

LAWRENCE J. HOGAN, JR.
GOVERNOR

BOYD K. RUTHERFORD
LT. GOVERNOR



JOHN H. WEST, III, ESQ.
Chair

DEBORAH MOORE-CARTER
RENÉ C. SWAFFORD, ESQ.
DARREN S. WIGFIELD
VACANT

STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

TESTIMONY IN SUPPORT OF HB 502 / SB 590
February 11, 2020
Health and Government Operations Committee

Dear Chair Pendergrass, Vice Chair Pena-Melnyk, and Members of the Committee:

The Members of the Public Information Act Compliance Board (“Board”) ask for a favorable report on House Bill 502, which stems from the Board and Public Access Ombudsman’s recommendations in the *Final Report on the PIA*, published in December 2019. Among other improvements to the Public Information Act (“PIA”), HB 502 would provide the Board with comprehensive administrative jurisdiction to review and decide PIA disputes that cannot be resolved through mediation with the Public Access Ombudsman. That improvement would allow the Board to play a much needed and meaningful role in the PIA dispute-resolution process, and in the development of PIA authority and guidance. The Board is ready and willing to fill this important role.

The Board is an independent body comprised of five members representing diverse interests and knowledge areas, including the media, the government, the bar, and the private citizenry. We are ably assisted by professional staff from the Office of the Attorney General. For the past four years, however, we have been underutilized and our impact has been minimal due to the extremely limited nature of our jurisdiction.

The Board was established through legislation in 2015 (HB 755 / SB 695). The first draft of that legislation provided the Board with the common sense and comprehensive PIA jurisdiction that HB 502 does now. However, the final legislation drastically limited the Board’s jurisdiction to reviewing and deciding only PIA complaints about unreasonable fees over \$350. Since October of 2015, the Board has received only 31 complaints that meet this narrow jurisdictional threshold—that’s fewer than eight complaints per year, on average.

By contrast, the Public Access Ombudsman, who has general jurisdiction to mediate—but not decide—PIA disputes, has received more than 900 mediation requests for all types of PIA disputes. The vast majority of these do not involve fees over \$350, but instead cover allegations ranging from unlawful withholding of records to untimely responses to overly broad or burdensome requests.

Although the Ombudsman makes valiant efforts to resolve these disputes, many are not resolved through mediation, and aggrieved requestors or custodians have no alternative but going to court—an alternative that is costly, time-consuming, complicated, and otherwise practicably

inaccessible for most PIA requestors. HB 502 enables the Board to fill this gap in a way that enhances and complements the important work of the Ombudsman, while providing an accessible and meaningful remedy for those disputes the Ombudsman can't resolve.

Moreover, the Board is equipped to fill this gap without any major changes to its structure or operation. As described in the *Final Report on the PIA*, we believe the Board's increased caseload under HB 502 could be handled with two additional full-time staff. This is a modest expenditure in exchange for a crucial addition to the PIA dispute-resolution process and, ultimately, for improving transparency at all levels of State and local government.

For all of these reasons, we ask for a favorable report on HB 502.

Respectfully submitted,

John H. "Butch" West III, Esq.
Chair

Deborah Moore-Carter
Member

René C. Swafford, Esq.
Member

Darren S. Wigfield
Member