

February 23, 2021

Testimony on SB 449
Public Information Act – Revisions (Equitable Access to Records Act)
Education, Health, and Environmental Affairs

Position: Favorable

Common Cause Maryland supports SB 449 which would build on the successful implementation of the Public Information Act (PIA) Compliance Board and the Ombudsman program as well as ensure the process for requesting records under the PIA is equitable.

Maryland citizens deserve access to information. They need fair and open access to data and public records concerning health, safety, natural resources, civil liberties and how government funds and subsidies are sent. While the General Assembly has taken important steps towards more open and accessible government, our current PIA dispute-resolution process leaves many requesters questioning the overall fairness and efficiency of the PIA.

Currently, the PIA Compliance Board has no jurisdiction to decide any disputes other than those involving fees greater than \$350 which are usually regarding fee waivers, repetitive requests, or exemptions. Requesters only option is to seek judicial remedy because there is no other process for obtaining a binding final decision on any PIA dispute outside of going to court. As can be expected, most infrequently use this process because they may be unable to cover the cost of legal fees.

SB 449 address this inequity by taking advantage of the Board that has been underutilized and expanding its jurisdiction while preserving the Ombudsman program. This would ensure all requesters who are unable to afford legal representation are provided with an alternative to resolving their disputes. The process is made even more accessible because the change would not require a complex process or hearing that may confuse requesters. Those requests unable to be resolved in mediation with the Ombudsman would be submitted to the Board who would be able to issue a binding decision.

SB 449 also lowers the current \$350 threshold to \$200, ensuring more disputes involving fees and the denial of fee waivers are able to be reviewed by the Board. This will allow the Board the opportunity to ensure that custodians are making the determination on an individualized, case-by-case basis. While the fee waiver process is still left at the discretion of the agency, many of which deny waivers with no discretion, we do believe this is a good starting point that begins to address the limited transparency available to low-income Marylanders. It also eliminates the process for judicial review of an agency's fee waiver decision which is inaccessible to a requester who is asking for a waiver.

SB 449 also requires regular reporting from agencies, ensuring that they are tracking requests as they receive them and as they are resolved. This will ensure future reports are able to provide a more robust review of the performance of the PIA. We note that agencies were not required to report, but have said that it is feasible for them to periodically report data on PIA caseloads.

The PIA Compliance Board and Ombudsman program play an integral role in ensuring government transparency which is vital to a healthy democracy. Expanding the Board's jurisdiction and ensuring they and the Ombudsman have access to information from agencies as well as adequate staffing will improve the PIA process while ensuring requesters with limited means receive a more equitable treatment.

We urge a favorable report on SB 449.

