure 3 reflects the type of agencies participating in mediation during FY 2023. Overall, there was a very high rate of agency consent to mediation (92%) with 109 unique agencies participating in mediations.[4] In all previous years, with the exception of FY 2021, state and local agencies have been approximately equally represented in the

[3] There were between 40-60 mediations carried over month-to month during most of FY 2023.

[4] In most instances in which mediation was declined (7%), a mandatory exemption or other dispute in which the agency felt it had no flexibility was involved. In the remaining 1% of matters, our

Ombudsman's caseload.[5] FY 2023 was consistent with prior years as reflected by the equal participation by state (27%) and local (27%) agencies. PIA requests made to public school districts, higher education institutions, and law enforcement agencies (*i.e.,* police, fire and state's attorneys' offices), which are captured as "Other" in **Figure 3,** comprised a combined 45% of all agencies participating in mediation, reflecting the continued strong public interest in educational affairs (particularly K-12 public schools) and law enforcement agencies.

Figure 4:
Disputes Presented for Mediation

Time Period	MIA/PIN	Other
FY 2023	44%	56%
FY 2022	52%	48%
FY 2021	65%	35%
Since Inception	46%	54%

For a full breakdown of each PIA dispute, please see the Ombudsman's Annual and "Since Inception" Statistical Reports included as a supplement to this report.

Figure 4 shows the relative percentage of disputes submitted for mediation involving either "no response" to a PIA request, or a partial, incomplete, or non-responsive agency response – collectively referred to as "MIA/PIN" matters – as compared to other types of disputes that are regularly submitted, including the application of exemptions resulting in a denial or partial denial of a request (37%), excessive fees (8%) or the denial or failure to respond to a fee waiver request (3%). See Appendix A, page 27.

During the State of Emergency, which began in March 2020 and remained in effect until mid-August 2021, the number of disputes submitted for mediation in the "MIA/PIN" category surged with nearly two thirds of all matters presenting with these disputes in FY 2021 and a little more than half of all matters involving these disputes in FY 2022. In FY 2023, these types of disputes continued to decrease as a percentage of the Ombudsman's caseload so that we are now able to resolve some MIAs as HD matters. The Office will continue its efforts to further reduce the level of "MIA/PINs" through training and outreach activities.

Figure 5: Length of Time to Conclude Mediations

Time Period	3 Weeks	6 Weeks	9 Weeks	12 Weeks	12+ Weeks
FY 2023	27%	21%	23%	16%	18%
FY 2022	18%	16%	17%	11%	38%
FY 2021	19%	13%	11%	9%	48%
Since Inception	30%	18%	15%	10%	26%

Figure 5 illustrates another positive trend continuing in FY 2023 – the number of mediations reaching conclusion in fewer than 12 weeks (84 days) has increased. This is due to many factors, but there are two key factors that deserve mention:

office did not obtain an agency response to a request to mediate a PIA dispute because the dispute presented for mediation became moot due to outside factors or the mediation request was withdrawn.

[5] In FY 2021, there was a greater percentage of mediations involving state agencies (45%) and a corresponding reduction in matters involving local government (17%), which may have reflected a predominant interest in the activities of state agencies leading the response to the pandemic.

- the new requirement that the Ombudsman bring mediations to closure within 90-days, with extensions granted only with the consent of the parties and in circumstances in which the Ombudsman believes that an extension will facilitate a resolution of the dispute, and
- the development of Office protocols and timelines that enable the Ombudsman to set clear standards and expectations for participants while attempting to resolve PIA disputes efficiently and within the statutory deadline.

While the program generally succeeded in moving mediations forward in a timely fashion during FY 2023, this success will not be sustainable without additional staff if the increased caseload reflected in **Figure 1** continues as expected. Because the effectiveness and utility of PIA mediation is closely tied to the Ombudsman's ability to address disputes sooner rather than later, the program's overall success depends upon the Ombudsman's ability to bring parties together in a constructive conversation promptly.

Figure 6: Outcome of Mediations

Time Period	Resolved	Unresolved	Partially Resolved	Did Not Pursue	Terminated
FY 2023	67%	19%	3%	8%	3%

Figure 6 captures the outcome of PIA mediations as recorded in the "Final Determination" that now must be issued at the conclusion of each mediation. Typically, the Final Determination reflects one of the following dispute outcomes:

1. "Resolved" (*i.e.,* matter is fully resolved);
2. "Unresolved" (*i.e.,* matter is entirely unresolved);
3. "Partially Resolved" (*i.e.,* one or more but not all discrete issues presented within a dispute are resolved);
4. "Did Not Pursue" (*i.e.,* the request for mediation was withdrawn or abandoned by the party initiating the mediation); or
5. "Terminated" (*i.e.,* by the Ombudsman in circumstances where one or both parties fail to engage with the process or fail to abide by the written standards of conduct applicable to the mediation).

Figure 6 reflects that FY 2023 mediation outcomes are within the parameters initially projected by the Ombudsman and the Board in their joint report "Final Report on the Public Information Act" issued on December 27, 2019. Specifically, the Board and Ombudsman projected that if the Board's jurisdiction was expanded to allow it to hear a greater range of PIA disputes, approximately 25% of PIA mediations (between 50 and 60 per year) would be closed as "unresolved" or "partially resolved" and likely would proceed to Board review. The percentage of matters closed by the Ombudsman as "unresolved" and "partially resolved" in FY 2023 comes close to these projections, totaling 22%. However, only 26 of the 54 potentially Board-eligible matters that closed as "unresolved" or "partially resolved" in FY 2023 resulted in the filing of a complaint with the PIACB. Of these 26 complaints, 11 (42%) were filed in the last quarter of the fiscal year. This metric will be closely monitored going forward. It remains to be seen whether the last quarter metrics and mediation caseload remains at or above FY 2023 levels. If so, the projected Ombudsman and Board caseloads reported in 2019 may well be exceeded.

Outreach & Training

The Ombudsman regularly receives requests for PIA training and other assistance from both requesters and custodial agencies. During FY 2023, the Office conducted 12 PIA trainings and presentations, which are listed in the statistical report included at Appendix A, pages 27 through 30. Since March 2020, the Ombudsman has conducted most trainings remotely, which has enabled the Office to expand its offerings and make these trainings and presentations accessible to a broader range of interested organizations and persons.

In FY 2023, the Office launched a new training program referred to as "Brown Bag Lunch Trainings." These trainings are held online during the lunch hour on a quarterly basis. Each Brown Bag training focuses on select PIA topics of interest allowing the participants to take a deeper dive into topics that present recurring issues or problems. Each session is open to both requesters and custodians, and thus provides an informal and convenient forum for them to hear and learn from each other's experience and concerns. The trainings conducted in this format to date have covered:

1. "PIA 101" – November 16, 2022 (189 attendees).
2. "Deliberative Process & Discretionary Exemptions" – April 20, 2023 (138 attendees).
3. "Making an Effective PIA Request" – July 19, 2023 (73 attendees).
4. "Protecting Personal Information & Anonymizing Data" – to be scheduled in Nov. 2023.

To maximize the reach of each "Brown Bag" session, the Ombudsman records and posts each video on the Office's YouTube Channel. In addition to the "Brown Bag" series, the Office continues to conduct trainings upon request by specific agencies or groups. These trainings are also recorded, but the recordings are circulated only to the individual attendees together with the written material used for that training. This approach has enabled the Office to give the public more engaging and in-depth information about the PIA while providing trainings focused on the needs, experiences, and interests of particular agencies and groups.

In addition to PIA training and presentations, the Ombudsman also posts a variety of PIA-related resources and news to the program's website and via its Twitter account. The Office continues to work with the Maryland Department of Information Technology to overhaul the Ombudsman's website to make it more accessible and user friendly.

Looking Forward: FY 2024

The changes made by H.B. 183 created additional tasks and program issues for the Ombudsman, its Administrative Officer, and program counsel in opening, managing, and closing mediations, including:

- the need to define disputes with precision at the outset of each mediation (relevant to potential Board jurisdiction);
- the need to obtain express written consent or a declination to mediate a specific PIA dispute (relevant to potential Board jurisdiction);
- the need to track and close each mediation within 90 days or, when appropriate, to obtain the parties' consent to an extension of the deadline (necessary to ensure compliance with statutory deadline);

- the need after all actions discussed during mediation have been taken to obtain the parties' input as to whether the disputes presented are "resolved," "partially resolved," or "unresolved" (relevant to the "Final Determination"); and
- the need to issue a "Final Determination" as required to close each mediation (necessary to determine Board jurisdiction).

To fulfill these new requirements, the Office adjusted its intake, case management, and closure protocols, and updated the Ombudsman's interpretive regulations to reflect these changes. The updated regulations were finalized in August 2023 and became effective September 18, 2023[6].

Even with these adjustments, the demands of an increased caseload combined with a more compressed period for handling each matter have resulted in a larger number of open mediations. If this trend continues, there will be increasingly lengthy queues and wait times for program users, diminishing the program's capacity to deliver services aimed at preventing and resolving PIA disputes on a timely basis. To sustain current service levels and improvements, we are seeking:

- The creation of a Deputy Ombudsman who will be able to handle mediations and perform all duties of the Ombudsman as needed. This will require legislative action amending Subtitle 1B of the PIA, § 4-1B-03 in particular.
- The addition of two staff – one additional administrative staff and one additional counsel – that will be able to support both the Ombudsman's program and the Board. This need is consistent with the projections contained in the 2019 "Final Report on the Public Information Act." This action does not require amendment to the PIA.

The Ombudsman looks forward to working with all stakeholders in FY 2024 to obtain the resources and staff needed to operate continuously at current levels for the benefit of the public and custodial agencies.

CONCLUSION

The Ombudsman wishes to thank the Attorney General for his support of the Ombudsman program and the consistently outstanding staff support the OAG has provided to the Ombudsman program. In addition, the Ombudsman extends her thanks to the Board for providing this forum for sharing information about the Ombudsman program. Finally, the Ombudsman wishes to again thank the dedicated staff of the OAG – Spencer Dove and Sara Klemm – who tirelessly support the Office of the Public Access Ombudsman, as well as OAG law clerk, Julia Byrne, who provided valuable assistance to the Ombudsman during the Summer of 2023 regarding the handling of multiple mediation matters. Additional program information, including statistical reports, helpful tips, and PIA-related news and developments, are regularly posted throughout the year to the Ombudsman's website http://piaombuds.maryland.gov, and via Twitter @MPIA_Ombuds.

Respectfully submitted,
Lisa Kershner
Public Access Ombudsman
September 2023

[6] COMAR Online, Title 14, Subtitle 37: https://dsd.maryland.gov/Pages/COMARHome.aspx

MARYLAND PUBLIC INFORMATION ACT (PIA)
The public's right to information about government activities lies at the heart of a democratic government.

Mediation Metric Report of the Public Access Ombudsman

FY 2023 - Annual Report
July 1, 2022 to June 30, 2023

Annual Report FY 2023

526 2022
- 275 - Mediation requests
- 251 - 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.

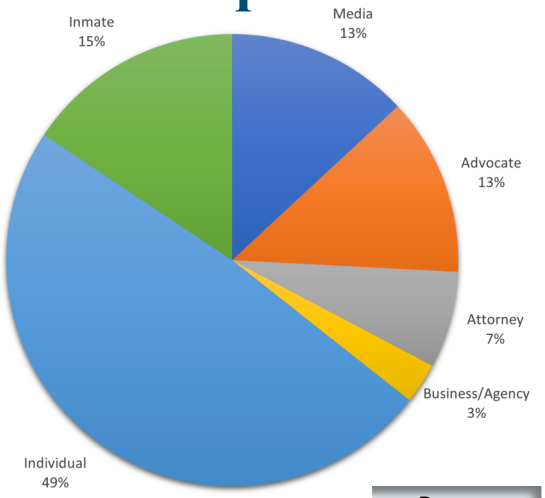
Total Mediation Cases, *as of June 30, 2023*	
Carry over from FY 2022	28
New/Incoming cases in FY 2023	275
Total Number of Mediation cases	303
Total Mediation cases Closed FY 2023	250
Mediation cases carried over to FY 2024	53

The Agencies

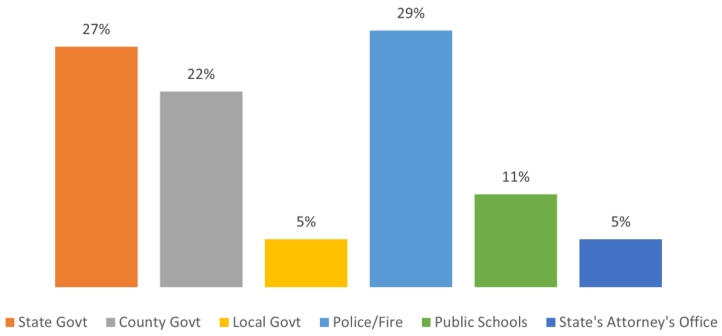
109 unique agencies participated in mediation matters with the PIA Ombudsman in Fiscal Year 2023, including agencies at the state, county, and municipal levels.

The Requesters

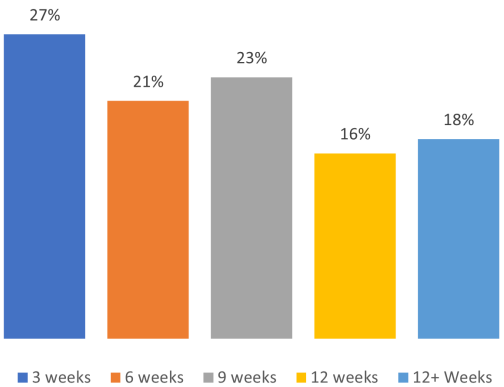
Requesters: *Professional/ Occupational requesters make up **36%** of requests for assistance, and all individuals make up **64%**.*



What Agencies are Participating in Mediation?

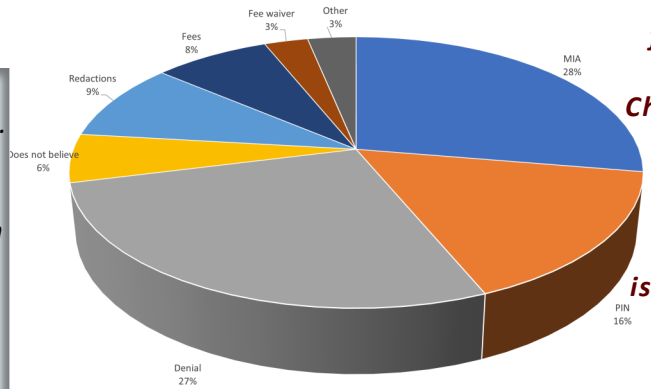


How Long Does Mediation Take?



*Range: 1 – 399 days. **27%** of the cases are closed within 3 weeks and **91%** by 90 days.*

What are the PIA Disputes?



Disputes are presented as framed by the requester. Characterizations are based on how the requesters describe the issues. These are not findings.

Misapplication of exemption - 37%
- Redaction inappropriate - 9.32%
- Entire record withheld - 27.33%

MIA: No Response - 28%

Partial, nonresponsive, or incomplete response –16%

Fees excessive - 8%

Fee waiver request denied or ignored – 3%

Does not believe response – 6%

Asked for explanation of response – 0%

Other - 3%

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http://piaombuds.maryland.gov

Public Access Ombudsman *FY 2023 Annual Report*

MPIA Ombudsman on Twitter
@MPIA_Ombuds

2023 Legislative Session

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July 1, 2022 – June 30, 2023

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MPIA Ombudsman

MARYLAND PUBLIC INFORMATION ACT (PIA)
The public's right to information about government activities lies at the heart of democracy.

Metrics Handout Office of the Public Access Ombudsman

Since Inception Report
March 30, 2016—June 30, 2023

87 Months Since Inception

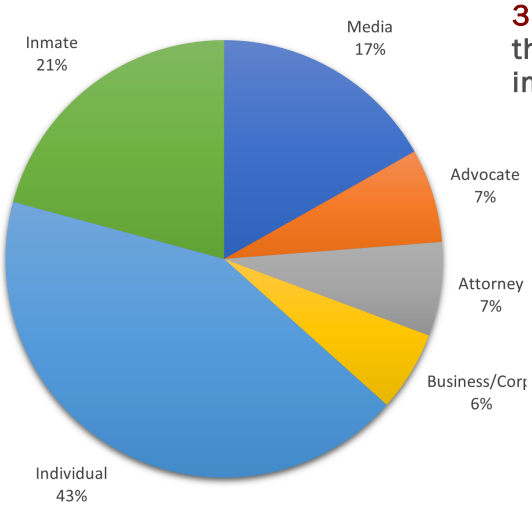
3011 *March 30, 2016*
- **1756** - Mediation requests
- **1255** - Other /"help-desk" inquiries

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 Requesters

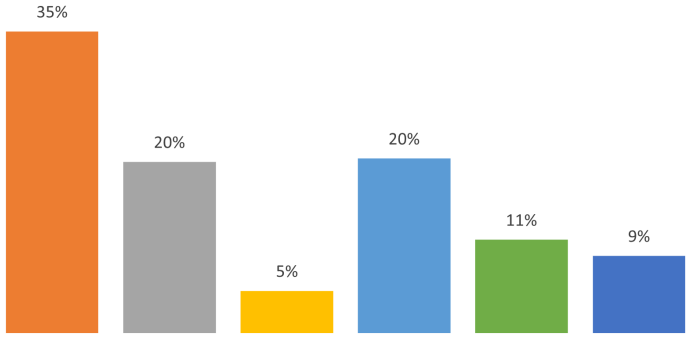
Aggregated Requesters: *Professional/ Occupational categories make up **36%** of requests for assistance and all individuals make up **64%.***



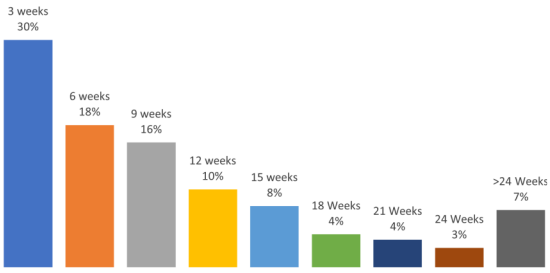
The Agencies

375 unique agencies participated in mediation matters with the PIA Ombudsman since the beginning of the program, including agencies at the state, county and local levels.

What Agencies are Participating in Mediation?

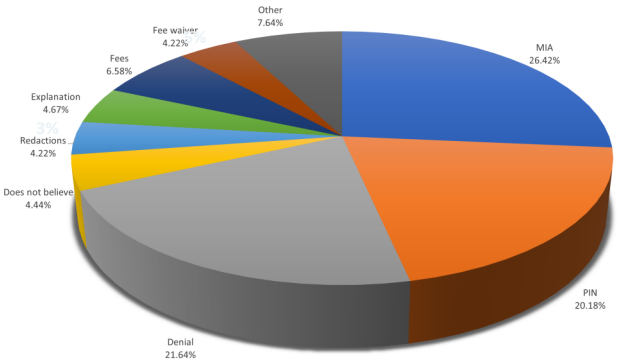


How Long Does Mediation Take?



30% *of Ombudsman matters are closed within 3 weeks and* **76%** *by 90 days.*

What are the PIA disputes?



Disputes are presented as framed by the requester. Characterizations are based on how the requesters describe the issues. These are not findings.

Misapplication of exemption 26%
- Redaction inappropriate 4%
- Entire record withheld 22%

MIA: No Response 26%

Partial, nonresponsive, or incomplete response 20%

- Fees excessive 7%
- Fee waiver denied or ignored 4%
- Does not believe response 4%
- Asked for explanation of response 5%
- Other 8%

Mediations March 30, 2016 – June 30, 2023	
New/Incoming Cases *between 3/30/16—6/30/23*	1756
Closed *as of 6/30/23*	1703

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Ombudsman's Website:
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