

**LAWRENCE J. HOGAN, JR.**  
*Governor*

**BOYD K. RUTHERFORD**  
*Lt. Governor*



**LISA A. KERSHNER**  
*Public Access Ombudsman*

**STATE OF MARYLAND  
OFFICE OF THE  
PUBLIC ACCESS OMBUDSMAN**

January 29, 2021

Mr. J.H. Snider  
**VIA EMAIL**

**RE:** Your request for PIA Mediation with the Open Meetings Act Compliance Board

Dear Mr. Snider:

The Public Access Ombudsman (“Ombudsman”) has asked me to respond to your recent emails of January 26 and January 28, 2021, both of which concern a matter you submitted to the Ombudsman on January 7, 2021, for mediation with the Open Meetings Act Compliance Board (“Board”). That matter involves a record request you made to the Board on November 25, 2020, seeking the draft of the Board’s annual report that was discussed and modified at its annual meeting on September 14, 2020. The matter also involves informational questions you posed to the Board seeking its opinion as to the exemptions, if any, that would allow draft documents used during a public meeting to be withheld under the Public Information Act (“PIA”)<sup>1</sup>.

I understand that the Board, on January 7, 2021, produced the requested draft report to you without any redaction and without asserting any exemptions under the PIA. The cover email attaching the draft report also included an apology for the misunderstanding as to the record you were seeking, which led to the delay in producing it to you. At the time you submitted your complaint to the Ombudsman seeking mediation with the Board, you had received the draft annual report you requested.

Since then, the Ombudsman has reviewed the documentation and communications you submitted to her office, and has conferred with Board counsel regarding the handling of this matter. Based on this review, she has determined that there is no open or live public record dispute between you and the Board that she can mediate under the PIA.

The PIA defines “public record” as an “original or any copy of any documentary material that . . . is made by a unit or an instrumentality of the State or of a political subdivision or received by the

---

<sup>1</sup> Per your January 26, 2021, email the precise issues posed to the Ombudsman are: (1) the “PIA exemptions OMACB and other Maryland public bodies claim when they belatedly provide [] reports to the public”; (2) how the Board “interprets the law regarding when it and other Maryland public bodies must make their reports accessible to the public before, during, and after a public meeting where a written report is the topic of discussion and action”; and (3) “the exemption OMACB claimed in acting with what [you] believe was an unreasonable delay after its annual report should have been made publicly available.”

unit or instrumentality in connection with the transaction of public business[.]” Md. Code Ann., Gen. Provisions § 4-101(j)(1). “[A] person or governmental unit that wishes to inspect a public record shall submit a written application to the custodian.” *Id.* § 4-202(a). Under certain circumstances, a written request may not be required. *Id.* §§ 4-202(b), 4-201(c). The PIA also provides the scope of the Ombudsman’s duties regarding mediation of disputes that arise in the context of public records requests. Specifically, the Ombudsman:

[S]hall make reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records under this title, including disputes over: (1) the custodian’s application of an exemption; (2) redactions of information in the public record; (3) the failure of the custodian to produce a public record in a timely manner or to disclose all records relevant to the request; (4) overly broad requests for public records; (5) the amount of time a custodian needs, given available staff and resources, to produce public records; (6) the request for a denial of a fee waiver under § 4-206(e) of this title; and (7) repetitive or redundant requests from an applicant.

*Id.* § 4-1B-04(a) (emphasis added). As noted above, there is no dispute that you were provided the public record that you requested in full, unredacted form. The Board did not claim any exemptions. Though the record was not provided in a timely manner, there is no live dispute about a public record request for the Ombudsman to mediate under § 4-1B-04.

The Ombudsman cannot mediate or address the informational questions you posed to the Board. The request does not involve a public record; rather you seem to seek a general opinion on how the Board and other, unnamed public bodies, interpret and apply the law. It is true that the Ombudsman, in her discretion and while discharging her statutory duties, will at times ask an agency to provide broader, more general information about how it applies the exemptions listed in the PIA. The Ombudsman does this in the context of live disputes or, sometimes, to prevent a specific, foreseeable dispute from arising. Neither of these contexts are present here. To the extent that you seek an advisory opinion about how the Board and other public bodies interpret “the law” generally, the Ombudsman lacks authority to provide or compel such an opinion.

I do note that the Board has not interpreted the Open Meetings Act to require public bodies to provide the public with copies of documents used in meetings, so long as the public body ensures that the observing public has the same information that someone reading the minutes from the meeting would have. 9 *OMCB Opinions* 206, 212 (2015). However, the PIA might require disclosure, upon request, of such documents. Here, the document you requested was provided to you. If, in the future, a dispute arises regarding a public body’s response to your request for a specific public record referenced at an open meeting—e.g., the public body claims an exemption or, in your opinion, improperly redacts the record—the Ombudsman may be able to assist you.

Finally, I understand that you are frustrated when agencies require “even the most trivial of information requests” be submitted in the form of a record request under the PIA. While the Ombudsman is sympathetic to the fact that it can, at times, be difficult to get answers to simple questions from government agencies, the fact remains, that the PIA is triggered by a request for a public record, and that the Ombudsman’s program operates within the confines of the PIA. She is also mindful that the questions you ask here are not necessarily simple or permitting of a uniform answer that applies to all agencies or public bodies and all documents they might consider during

January 29, 2021

Page 3

meetings. The Ombudsman has done all she can do to assist you with this particular matter. Any issues you have with the law as it currently exists are more properly directed to the General Assembly.

Sincerely,

/s/

Sara Klemm  
Assistant Attorney General  
Public Access Unit