



## **Maryland Health Benefit Exchange Public Information Act Policy**

### **What is the Public Information Act?**

Maryland's Public Information Act (PIA), enacted in 1970, grants the public a broad right of access to public records while protecting legitimate governmental interests and the privacy rights of individual citizens. The PIA covers public agencies and officials in Maryland and includes all branches of State government (legislative, judicial, and executive). The PIA is similar in purpose to the federal Freedom of Information Act (FOIA).

### **What is a Public Record?**

A public record is defined as the original or copy of any documentary material in any form, to include written materials, books, photographs, photocopies, films, microfilms, records, tapes, computerized records, maps and drawings, created or received by a State agency or official in connection with the transaction of public business.

### **Who can submit a PIA request?**

Anyone — citizens, corporations, associations, public interest groups, private individuals, and universities.

### **Can I have access to all MHBE records?**

The PIA provides for access to most agency records. Certain records are privileged by law and *must* be withheld. Examples include, but are not limited to, records containing attorney-client advice and attorney work product; hospital records; and personnel records. Even if a record can be disclosed, certain information must be withheld, including, but not limited to, medical and psychological information; trade secrets; individual financial information; and confidential commercial or financial information.

Other records *may* be withheld. Examples include, but are not limited to, investigatory records and interagency and intra-agency memoranda and letters. If you are denied access to any MHBE records, you will be notified as to the specific statutory provisions for each exemption and the procedures for challenging the denial.

You will also be notified if files have been lost or destroyed in accordance with MHBE's filing and retention schedules.

### **Are there fees related to the Public Information Act?**

- The fees described in this section apply to PIA requests. Fees may not be used to discourage requesters, and to this end, PIA fees are limited to standard charges for direct document search, review, and duplication. Also, the PIA specifies that requesters receive the first two hours of search time without charge.
- The term "direct costs" means those expenditures the Agency actually makes in searching for, reviewing, and duplicating documents to respond to a PIA request. Direct costs include, for example, the costs of the employees performing the work and the costs of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, heating, or lighting the facility in which the records are stored.
- The term "search" includes all time spent looking, both manually and electronically, for material that is responsive to a request. "Search" also includes a line-by-line or page-by-page identification (if necessary) of material in the record to determine if it, or portions thereof, are responsive to the

request. Time spent reviewing documents in order to determine whether to apply a statutory exemption is not search time, but review time.

- The term "duplication" refers to the process of making a copy of a document in response to a PIA request. Such copies can take the form of paper copies, audiovisuals, or machine-readable documentation (e.g., magnetic tape or disc), among others.
- The term "review" refers to the process of examining documents located in response to a PIA request to determine whether one or more of the statutory exemptions permit or require withholding. It also includes the processing of documents for disclosure, such as redacting them for release. "Review" does not include time spent resolving general legal or policy issues regarding the application of exemptions.
- In order to be as responsive as possible to PIA requests while minimizing unwarranted costs to the taxpayer, requesters should submit a fee declaration.
- Fee declarations should include the maximum amount a requester is willing to pay for the requested records (e.g., all costs up to \$100). Unless the requester has indicated in advance a willingness to pay fees which will cover the Agency's estimate of the cost to produce the requested records, the Agency will notify the requester if fees are likely to exceed \$25. A written copy of an estimate of assessable fees can be provided if desired by the requester before committing to a willingness to pay.
- The Agency will make every effort to accurately estimate the costs associated with the request. However, the Agency is not bound by the estimate and may charge fees which exceed the estimate. The requester will be provided with justification for the fees. For estimates in excess of \$250, the Agency requires a deposit of 25% of the estimated cost before starting the search for and review of documents. Once the search and review have been completed, payment of the remaining balance must be made in full before the records will be released. In the event that the cost of searching and reviewing the records turns out to be less than the amount of the deposit, the requester will receive a refund for the overpayment.

#### **Fee Waivers:**

Requests for a fee waiver or reduction in fees should be submitted in writing to MHBE. MHBE may grant a fee waiver if it determines, in its sole discretion, that a fee waiver is in the best interest of the public and that it is able to incur the costs of searching for, reviewing, and duplicating the requested records. A fee waiver will not be granted if it is primarily in the commercial interest of the requester.

Decisions to waive or reduce fees are made on a case-by-case basis. A determination pursuant to §10-621 of the State Government Article on a request for a fee waiver is within the discretion of MHBE. State law does not provide a right to a contested hearing or other agency adjudication of this decision.

#### **Aggregating Requests:**

Multiple requests from the same or a related entity may be aggregated, at the discretion of the Agency, for purposes of conducting the search and/or determining applicable fees where:

- 1) The Agency reasonably believes that a requester (or group of requesters) is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees; or
- 2) The Agency believes that the combination of multiple requests, either in whole or in part, promotes administrative efficiency in the handling of the requests. For example, where a single database must be searched for multiple locations.

However, the Agency will not normally aggregate multiple requests on unrelated subjects from one requester. The requester will be informed of the aggregation only if, under the Agency's guidelines, the requester is to be informed of the expected costs prior to the execution of the search.

#### **Collection of Fees:**

Collection of fees will typically be made via regular invoicing after the documents have been provided to the requester or recipient. Fees will be collected in advance if the requester has failed on previous occasions to pay fees within 30 days from the date of billing or if the estimated cost of the fee is in excess of \$250, as discussed above.

**Search & Review Time, Grade, and Hourly Rate (\$):**

MHBE Fees		
Position Type	Salary Grade	Hourly Rate
Clerical	Grade 7 and lower	N/A
Administrative	Grades 8-12	\$29
Professional	Grades 13-18	\$39
Management	Grades 19-21	\$51
Executive	Grades 22 and above	\$77

The fees reflected in this schedule may be subject to change over time.

**Computer Search**

Fee assessments for computer searches consist of two parts: individual time charged at the above rates and machine time. Machine time involves only the direct costs of the CPU, input/output devices, and memory capacity used in the actual computer configuration. Machine time calculations are therefore calculated per request.

**Duplication Cost:**

Duplicated Item	Cost
Office Copy (time + materials)	25¢
Certified True Office Copy	47¢
Oversized Document (e.g., blueprint)	\$2.00 for documents that can be duplicated in-house; for external duplication, actual cost
Pre-printed material	.02¢ per page or established price
Computer copy	Actual cost of duplicating the tape, compact disc, flash drive, or printout (includes operator's time + cost of medium)

Instead of having all of the records duplicated, you may choose to come into MHBE's office to review them; you will still be responsible for the full costs incurred by MHBE in searching for and reviewing the records, which must be paid in full before your review. You must contact Betsy Charlow, Communications Manager, at the contact information below, to arrange for payment and to schedule an appointment to conduct your review. **Walk-in requests cannot be accommodated.** If, during your review, you locate documents you wish to have copied, MHBE staff will have those copies made at the rates set out above. Requesters are not permitted to take files with them to make copies.

**Current Postage Rates:**

Delivery Method	Cost
First Class Letter	Actual cost of postage as established by the U.S. Postal Service
Approx. 25 pages	Currently \$1.25
Approx. 26-50 pages	Currently \$2.15
Approx. 51-100 pages	Currently \$3.00
Other First Class mail	Actual cost of postage as established by the U.S. Postal Service

**Costs for Special Services:**

The information which is covered under the PIA is only that information which is in existence at the time of the request. While there is no obligation for MHBE to generate records to satisfy a PIA request, MHBE may, at its discretion, do so only after agreement has been obtained in writing from the requester to pay for the special service. The decision to provide special services will be made on a case-by-case basis.

Fees for special services are computed to recover all reasonable costs to MHBE for rendering the service. "All reasonable costs" include all direct costs (as defined above) plus all indirect costs to conduct the search and review, and to duplicate the records (for requests to generate records or technical data). Indirect costs for special services will be calculated using MHBE's negotiated federal indirect rate in effect at the time of the request.

**What kind of records does MHBE have and whom do I contact for information?**

Betsy Charlow, Communications Manager  
(410) 547-6324  
elizabeth.charlow@maryland.gov

**What information do I need to provide when requesting records?**

Identification of the record(s) desired is the responsibility of the requester. To provide you with the best possible service, MHBE asks that you provide specific information concerning the record(s) in which you are interested. In order to assist MHBE in conducting timely searches for records, requesters should provide as much identifying information as possible, including the subject matter, date the record was created, and originator, if known.

**How does the PIA process at MHBE work?**

When MHBE receives your request, it is logged, assigned a unique identifying number, reviewed, and distributed to all appropriate departments. You will receive correspondence acknowledging receipt of your request and notifying you of the estimated cost involved, if applicable. If MHBE is not the custodian of the records requested, you will receive information regarding the location of the records, if known. Once any required deposit has been paid, each department will complete its search, and you will be notified as to whether or not pertinent records exist. If there is a balance due for the requested records, you must pay that amount in full before the records will be provided to you.

Once all records have been compiled and prepared, you will receive additional correspondence describing the records that will be provided, including whether access has been denied, the legal basis for denial, and the procedures for challenging the denial.

**Can I submit my request electronically?**

You can submit your request electronically by e-mailing Betsy Charlow, Communications Manager, at [elizabeth.charlow@maryland.gov](mailto:elizabeth.charlow@maryland.gov). Be sure to include all pertinent information.

**Where can I learn more about the Public Information Act?**

The PIA can be found in §§ 10-611 through 10-628 of the State Government Article, which is an article of the Maryland Annotated Code. You can locate the Maryland Annotated Code at your local public library.

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