

MACo Summer Conference

Body-Worn Camera Footage and the PIA

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“Broad right of access”

- PIA generally to be construed “in favor of allowing inspection of a public record, with the least cost and the least delay” to the requester. General Provisions Article § 4-103(b).
- Maryland Court of Appeals – “We have reiterated on numerous occasions that the PIA reflects the need for wide-ranging access to public records, and therefore, the statute should be construed in favor of disclosure for the benefit of the requesting party.” *Ireland v. Shearin*, 417 Md. 401 (2010).

Body-worn camera footage – public record

- A **public record** is “the original or any copy of any documentary material,” in any form, that “is **made by** a unit or an instrumentality of the State or of a political subdivision or **received by** the unit or instrumentality **in connection with the transaction of public business.**” General Provisions Article § 4-101(k).
- “Except as otherwise provided by law, a custodian **shall** allow a person or governmental unit to inspect any public record at any reasonable time,” and “[i]nspection or copying of a public record may be denied only to the extent provided under [the PIA].” General Provisions Article § 4-201(a).

Part I exemptions – law outside the PIA

- General Provisions Article § 4-301(a)(1) – **must** deny inspection if “by law, the public record is privileged or confidential.”
 - E.g., records protected by attorney-client privilege
- General Provisions Article § 4-301(a)(2) – **must** deny inspection if contrary to state statute, federal statute or regulation, a rule adopted by the Court of Appeals, or an order of a court of record.
 - E.g., Courts & Judicial Proceedings Article § 3-8A-27 – protects certain police records pertaining to minors

Part II exemptions – mandatory denial of specific records

- Custodian **must** deny inspection “[u]nless otherwise provided by law.”
General Provisions Article § 4-304
- Examples:
 - Hospital records, § 4-306
 - Personnel records, § 4-311
 - Student records, § 4-313
 - Shielded criminal and police records, § 4-327

Part III exemptions: mandatory denial of specific information

- Custodian **must** deny inspection of a part of a public record, “[u]nless otherwise provided by law.” General Provisions Article § 4-328.
- Examples:
 - Medical or psychological information, § 4-329
 - Social security numbers, § 4-334
 - Home address, telephone number of public employees, § 4-331
 - Financial information of an individual, § 4-336

Part IV exemptions – discretionary denials

- “Unless otherwise provided by law,” custodian **may** deny inspection of records or information “if a custodian believes that inspection of a part of a public record . . . would be contrary to the public interest.” General Provisions Article § 4-343.
- Examples:
 - Investigative records, intelligence information, security procedures, § 4-351
 - Information related to emergency management, § 4-352
 - 911 communications record, § 4-356

Note about police misconduct records

- Before Oct. 1, 2021, considered personnel records subject to mandatory denial under § 4-311.
- Now classified as investigative records subject to discretionary withholding under § 4-351 – meaning that a custodian may deny only if disclosure is contrary to the public interest.
- Note – records of “technical infractions” continue to be considered personnel records.
- Anecdotally, it seems that many police misconduct files contain BWC footage.

Police misconduct records cont'd

- General Provisions Article § 4-351(d) places certain redaction duties upon custodians:
 - **Must** redact “medical information of the person in interest,” “personal contact information of the person in interest or a witness,” and “information relating to the family of the person in interest.”
 - **May** redact the record “to the extent that the record reflects witness information other than personal information.”

Reasonable fees

- Fee must bear a “reasonable relationship to the recovery of actual costs.” General Provisions Article § 4-206(a)(3).
- Recoverable costs include cost of time spent searching for, preparing, and reproducing the records (including attorney review) and actual costs of reproduction (e.g., copies or media).
- Staff and attorney costs must be prorated for each individual’s salary and actual time spent on the request – does not include benefits.
- To the extent possible, use the lowest-compensated staff available and competent to prepare the response.

Requests for BWC footage – tips

- Help narrow the scope of broad requests – if possible, provide a “menu” with information about responsive footage – e.g., in PIACB 22-13 (May 6, 2022).
- Provide requesters with detail about the work involved in preparing BWC footage for production.
- Seek assistance from the Public Access Ombudsman – dispute resolution in the context of voluntary, confidential mediation.
 - <https://news.maryland.gov/mpiaombuds/#>
 - PIA.Ombuds@oag.state.md.us

Recent changes to ADR in the PIA

- As of July 1, 2022, start with mediation through the Public Access Ombudsman – generally 90 days to try to resolve the dispute.
- Mediation can be initiated by both requesters and custodians.
- If the dispute is not resolved in mediation, some disputes are eligible to go to the PIA Compliance Board:
 - Custodian denied inspection
 - Custodian failed to respond to PIA request
 - Custodian charged an unreasonable fee over \$350
 - PIA request is “frivolous, vexatious, or in bad faith”

Recent changes to ADR cont'd

- PIA Compliance Board complaints must be filed within 30 days after receiving the Ombudsman's final determination.
- Responding party (i.e., the custodian or PIA requester) has 30 days to send a response to the Board.
- Board will issue a written decision within 30 days after receiving the response, or within 30 days after an informal conference (if held) or receipt of any additional information the Board requests.
- Complainant or custodian may appeal the Board's decision to circuit court – appeal automatically stays the Board's decision.