

Internal
Audit
Report

Superintendent of Schools – Office of Law

**Office of Law: Maryland Public
Information Act (MPIA) Process Audit**

October 2023

Office of Law

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providing high quality legal counsel, advice and
representation to the Board of Education, the
Superintendent of Schools, Executive Staff
members, schools, and offices.*



Baltimore County Public Schools
Office of Internal Audit

Andrea M. Barr, CGAP, CBM
Chief Auditor

Office of Law: Maryland Public Information Act (MPIA) Process Audit

Background

Maryland's Public Information Act (MPIA) of the General Provisions (GP) Article, grants the public a broad right of access to records that are in the possession of State and local government agencies. The basic mandate of the MPIA is to enable the public to have access to government records without unnecessary costs or delay.

The Office of Law coordinates MPIA requests for BCPS.

Objective

The audit objective was to determine if BCPS is compliant with applicable MPIA laws and policies.

Results in Brief

- During FY 23, 210 MPIA requests were received by BCPS. Of these, 189 were closed, 13 were open¹, and 8 were transferred.
- For 9 of the 189 closed MPIA requests, the 10-business day notification letter was sent late.

Potential Risks

Lack of compliance with the MPIA:

- MPIA requests are not processed expeditiously.
- MPIA costs are not calculated properly.
- Privacy rights are not protected.

Recommendation

Consider the feasibility of purchasing PIA management software.

Response

Staff is researching the feasibility of a software product which would increase our ability to meet and exceed statutory deadlines (10-day and 30-day) and improve our internal and external customer interface. Additionally, staff will consult with IT to request development of an automated acknowledgement email to the applicant from the MPIA mailbox. As is evidenced by 2023-2024 first quarter responses, staff have significantly improved 10-day letter response times and there were no late 10-day letters in the first quarter. Staff is also now utilizing a new calculator which only counts holidays when they are also school or school system holidays to correct miscalculation of the 10-day deadline.

¹ As of August 28, 2023.

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BACKGROUND

Purpose and History of the PIA in Maryland

Maryland’s Public Information Act (PIA) grants the public a broad right of access to records that are in the possession of State and local government agencies. It has been a part of the *Annotated Code of Maryland* since its enactment as Chapter 698 of the Laws of Maryland 1970 and is similar in purpose to the federal Freedom of Information Act (FOIA). The basic mandate of the PIA is to enable people to have access to government records without unnecessary costs or delay. Custodians of records are to provide such access unless the requested records fall within one of the exceptions in the statute.

Annotated Code of Maryland

The MPIA is found in §§ 4-101 through 4-601 of the General Provisions (GP) Article, *Annotated Code of Maryland*.

BCPS Responsibility for PIA

The Office of Law coordinates MPIA requests for BCPS. BCPS established Rule 2373, “Public Information Act Requests,” which explains BCPS procedures related to MPIA requests and the fee schedule. In accordance with the *Annotated Code of Maryland*, no fees are assessed for the first two hours of employee time that is needed to respond to a request for public records.

Time for Response

Under GP § 4-203(b)(1), if a custodian determines that a record is responsive to a request and open to inspection, the custodian must produce the record “immediately” after receipt of the written request. An additional reasonable period “not to exceed 30 days” is available only where the additional period of time is required to retrieve the records and assess their status under the MPIA. A 10-business day window is used to acknowledge requests and either provide the records immediately or advise that it will take longer.

FY 23 PIA Data Analysis

There were 210 MPIA requests received in FY 23. The total fees received for MPIA requests was \$774.03. Of the 210 requests:

PIA File Resolution	Number of Files
Closed	189
Open ²	13
Transferred – non-MPIA	8
Total	210

² As of August 28, 2023.

There were several resolutions for closed files:

Reason File Was Closed	Number of Files
Responsive records sent - no fee charged	120
Fees not submitted	29
No responsive records	16
Responsive records sent - fee received	11
No response from requestor to clarification	6
Denial	5
Withdrawn	2
Grand Total	189

There were several reasons why there were no responsive records:

- BCPS is not the custodian of the records.
- There was no request to archive video, or the video footage was unavailable.
- There was no record based on the information provided by the requestor; the requestor was asked to provide additional information and did not.
- An IT search for email produced no records.

Requests were denied because of statutory exceptions: the records requested were personnel records, student records, pending proceedings, or confidential commercial information.

COMMENDATIONS

Communication The Policy and Compliance Officer was prompt in her responses to our requests and provided detailed explanations when follow-up was needed.

Improved Response Time The MPIA response time has improved in the first quarter of FY 24.

Average Response Time Comparison	FY 23	FY 24	Improvement
10 Business Day Letter	5.5 days	3.8 days	1.7 days
30 Calendar Day Letter	7.8 days	5.4 days	2.4 days

Standard Operating Procedure (SOP) There is a detailed SOP for tracking MPIA requests that aligns with the *Annotated Code of Maryland*.

Fee Collection The applicable fees for the sampled MPIA requests were properly collected before MPIA requests were disseminated.

*No Exceptions
for 30-Day
Letters*

All 30-day letters in the FY 23 MPIA population were sent on time.

RESULTS

Ten-Business Day Notification Letters Were Sent Late.

Criteria

Under Maryland Code, General Provisions Article, § 4-203:

(a) In general. -- The custodian shall grant or deny the application promptly, but not more than 30 days after receiving the application.

(b) Procedure for approval. --

(1) A custodian who approves the application shall produce the public record immediately or within a reasonable period that is needed to retrieve the public record, but not more than 30 days after receipt of the application.

(2) If the custodian reasonably believes that it will take more than 10 working days to produce the public record, the custodian shall indicate in writing or by electronic mail within 10 working days after receipt of the request:

(i) the amount of time that the custodian anticipates it will take to produce the public record;

(ii) an estimate of the range of fees that may be charged to comply with the request for public records; and

(iii) the reason for the delay.

(3) Failure to produce the public record in accordance with this subsection constitutes a denial of an application that may not be considered the result of a bona fide dispute unless the custodian has complied with paragraph (2) of this subsection and is working with the applicant in good faith.

Finding

Nine of 189 (5%) ten-business day notification letters were sent late. Eight were sent one day late and one was sent five days late.

Cause

There were several reasons for the delays:

- a. The Policy and Compliance Officer's first day was 2 days before the due date of one letter and she had issues with her computer.
- b. A misunderstanding regarding one instance.

- c. A delay in approval regarding one instance.
- d. A due date miscalculation for three instances.
- e. There were similar requests for the same information that arrived on the same date for three instances.

Effect The public did not receive statutory notice of receipt of the MPIA request.

Recommendation Consider the feasibility of purchasing PIA management software. PIA management software has many benefits, including:

- automated email reminders and custom notifications to ensure nothing is missed.
- the ability to easily track record requests, communications, and document production for proof of compliance.
- increased ability to report information about PIA metrics and data.
- data security.
- improved coordination across departments.

Management's Corrective Action

Staff is researching the feasibility of a software product which would increase our ability to meet and exceed statutory deadlines (10-day and 30-day) and improve our internal and external customer interface. Additionally, staff will consult with IT to request development of an automated acknowledgement email to the applicant from the MPIA mailbox. As is evidenced by 2023-2024 first quarter responses, staff have significantly improved 10-day letter response times and there were no late 10-day letters in the first quarter. Staff is also now utilizing a new calculator which only counts holidays when they are also school or school system holidays to correct miscalculation of the 10-day deadline.

Responsible Person(s)

Ms. Margaret-Ann F. Howie

Anticipated Completion Date

Staff is targeting between 6 – 8 months to complete the software research and implementation of the automated MPIA mailbox response.

OBJECTIVE, SCOPE & METHODOLOGY

- Objective** The audit objective was to determine if BCPS is compliant with applicable laws and policies regarding the MPIA process.
- Scope** The audit period is FY 23.
The MPIA audit process was identified as low risk in the FY 24 work plan.
The total MPIA population for FY 23 was 210 requests.
- Methodology** To achieve the audit objectives, we performed the following:
- Obtained and reviewed applicable law, policy, rules, and SOPs.
 - Compared SOPs to applicable laws for compliance.
 - Interviewed the Policy and Compliance Officer regarding the MPIA process.
 - Reviewed a sample of FY 23 PIA requests to determine compliance with the law.
 - Performed data analysis on FY 23 and FY 24 Quarter 1 MPIA requests.