

DHMH POLICY

<http://dhmh.maryland.gov/pages/op02.aspx>

OFFICE OF THE SECRETARY – Office of Communications

DHMH Policy 01.04.01

Effective: July 14, 2016

PUBLIC INFORMATION ACT (PIA) POLICY

I. EXECUTIVE SUMMARY

The Department of Health and Mental Hygiene is committed to accountability, transparency and compliance with the State's Public Information Act (PIA). This policy is intended to facilitate appropriate and timely access by the general public or a governmental unit to the public records maintained by the Department.

II. POLICY STATEMENTS

A. DEFINITIONS.

In this policy the following words have the meaning indicated.

1. **“Applicant”** means a person or governmental unit that requests to inspect a public record of the Department.
2. **“Custodian”** means the official custodian or the Department employee who has physical custody and control of public records.
3. **“Department”** means Department of Health and Mental Hygiene.
4. **Entity.**
 - a. **“Entity”** means any administration, division, office, unit, or program within the Department.
 - b. **“Entity”** does not include Local Health Departments, the Maryland Health Care Commission (MHCC), or Health Services Cost Review Commission (HSCRC).
5. **“Official Custodian”** means the Secretary of Health and Mental Hygiene or the Secretary's designee.
6. **“PIA”** means the Maryland Public Information Act, General Provisions Article, §§4-101—4-601, Annotated Code of Maryland (2014 & Supp. 2015), as amended from time to time.

Department of Health & Mental Hygiene

OFFICE OF REGULATION AND POLICY COORDINATION (ORPC)

201 West Preston Street - Room 512 - Baltimore Maryland 21201-2301

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7. “**PIA Contact**” means the Department employee designated by the Secretary of the Department to receive all PIA requests submitted to the Department.
8. “**PIA officer**” means the Department employee designated by an individual entity of the Department to coordinate all PIA requests for that entity.
9. “**PIA request**” means a request submitted by a person or governmental unit for specific public records presumed to be in the custody of the Department.

B. PIA CONTACT.

1. The Secretary shall designate an employee of the Department to receive notification of all PIA requests submitted to the Department.
2. The contact information for the PIA Contact shall be posted in a user-friendly format on the Department’s web site. The contact information shall include the PIA Contact’s name, business address, business phone number, email address, and the Internet address of the Department. This information shall be updated whenever a change(s) occur.
3. The Department shall submit the contact information for the PIA Contact to the Office of the Attorney General at PIA.Custodians@oag.state.md.us on an annual basis, or more frequently whenever change(s) occur.

C. DESIGNATION OF PIA OFFICER.

1. Each entity shall designate a primary PIA officer and a secondary PIA officer.
2. Periodic training will be conducted by the Office of the Attorney General (OAG). The OAG shall provide contact information for the OAG trainers to the supervisor of each entity. The supervisor of each entity shall provide contact information for the PIA officers for that entity to the OAG trainers. The supervisor of each entity is responsible for affording the PIA officers for that entity the opportunity to receive training in the handling of PIA requests. The OAG is responsible for ensuring that all PIA officers who attend receive appropriate training in the handling of PIA requests.
3. The designated PIA officers for an entity have the responsibility for coordinating responses to all PIA requests received for that entity by the Department PIA Contact, and for notifying the PIA Contact of all PIA requests received directly by the entity.
4. The supervisor of each entity shall provide the names and contact information of the entity’s PIA officers to the Director of Communications at dhmh.pia@maryland.gov, who shall have the responsibility of maintaining and circulating a central list of PIA Officers.

D. DESIGNATION OF IMMEDIATELY-AVAILABLE RECORDS.

1. Each entity shall designate types of public records of that entity that can be made available to any applicant immediately on request.
2. Each entity shall maintain a current list by type of public record of the public records that have been designated as available to any applicant immediately on request. Each entity's list shall be posted on the entity's website.

E. INITIAL SCREENING PROCESS.

1. Determine whether the request seeks records previously identified as available immediately, and if so, deliver those documents promptly to the applicant. Examples of documents in this category include previously compiled statistics, annual reports, and other readily-accessible documents.
2. For other requests, if the request was made orally, ask the applicant to provide a written request that clearly identifies the records being sought by the applicant.
3. Determine whether the PIA request seeks records, such as medical records, that are only available to persons in interest and, if so, whether the applicant is a person in interest.
4. Review the PIA request to determine whether it presents any of the following issues:
 - a. Does the PIA request cover existing records in the entity's custody? If no, notify the applicant within 10 business days in writing or by e-mail, and refer the applicant to the actual records custodian, if known. Entities are not responsible for producing documents not already in their custody.
 - b. Does the PIA request require creation of a record? Entities are not responsible for creating paper or electronic records to satisfy a PIA request. If a portion of a public record is the subject of a PIA request, an entity is responsible for producing the portion of the public record containing the requested information, which does not constitute creating a new public record. If a public record exists in a searchable and analyzable electronic format, the act of providing a portion of that public record in a searchable and analyzable electronic format does not constitute creating a new public record.
 - c. Is the PIA request unclear or overly broad? If so, contact the applicant within 5 business days to clarify or narrow the PIA request.
 - d. Will it take more than 10 business days to produce the requested records? If yes, notify the applicant, in writing or by email (See **V. Appendix - Sample 10-day Letter**), within the 10-day time period following receipt of the PIA request, and include:

- i. The number of additional business days needed to respond to the PIA request,
 - ii. The reason for additional time is required, and
 - iii. An estimate of the range of fees that may be charged.
5. The Department's Communications Office should be notified of all PIA requests received from the media.

F. RESPONSES TO PIA REQUESTS.

1. If an entity has the records and can find those covered by the PIA request after a reasonable search, promptly retrieve the records.
2. Review the records to determine whether any PIA exemptions apply and whether the records must be redacted before making them available.
3. Each entity shall have a process for review and approval of proposed responses to PIA requests. Each entity should identify the 10 most requested categories of information to make determinations as to whether exemptions to disclosure would apply. If the supervisor of the entity requires legal advice concerning the disclosure of the records, the supervisor of the entity should contact the Office of the Attorney General.
4. Once it has been determined that records are to be disclosed, promptly notify the applicant, in writing or by email, that the records are available for inspection or copying.
5. If records are to be withheld in whole or in part, the PIA officer should send the applicant a letter within 10 business days of the determination that records are being withheld in whole or in part:
 - a. Describing the records being withheld in whole or in part, as applicable;
 - b. Explaining why those records are, or specific information is, exempt from disclosure;
 - c. Citing legal authority for each category of records or information withheld in whole or in part; and
 - d. Notifying the applicant how to seek review of the decision to withhold records or information.

* Before sending the letter, the entity should consult with the Office of the Attorney General for assistance in determining whether any specific exemptions from disclosure apply. (See **V. Appendix - Sample Denial Letter**)

7. Each entity should respond to a PIA Request within 30 calendar days or less, unless the Applicant agrees to extend the period for response.

G. COPIES.

1. If the applicant seeks copies, provide them within a reasonable time. If the PIA request response is voluminous, discuss a mutually agreeable schedule – for example, providing copies on a rolling basis.

2. If copies are requested in an electronic or other special format, honor that request if it is possible to do so without significant cost or burden on the agency. In some circumstances, the applicant may have a right to an electronic copy. Whenever possible, electronic documents should be distributed in pdf format. Consider whether metadata should be removed from the electronic copy to be provided to the Applicant. If electronic documents contain personal health information, consider encryption and password protection.

H. FEES.

1. COMAR 10.01.08.04A governs the fees that the Department may charge for responses to PIA requests.

2. When the PIA request will require more than two (2) hours to respond, provide the applicant an estimate of the charges for response time and copying, and obtain agreement from the applicant that the actual charges will be paid. The entity's PIA officer, with the approval of the entity's supervisor, may request prepayment before completing the response.

3. In accordance with COMAR 10.01.08.04C, the entity's PIA officer, with the approval of the entity's supervisor, may waive charges for responses to PIA requests.

III. ADDITIONAL INFORMATION

More information about the PIA may be found in the Attorney General's manual, available online at <http://www.oag.state.md.us/opengov/pia.htm>.

IV. REFERENCES

- COMAR 10.01.08 Procedures for Access to Records
http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.01.08.*
- Maryland Public Information Act, General Provisions Article, §§4-101—4-601, Annotated Code of Maryland (2014 & Supp. 2015)
<http://mgaleg.maryland.gov/webmga/frmStatutesText.aspx?article=ggp§ion=4-101&ext=html&session=2016RS&tab=subject5>

- Maryland Public Information Act Manual, Maryland Attorney General website
<http://www.oag.state.md.us/opengov/pia.htm>

V. APPENDIX

1. Sample 10-day Letter
2. Sample Denial Letter

APPROVED:



Van T. Mitchell, Secretary

July 14, 2016
Effective Date

SAMPLE 10-DAY LETTER (or E-MAIL)

September 17, 2015

Connie Have, Esquire
1000 Lawyer Building
Baltimore, Maryland 21200

Ms. Have:

The License Commission has received your request under the Public Information Act, Md. Code Ann., Gen. Prov. ("GP") §§ 4-101–4-601, seeking records related to the Commission's denial of a license or permit to Wanda Know and other materials related to the Commission's licensing practices. The Commission received your request on September 2, 2015, and began to process it. I write now to advise you that it will take us more than 10 working days to produce the records, to give you the date by which we expect to be able to do that, and to explain why we are unable to produce them more quickly. I write also to provide an estimate of the costs of producing the records.

With regard to the time it is taking to make the records available to you, the second part of your request—seeking materials related to the Commission's license review process in general—encompasses a large volume of materials, some of which were located in off-site storage and in the Commission's satellite offices, and it took some time to locate and retrieve them. We are now reviewing the collected materials to determine whether they are, in whole or in part, exempt from disclosure under the Act.

As for when we can make the records available, we expect that the review process will take between 10 and 20 hours to complete. If so, we anticipate that we will be able to respond to your request by September 25. I do not yet know whether all of the records are subject to inspection, but, if any are to be withheld, the response will explain the reason for that.

As to the cost, we expect that our response will generate a fee between \$250 and \$700, depending on the time and hourly rates of the individual staff and attorneys who must conduct the review, and with the first two hours provided free of charge. In addition, there would be a copy charge of \$.25 per page should you want copies of the responsive materials. We anticipate that the additional copy charge would be between \$100 and \$150.

Please do not hesitate to contact me if you have any questions or concerns regarding the Commission's processing of your request.

Freeman Information
Executive Director

SAMPLE DENIAL LETTER

September 25, 2015

Connie Have, Esquire
1000 Lawyer Building
Baltimore, Maryland 21200

Dear Ms. Have:

I have received your letter dated August 31, 2015, in which you request certain records under the Public Information Act, Annotated Code of Maryland, General Provisions Article ("GP"), § 4-101 *et seq.*, on behalf of your client, Wanda Know. In particular, you seek to inspect and copy all records in my custody and control pertaining to the following:

(A) the denial by the Commission of the license or permit to Wanda Know which occurred on August 17, 2015, and

(B) any studies, statistics, reports, recommendations, or other records that treat in any fashion the Commission's actions, practices, or procedures concerning the granting or denial of licenses or permits during the last three fiscal years.

My staff has collected those records in our custody that are responsive to your request. You may inspect all of the records we have compiled with two exceptions.

First, 13 emails between an Assistant Attorney General and the Commission's Chairman and 2 confidential legal memoranda prepared by the Assistant Attorney General for the Chairman are subject to the attorney-client privilege and are therefore protected from disclosure by GP § 4-301 as privileged or confidential records. These same materials are also covered by the deliberative process privilege, and thus exempt from disclosure under GP § 4-301, and qualify as intra-agency memoranda exempt from disclosure under GP § 4-344. All of these records are internal materials prepared by counsel to inform the Commission of the different options available to it in considering Ms. Know's application. In accordance with GP § 4-343, I find that the disclosure of these materials would be contrary to the public interest because it would discourage the Commission's receipt of full and frank advice.

Second, I am also denying access to a portion of an investigatory file of this agency concerning your client. This file was compiled as part of a law enforcement investigation of this agency and is therefore covered by GP § 4-351. While your client is a person in interest as to these records, complete disclosure of the file would be contrary to the public interest since inspection would disclose the identity of a confidential source and would also disclose investigative techniques and procedures of the Commission. Apart from that portion, the balance of the investigatory file on your client is available for your inspection.

The cost of searching for and preparing the records for disclosure comes to \$380, which represents 16 hours of staff time at prorated hourly salaries of \$25 and \$40 per hour, with the first two hours provided free of charge. You may also obtain copies of the records. This agency charges a fee of \$.25 per page for copies. If you wish to inspect the records that are available to

your client under the Act, please call my administrative assistant, Madge Public, to arrange for a mutually convenient time.

Pursuant to GP § 4-362, your client is entitled to seek judicial review of this decision. Your client also has the option to file a complaint with the Public Information Act Compliance Board concerning the amount of the fee charged, see GP § 4-1A-01 *et seq.*, and may also refer any concerns about this decision to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Also, if you have any questions about this letter, please feel free to contact me.

Sincerely,

Freeman Information
Executive Director

cc: Evan Hand
Assistant Attorney General