

**Maryland General Assembly  
Joint Committee on Legislative Information Technology and  
Open Government**

**2018 Interim  
Membership Roster**

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**Douglas J.J. Peters, Senate Chairman  
Luke Clippinger, House Chairman**

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**Committee Staff**

Lindsay Rowe



THE MARYLAND GENERAL ASSEMBLY  
ANNAPOLIS, MARYLAND 21401

**Joint Committee on Legislative Information Technology and Open Government**

December 10, 2018

The Honorable Thomas V. Mike Miller, Jr., Co-chairman  
The Honorable Michael E. Busch, Co-chairman  
Members of the Legislative Policy Committee

Ladies and Gentlemen:

The Joint Committee on Legislative Information Technology and Open Government respectfully submits its 2018 interim activities report. The joint committee met on October 3, 2018, to receive presentations from the Open Meetings Compliance Board (OMCB), the Public Information Act (PIA) Compliance Board (PIACB), the Open Access Ombudsman, the Maryland-Delaware-DC Press Association, and the Office of Information Systems (OIS) in the Department of Legislative Services (DLS). These briefings are summarized following this letter.

The joint committee appreciates the advice and assistance of the private citizens and public officials who participated in the joint committee's activities during the 2018 interim. We also wish to thank the staff of the Department of Legislative Services for their assistance.

Respectfully submitted,

Douglas J. J. Peters  
Senate Co-chair

Luke Clippinger  
House Co-chair

DJJP:LC/LAR/ajn

cc: Ms. Victoria L. Gruber  
Mr. Ryan Bishop  
Ms. Ryane M. Necessary

# **Joint Committee on Legislative Information Technology and Open Government Interim Report**

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## **Open Meetings Compliance Board**

April Ishak, member of the OMCB, described the board membership and noted that the members' packets contained the board's twenty-sixth annual report. Ms. Ishak discussed complaints made to the board during fiscal 2018, noting that 16 of the complaints this year were the result of a single complainant's survey of the Maryland boards of education. Ms. Ishak also noted that many violations dealt with the adequacy of a public body's disclosure requirements and the closing of meetings. Eleven violations involved closed meetings. Examples of violations include minutes that did not give adequate information as to what was discussed in the closed meeting and a lack of notice by a public body of the right of the public to observe the vote to close a meeting.

Ms. Ishak expressed that the board does not see the need for any legislation at this time. The board encourages public bodies to study the Open Meetings Act (OMA), noting that public bodies without staff or legal advice often do not know the law but are amenable to complying when advised of an issue. Ms. Ishak reiterated a prior request of the board to the joint committee and General Assembly as a whole that it be notified when legislation is submitted by a member of the General Assembly so that the board has an opportunity to meet and give comments on legislation.

Further discussing the complaints described in the board's annual report, Ms. Ishak noted that the board has made no conclusions about compliance rates because the number of complaints is small compared to the number of public bodies. Ms. Ishak noted that only three of the complaints received came from media sources, with only one finding of a violation. Ms. Ishak expressed that the board's focus is on guiding public bodies and giving advice.

In response to questions, Ms. Ishak explained that the board does not have notice of every public body that forms because it does not have staff to keep track of this and because public bodies are regularly created, abolished, or the names are changed. It is the responsibility of the entity creating the public body to keep it compliant with the law. Ms. Ishak also noted that the Maryland Attorney General's website has a section on the OMA and discussed the requirement that at least one person on the public body be trained as to the OMA's requirements.

## **Public Information Act Compliance Board**

John H. West III, Chair of the Public Information Act Compliance Board, described the board's membership and responsibilities and noted that the members' packets contained the board's third annual report. He briefly summarized the number and outcome of complaints

received and referred the committee members to the report for more detail. Mr. West highlighted that many complaints to the board came from inmates who had not received a fee waiver denial. Mr. West emphasized the value and competency of the Public Access Ombudsman in resolving complaints.

Mr. West highlighted several recommendations for legislative action that were included in the board's report as well as several holdover recommendations from last year's report that the board continues to support. The board supports legislation that would entitle inmates to one indigence-based fee waiver in order for the inmate to obtain his or her own file. The board also supports expanding its jurisdiction to include the review of fee waiver denials. Finally, Mr. West discussed the board's support of expanding protections against the request of bulk personal information. Though this was addressed through Chapters 39 and 40 of 2018, Mr. West expressed that the board sees opportunities to increase protections against personal information being made public.

One of the holdover recommendations highlighted by Mr. West is the board's view that contractors involved in the storage and retention of government records be subject to the same record management requirements as the public body. Mr. West noted that the board currently benefits from the technological expertise of one of its members and recommends requiring at least one member to possess such expertise so that the board can continue to effectively review complaints. Finally, to increase the benefits of referring cases to the Public Access Ombudsman, the board recommends authorizing referrals at any time and expanding the timeframe for review in cases referred to the ombudsman.

In response to questions from committee members, Mr. West clarified that requiring a board member to possess technological expertise would not require adding a member to the board but could be accomplished by requiring one of the existing number to have this background. Mr. West also clarified that the recommendation relating to third party contractors does not stem from a specific incident but is in the interest of promoting consistency amongst record holders.

### **Office of the Public Access Ombudsman**

Lisa Kershner, Public Access Ombudsman, briefed the committee on the establishment of the Office of the Public Access Ombudsman and its activities. Ms. Kershner provided documents summarizing the Ombudsman's work and operations. Ms. Kershner highlighted two broad categories of requests, complaints regarding fully ripe disputes, and requests for information. She also discussed the various types of requestors and noted that the largest group of requestors is incarcerated individuals (approximately 36% of requestors). Ms. Kershner also discussed outreach work to educate custodians on the PIA.

Ms. Kershner highlighted several types of issues that she has mediated, including withholding of documents; withholding of information within documents through redaction; fee issues, including amounts charged and denials of waivers; and failure to respond to a request. Ms. Kershner estimated that an agency's failure to respond represented just over 20% of cases brought to the Ombudsman while incomplete responses represented approximately 22% of

complaints. Ms. Kershner hypothesized that the incomplete responses may be a result of 2017 legislation requiring custodians to explain why a record is withheld rather than redacted, potentially resulting in a higher number of redacted records returned to requestors.

Ms. Kershner estimated that fee issues represent 15% of her caseload, including both disputes as to the fee amount and denials of fee waivers. Ms. Kershner discussed the interconnection between fee waiver disputes and fee amounts. Based on the link between these issues, she supports legislation to give jurisdiction over fee waivers to the PIACB. Ms. Kershner also noted that there is no extrajudicial remedy for PIA disputes and stated that she believes another enforcement remedy is needed to incentivize parties to agree to resolution. Ms. Kershner stated that she supports the recommendations made by the PIACB in both its annual report and comments before the joint committee, particularly the recommendation regarding tolling the time limits when a case is referred to mediation.

Ms. Kershner outlined her goals as Ombudsman, which include working to monitor her caseload with the hope of improving efficiency and creating a relational database for case management, continuing to develop a greater online process of informational resources including developing suggested best practices both for agencies and requestors, and developing interpretive regulations to explain how the Ombudsman's mediation process is working that would ensure the process is clear to all.

With regard to the issue of inmate case files, Ms. Kershner discussed conversations she had with an assistant county attorney who suggested requiring the digitization of records at a set point in time (for example, when a case goes to appeal), to make record production less expensive and time consuming. Ms. Kershner noted that record retention and management requirements placed on police departments, state and county attorneys, and courts would require input from these stakeholders. Ms. Kershner further discussed issues specific to post-conviction proceedings, including discovery rules and the lack of clarity related to the right to obtain records. Ms. Kershner expressed that it would be useful to allow under law or rule for the production of the inmate's file for the purposes of filing a post-conviction petition. This provision would not be part of the PIA, as Ms. Kershner views this as separate from the purposes of the PIA.

### **Maryland-Delaware-DC Press Association**

Rebecca Snyder, Executive Director of the Maryland-Delaware-DC Press Association presented to the joint committee on the membership of the Press Association, the role of the media outlets represented, and the population reached by the members. Ms. Snyder expressed that the Press Association represents citizens in scrutinizing government activity because government cannot serve as its own watchdog. Through reporting, members of the Press Association provide context for citizens to understand their government.

Ms. Snyder discussed the importance of transparency in Maryland government and discussed this framework within the context of the OMA, PIA, and various statutory notice requirements. While the Press Association is a sophisticated user of these statutes, Ms. Snyder

noted that public records should be available to all. Ms. Snyder noted the value of the Ombudsman in mediating disputes and expressed that the PIACB is underutilized, perhaps because it lacks jurisdiction over fee waivers. The Press Association concurs with the recommendation that the PIACB's scope should be expanded, including to provide enforcement options outside of the court system. In addition, the Press Association supports expanding the authority of the OMCB to enforce the OMA. Ms. Snyder stated that there seems to be limited consequences to a public body when the OMA is not followed. Finally, Ms. Snyder expressed the concern that legal notice requirements have weakened, limiting what the public sees of public activity.

Ms. Snyder highlighted issues the Press Association members have faced when requesting information, including time constraints due to the deadlines associated with journalism, difficulty getting information from police departments, and document management leading to inefficiencies obtaining records.

Ms. Snyder discussed the state of the press corps since the June 28, 2018 shooting at the Capital Gazette in Annapolis, noting that many journalists are more fearful for their safety. Members of the Press Association also face economic pressures due to the shift from print to online media and as a result of newsprint tariffs. Finally, Ms. Snyder discussed a current legal challenge against a federal law mandating websites publish details about advertisements, which the Press Association views as compelled speech.

## **Office of Information Systems**

Michael Gaudiello, Director of the Office of Information Systems in DLS, briefed the joint committee on the status of ongoing and new OIS projects. He discussed the online bill drafting review process implemented in the Office of Policy Analysis in fall 2017 and noted that use of the new system has allowed for a faster turnaround time for bills as well as a more accurate drafting process.

Mr. Gaudiello also described enhancements made to the web-based floor system. The system has approximately 500 users between the members and their staff. Enhancements for 2019 will include a personal notebook with two new tabs to track bond initiatives and sponsored bill requests. The system will allow a member to request a bond initiative or bill directly from the floor system and to track where bills and initiatives are in the process. Regarding upgrades to the constituent tracking application, OIS remains committed to moving forward with the project and is continuing to explore options, most recently looking at a cloud-based solution.

OIS completed an upgrade to the voting boards while maintaining the historic décor of both the Senate and House chambers. The new boards allow for the same functionality as the previous voting boards. The new voting boards have a projected life of 20 or more years. The House chamber sound system was also upgraded to employ a more modern, digital technology. Mr. Gaudiello noted that all the Senate laptops will be replaced before the 2019 session begins, consistent with the three-year cycle employed by OIS. All House floor laptops were replaced before the 2017 session. In addition to replacing laptops, all DLS and General Assembly members and staff will receive software upgrades on their laptops during the 2018 interim. In January,

OIS will host an in-house training for new members and staff on the legislative software package and Microsoft Office suite.

Regarding new projects, Mr. Gaudiello discussed the new bond request process. Beginning with the 2019 legislative session, bond requests will no longer require a bill draft but will be requested through the bond initiative program. Process and tracking will be provided on both the floor system application and the General Assembly website.

Another significant new project OIS undertook during the 2018 interim was the development of a new committee information system. The system is comprised of three parts: committee application, hearing schedule, and witness signup via wall display. With the new system, there will no longer be a Wednesday hearing schedule each week, but instead the schedule will be updated in real time. The system functionality will also allow members to add the hearing schedule to their personal calendars and to stream hearings directly from the hearing schedule (both live stream and on-demand stream). The prior committee software was the last major application using the Mapper system and OIS will be retiring the Mapper system once the new software is deployed.

Mr. Gaudiello also discussed OIS's work to expand use of the SAP time sheet application. The application previously ran internally and was not used by other staff. After the expansion, the time sheet system will be able to be accessed anywhere. During the 2018 session OIS launched a pilot project in which the House Health and Government Operations Committee recorded all committee votes on an iPad application. After the successful pilot, OIS will be extending that application to all standing committees and to the Senate and House Rules committees. OIS is also working to improve the General Assembly website functionality on mobile devices such as mobile phones and iPads.

In response to a question regarding establishing and using electronic bill files to store and distribute bill testimony, Mr. Gaudiello stated that it would not be technically challenging or very expensive but is a policy matter and that OIS has not been asked by General Assembly leadership to pursue this project. Members of the joint committee expressed concern that this topic was raised during the joint committee's 2017 meeting but that there was an inadequate response at that time. Members of the joint committee suggested that the use of electronic testimony could be tested in one standing committee first as a pilot project, noting that this would be a question for General Assembly leadership. Mr. Gaudiello stated that he would follow up with the joint committee after the meeting with more information on this topic.

Several members raised concerns about the constituent management system and expressed a desire to ensure its continued use meant that the system would become more user friendly and that members would be consulted regarding interface changes. In response, Mr. Gaudiello reiterated that OIS staff would evaluate the system options and then pursue a pilot program if a solution seemed viable.

In response to a question about certain technology that is not regularly used, Mr. Gaudiello explained that all of the components are in working order and its use depends on presenters preparing materials that employ it.

Following the October 3, 2018 meeting, Mr. Gaudiello forwarded an email to the joint committee members that Mr. Gaudiello had sent to the joint committee after its 2017 meeting. In the letter, Mr. Gaudiello reiterated that while the technology is available to allow for the electronic submission of testimony, it is a policy decision as to whether to employ it.

**Public Comment**

No members of the public submitted comments.