



February 23, 2021

The Honorable Paul G. Pinsky, Chair  
Education, Health, and Environmental Affairs Committee  
2 West, Miller Senate Office Building  
Annapolis, Maryland 21401

**Re: Senate Bill 449 – Public Information Act – Revisions (Equitable Access to Records Act)**

Dear Chairman Pendergrass and Members of the Committee:

The Maryland Department of the Environment (“MDE” or “Department”) has reviewed Senate Bill 449, entitled Public Information Act (PIA) – Revisions (Equitable Access to Records Act) and would like to offer a letter of information.

First it is important to provide you with some background on the MDE PIA Program. This is important because the Act leaves many aspects of implementation up to the organization, such as fees, methods of tracking and interpretation of fee waiver basis.

MDE receives the most PIA requests out of any state agency in Maryland. Currently the Department processes approximately 4,000 – 5,000 requests annually. The actual number of requests is not easily obtained for the purpose of reporting data because the Department aggregates requests that come in, during similar time frames and from the same requester, under one tracking number to help process requests faster and more efficiently.

MDE receives different types of requests from a variety of requesters. Responsive records to PIA requests can be anywhere from a single page document to numerous floor-to-ceiling rolling filing shelves. In addition to citizen requests or NGOs seeking clarity about risk, MDE receives requests from law firms, media outlets, interest groups, realtors, and other government entities. The majority of requests are from environmental consulting firms conducting environmental screenings on behalf of their clients. Oftentimes, the Department receives requests from multiple environmental consulting firms for the same property(s) in an effort to compete for a contract. For example, the PIA request will ask for research about an undeveloped lot to determine if there are any environmental concerns such as asbestos, permitted piers or even licensed x-ray machines.

MDE is currently employing the following staff to handle the considerable amount of PIA requests received annually:

- One PIA Coordinator - residing in MDE’s Office of Communications overseeing the entire program and leading employees working on PIA in MDE’s three technical Administrations. The PIA Coordinator has additional job responsibilities beyond PIA.
- Four PIA Liaisons - residing in MDE’s three technical Administrations overseeing the requests at an administrative level and leading the employees working on PIA as a regular part of their job duties. All except one Liaison has additional job responsibilities beyond PIA.

- 33 File Custodians - residing in MDE's technical programs and responsible for responding to PIA requests on behalf of their programs. Some of these File Custodians are responsible for more than one program's records and have other responsibilities in addition to processing PIA requests.

MDE offers all approved PIA filers a file review room located off the main lobby with a copy machine with scanning capabilities. Scanning is free of charge. Often the requester will review the records and only scan the portions they need MDE has found this to be a welcomed customer service approach that expedites the request and saves the cost of s from paying duplication fees.

Under Senate Bill 449, *“each official custodian shall adopt a policy of proactive disclosure of public records that are available for inspection under this title. Include publication of public records on the website of the governmental unit, to the extent practicable, or publication of prior responses to requests for inspection made under this title.”*

The presumption of the Bill excludes the fact that most requests for information originate with the business community seeking information needed to bid for a contract. In addition, MDE needs clarity because:

- The proposed act does not identify a timeframe for how far back a governmental unit must go back to publish prior responses.
- It is not clear from the bill text if this would be required of the agencies moving forward or already completed/closed requests.
- In situations where the requester prefers to conduct an in-person file review, instead of paying to have the documents duplicated, MDE does not document which records the requester selected.

Under Senate Bill 449, MDE personnel would be responsible for adopting and implementing a policy to proactively publish public records, available for inspection, on the MDE website. MDE maintains billions of records, within 50 plus subject areas. Historic records which can date back more than 100 years, include microfilm and bound materials. Publishing every public record available for inspection would be extremely time consuming and costly to MDE. MDE would most likely need to procure a contractor to complete the procurement bidding process and complete the scanning and digital organization of all of MDE records.

MDE is diligently working to publish more information on its website. This effort is currently being piloted with the Water Compliance Program. Once the pilot is complete, the remaining MDE technical programs that store data on the Environmental Tracking System, the department's primary database, will produce public portals to increase transparency. As some MDE programs involve public health information and other interface with federal agencies, the Department will work with these entities to determine how to best improve transparency within the technical legal restrictions of these areas.

Under Senate Bill 449, *“On or before July 1 each year, each official custodian shall publish on the website of the governmental unit, to the extent practicable, a report on the requests received during the immediately preceding calendar year under this title for inspection of public records of the governmental unit.”* MDE has concerns with numerous reporting items within the proposed bill. Every governmental unit is responsible for creating its own tracking database and requiring MDE to upgrade the existing database to track twelve new metrics would be time consuming and costly.

Lastly, the basis for granting a fee waiver under the Act, as it currently stands, is not clear and should be reevaluated before granting the Maryland Public Information Act Compliance Board with the authority to make determinations on whether governmental units are unreasonably failing to waive fees. Therefore, the proposed 4-1A-04 (a)(1) (III) *unreasonably failed to waive a fee under § 4-206(e) of this title; and (3) (III) if the Board finds that the custodian unreasonably failed to waive a fee under § 4-206(e) of this title, waive all or part of the fee or reconsider the fee waiver request; should be reconsidered.*

Currently, 4-206(e) states *The official custodian may waive a fee under this section if: (1) the applicant asks for a waiver; and (2) (i) the applicant is indigent and files an affidavit of indigency; or (ii) after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.* The Act is leaving the discretion up to the governmental unit to determine if the applicant has the “*ability to pay*”, and if the fee waiver is “*in the public interest*”. Therefore, allowing the Maryland Public Information Act Compliance Board to determine if a governmental unit is unreasonably failing to waive fees without revising the existing Act with clarifying parameters would be arbitrary and capricious.

Thank you for your consideration. We will continue to monitor Senate Bill 449 during the Committee’s deliberations, and I am available to answer any questions you may have. Please feel free to contact me by e-mail at [tyler.abbott@maryland.gov](mailto:tyler.abbott@maryland.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott