



HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE

House Bill 183

Public Information Act - Revisions

February 11, 2021

Unfavorable Report

Chair Pendergrass, Vice Chair Delegate Pena-Melnyk and Committee members, thank you for the opportunity to share UMBC's thoughts on House Bill 183.

I have handled UMBC's PIA requests and compliance for over 15 years and I fully and wholeheartedly believe strongly in the PIA. I have witnessed the benefits to Maryland citizens on many occasions. Fulfilling requests can be a challenge but one that I have always accepted because I believe in the mission of the Act. However, I do not support this bill's changes to the PIA because I believe it will make it significantly more difficult to serve requestors of public information. I believe that this bill imposes obligations upon State Agencies that will have a significant financial impact that may be impossible for UMBC to absorb during an already challenging budget year for all of us.

HB 183 requires online publication of a report reflecting the PIA request of the preceding calendar year (page 4 §4-105(A)(1)) including nine (9) separate and distinct metrics (page 4-5 §4-105(B)). Some may believe this level of collection is simple, but the changes will require an overhaul of our current PIA system. This tracking and online reporting would require web support personnel that my office would be forced to hire.

The bill expands the jurisdiction of the PIA Compliance Board (PIACB) to include additional types of disputes, or, a better way to describe it would be that the bill expands the PIACB jurisdiction to include *all* disputes (page 7 §4-1A-04). I have not been able to imagine a dispute that is not included in the list of disputable matters that would now be the jurisdiction of the PIACB. Under the proposed bill, any requestor who alleges any of these disputes could bring any Agency before the Public Access Ombudsman, then could bring us before the PIACB, and then could take us to Circuit Court, all of which would require hours of preparation from my office that would make it even more challenging to fill other requests in the limited time frame of the PIA. I am extremely proud to say that we have had zero matters referred to the Ombudsman under the current process. I place the credit for this upon the integrity with which we abide by PIA and the hard work we do to educate requestors about the PIA. We work with requestors to help them understand the rationale for our denials or redactions and to understand the small chance of success should they file in Circuit Court while also providing them any information we can. HB 183 would undermine this process. If a requestor can go before the Ombudsman and the

PIACB for any of the listed reasons, then, I suggest, they will ignore my rationale and take their chances before the Ombudsman and PIACB. It doesn't cost them, but it *does* cost my agency. The preparation and the timely responsiveness to the informational requests and the mediation and the hearing will eat enormous resources. Just as the bill provides "at least four staff members to assist the Board and the Office of the Public Access Ombudsman to carry out the duties" (page 7 §4-1A-03), this bill would require additional legal and support personnel that my office would be forced to hire to comply with these changes to the PIA. Just as the Ombudsman and the PIACB predict increased complaints and PIA requests, UMBC believes the same.

For fiscal year 2021, the combined estimated fiscal impact for UMBC is expected to be \$375,838. The fiscal impact will increase in subsequent fiscal years. This cost includes an attorney and a paralegal to respond to the complaints before the Ombudsman and the PIACB, and to ensure that UMBC is responding within the short time frames dictated by these changes. Our IT department predicts need for one SOC analyst and software solutions to enable response to the predicted increased demand upon their services and to handle timely responses to requestors and the PIACB. Finally, the online reporting and metric tracking, along with a process for timely publishing of requests and responses, will require the hiring of a web specialist in our office to meet these statutory requirements and avoid an adverse PIACB finding or audit finding.

Regarding the proposed PIA language, UMBC has noted a number of concerns to point out. Prior to this proposed bill, the current PIA statute placed the authority to determine discretionary exemptions (denials of disclosure) in the hands of the Agency's custodian who knows the records best. House Bill 183 gives the PIACB the authority to review (page 7 §4-1A-04(a)(1)(I)) and overrule the Agency's decision (page 8 §4-1A-04(a)(3)(I)), despite lacking personal knowledge of the records and, for most PIACB members, lacking any experience being a custodian of Agency records. House Bill 183 gives the PIACB the authority to waive reimbursement to the Agency if it finds the Agency's fee was "unreasonable" despite the Agency's hourly wage accounting for the costs of the document production ((page 7 §4-1A-04(a)(II)&(III) and page 8 §4-1A-04(a)(3)(II)&(III)). Finally, Higher Education records are unique amongst agencies. Our records are covered by a number of state and federal statutes that limit disclosure, including, to the Ombudsman or the PIACB. I would not expect that the PIACB, or the Ombudsman, would be expertly aware of these statutes. My institution, and my staff, would be left to choose between potential criminal, and civil, liability and violating the PIACB's decision under these changes.

The explanation for HB 183 is that there are some Agencies who do not act in good faith in regards to the PIA. UMBC believes in the intent and objectives of the PIA and want to be able to continue to fulfill requests without the distraction of these changes. We ask that we be permitted to retain authority over our PIA responses, that we be free from these significant fiscal impacts, and that the PIA changes be denied. Thank you for allowing the UMBC to share our thoughts regarding House Bill 183 and urge an unfavorable report.