



Fact Sheet: Public Information Act

January 2025

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Additional, more detailed information about Maryland's Public Information Act (PIA) and interpretation of the act by the courts, the Attorney General, and the Public Information Act Compliance Board (PIACB) can be found in the *Public Information Act Manual* and other materials on the website of the Office of the Attorney General (OAG) [here](#). Please note that this fact sheet is intended only to give a brief overview of the Act – the *Public Information Act Manual* should be consulted if you are looking for guidance on how to comply with the Act.

In General

PIA establishes that “all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.” PIA establishes procedures for the request and inspection of that information subject to certain exceptions where information may or must be kept privileged and confidential for purposes of protecting individuals' personal privacy or for other public policy reasons. Each governmental unit that maintains public records must identify a representative whom a member of the public may contact to request a public record. OAG must post all such contact information on its website and in the PIA manual that it publishes.

Applicability

Government Unit or Instrumentality

As explained in the *Public Information Act Manual*, the Act is applicable to virtually all public agencies or officials in the State (any “unit or instrumentality of the State or of a political subdivision”) – including counties, municipalities, school districts, and special districts. The Judiciary, however, has adopted its own rules to govern access to judicial records, which the Maryland Supreme Court has clarified are the exclusive method for obtaining access to judicial records. PIA can also apply to entities that may not be typically thought of as government agencies but are considered a “unit or instrumentality” of the State or a local government due to a certain amount of control by, or other nexus with, the State or the local government.

Public Records

PIA applies to any public records made or received in connection with the transaction of public business, in any form, including computerized records, correspondence, drawings, maps, photographs, or recordings.

In a pair of recent decisions (*PIACB 24-53* and *PIACB 24-55*), PIACB elaborated that while it is safe to assume that most records in the government's possession are public records subject to PIA, some records in government agencies' possession are private in nature and – independent of PIA's requirements/authorizations for denial of inspection of certain records – are not subject to PIA. The board relied, in both decisions, on *Office of the Governor v. Washington Post Co.*, 360 Md. 520 (2000), in which home telephone bills of the Governor and his family were determined to not be public records for purposes of PIA even though the home and furnishings, including telephone service, were supplied by the State.

In the two recent PIACB decisions, the board concluded that:

- in general, recordings of inmates' jail calls are private in nature and not public records, but can become public records when retrieved and used in connection with an agency's public business (*e.g.*, in a prosecution), in which case they are subject to any applicable requirements/authorizations for denial of inspection of records under PIA; and
- records of the date and time of, duration of, and amount of any charges associated with personal phone calls made from a government phone during working hours were public records (due to the frequency, duration, and cost of such calls being related to "the transaction of public business"), but the phone numbers to which the calls were made were not public records (being information that is private in nature).

Inspection of Public Records

"Custodians" and "Official Custodians"

PIA assigns "custodians" the responsibility for agencies' compliance with the Act – who must allow for inspection of public records and determine whether inspection can or must be denied. "Custodian" includes an "official custodian" and any other authorized individual who has physical custody and control of a public record. An "official custodian" is the officer or employee of an agency who has the overall legal responsibility for the care and keeping of public records, whether or not the officer or employee has physical custody and control of the public records.

Inspection – and – Reasonable Fee

A custodian of a public record must permit inspection of any public record at any reasonable time unless inspection of the public record is subject to denial as discussed further below. Each official custodian must adopt reasonable rules or regulations that govern timely

production and inspection of a public record. The official custodian may charge a reasonable fee for costs incurred in producing a public record for inspection.

Timeliness of Response to an Application for Inspection

A custodian must approve or deny an application for inspection promptly but not more than 30 days after receiving the application and, if the application is approved, must produce the record either immediately or within a reasonable period needed to retrieve the public record but not more than 30 days after receipt of the application. These time limits may be extended for no more than 30 additional days with consent of the applicant. The custodian must also notify the applicant within 10 working days of the receipt of the request if the custodian reasonably believes it will take more than 10 working days to produce the requested records.

Reasonable Search for Records

With regard to what efforts custodians must undertake to locate records, the Maryland Supreme Court – in *Glass v. Anne Arundel County*, 453 Md. 201 (2017) – explained that “[a]n agency that receives a PIA request must conduct a search in good faith that is reasonably designed to capture all responsive records...[t]his does not mean that the agency must robotically examine every record in its possession, running up an extravagant fee and diverting public resources in furtherance of a futile effort; rather the search should be focused on where the responsive records are likely to be found.” The Court further explained:

“In practice, a productive response to a PIA request is often an iterative process in which the agency reports on the type and scope of the files it holds that may include responsive records, and the requestor refines the request to reduce the labor (and expense) of searching those records. When the requestor and the agency work together, the process approximates the purpose and policy of the PIA. When they do not, what results is a requestor insisting on what, to the agency, is an unbounded and unreasonable search and the agency insisting on what, to the requestor, is an unbounded and unreasonable fee.”

Immediate/Proactive Disclosure of Certain Records

An official custodian must designate types of public records that are to be made available to any applicant immediately on request and maintain a current list of those types of records. An official custodian must also adopt a policy of proactive disclosure of public records that are available for inspection under PIA, which may (1) vary as appropriate to the type of public record and to the staff and budgetary resources of the governmental unit and (2) include publication of public records on the website of the governmental unit, to the extent practicable, or publication of prior responses to PIA requests.

Denials

Required Denials

A custodian is required to deny inspection of a public record or any part of a public record if (1) the public record or part of the public record is privileged or confidential by law (including under attorney-client, executive, or legislative privilege) or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. PIA itself also specifies various types of records and information for which inspection must be denied (unless another law requires public access), many related to personal privacy (*e.g.*, personnel records, student records, and medical and financial information) and some to other public policy (*e.g.*, any business trade secrets or other confidential commercial information obtained from any person or governmental unit, information about the security of an information system, and school safety plans, policies, or guidelines).

Authorized Denials

In addition, several other types of records and information for which a custodian *may* deny inspection, if a custodian believes inspection would be contrary to the public interest, are specified in PIA. An official custodian may also temporarily deny inspection of any other record that otherwise must be open to inspection under PIA if the official custodian (1) believes that inspection would cause substantial injury to the public interest and (2) petitions a court within 10 working days to authorize the continued denial of inspection.

Written Statement Provided to Applicant

A custodian who denies inspection of a public record must, within 10 working days of the denial, provide a written statement to the applicant that gives (1) the reason for denial; (2) if denying a part of a record on a discretionary basis, a brief explanation of why the denial is necessary and why redacting information would not address the reasons for the denial; (3) the legal authority for the denial; (4) a brief description of the undisclosed record (without disclosing the protected information); and (5) notice of the available statutory remedies for review of the denial.

Dispute Resolution and Judicial Review

Ombudsman and Compliance Board

The Public Access Ombudsman, an attorney appointed by the Attorney General, is charged with making reasonable attempts to resolve disputes between applicants and custodians over requests for public records. The ombudsman serves only as a mediator and may not compel a custodian to disclose public records or redacted information, either to the applicant or the ombudsman.

PIACB is a five-member board appointed by the Governor that is authorized to resolve complaints by applicants regarding denials, fees, and failures to respond to requests in a timely manner, as well as complaints by custodians that requests or patterns of requests are frivolous, vexatious, or in bad faith. PIACB is authorized to order a custodian to provide appropriate remedies if the board finds that a custodian acted in violation of PIA. Resolution through the Public Access Ombudsman must be sought before filing a complaint with the board.

OAG serves as staff for both the ombudsman and board.

Circuit Court

An applicant or a custodian may appeal a decision of PIACB to the circuit court, and an applicant that is denied inspection of a public record or is not provided with a copy, printout, or photograph of a public record as requested can also file a complaint with the circuit court without first seeking resolution of the denial through the Public Access Ombudsman and/or PIACB. The court may order the production of the public record or a copy, printout, or photograph of the public record that was withheld from the applicant, and a defendant governmental unit is liable to the applicant for statutory damages and actual damages that the court considers appropriate if the court finds that the defendant knowingly and willfully violated PIA.