



Takoma Park City Council Meeting – May 6, 2020 Agenda Item 1

Work Session

Public Information Act Legal Time Requirements Action

Recommended Council Action

The City Attorney will respond to the City Council's questions regarding the Order Temporarily Suspending Legal Time Requirements for the Maryland Public Information Act Timeline

Context with Key Issues

The City Attorney recommended that if needed the City may suspend the requirement to provide a response to a Public Information Act request within 30 days. The City Attorney's recommendation is based on information conveyed to him regarding issues other local governments have encountered and one public information act request that is currently pending in the City which cannot be addressed at present as a result of restrictions on employee activity due to the worldwide pandemic. The Maryland Municipal Attorney's Association and the Maryland Municipal League, recognizing that Public Information Act Request response times are a statewide issue, worked with the Governor's Office of Legal Counsel to establish the process by which a suspension of time for something like the Public Information Act can occur. That process has been followed. The action taken by the City of Takoma Park is similar to that being taken by many local governments in Maryland under the special process set up by Maryland's Governor's Office pursuant to statutory authority granted to the Governor when there is a state of emergency.

The Notice of Order Temporarily Suspending Legal Time Requirements Regarding MD Public Information Act Timeline was prepared by the City Attorney and submitted to the Governor's Office of Legal Counsel for review. After the review, the final notice was provided to the City Manager on April 23 for her signature and publication. The City Clerk published an announcement in the *Takoma Insider* (published April 24) with a link to the signed notice:

Notice of Order Temporarily Suspending Legal Time Requirements Regarding MD Public Information Act Timeline:

The legal time requirements for the City's response to requests under the Maryland Public Information Act are temporarily suspended until thirty (30) days have elapsed from the expiration of the State of Emergency and public health catastrophe, as determined by Governor Hogan. Maryland's Public Information Act ordinarily requires the City to respond to requests for public records within ten (10) days, if there are no responsive records, or thirty (30) days, if responsive records exist. These time requirements are suspended. Link to signed notice.

The notice was published before the City Manager had an opportunity to notify the City Council of the action. Additionally, the notice raised concerns that the City will no longer be responding to questions or requests for information. In response, the City Clerk [posted information](#) on the City website intended to clarify the City's intentions and provide some context.

City of Takoma Park staff members routinely respond to questions and requests for information. This has not changed during the pandemic. Additionally, if requests for records are received, staff continues to provide records that are accessible under the circumstances.

Public Information Act requests will continue to be responded to during the current health crisis. Only in cases where that is not possible will additional time be needed.

The City Council had a number of questions and requests for clarification about the notice and the City's practices in responding to Maryland Public Information Act requests. The Mayor scheduled this work session to allow the City Attorney to respond publicly to the Council's questions.

Council Priority

Engaged, Responsive & Service-oriented Government

Environmental Considerations

N/A

Fiscal Considerations

N/A

Racial Equity Considerations

N/A

Attachments and Links

- Notice of Order Temporarily Suspending Legal Time Requirements Regarding MD Public Information Act Timeline (April 26, 2020)
- Information Posted on the City Website to Clarify the City's Intentions and Provide Context for the Notice
- Appendix I-1 Access to Government Records Under the Maryland Public Information Act
- [Link to the Maryland Attorney General's Website on the Maryland Public Information Act](#)

NOTICE REGARDING RESPONSE TIMES FOR

REQUESTS RECEIVED UNDER THE MARYLAND PUBLIC INFORMATION ACT

This notice is given by Suzanne Ludlow, City Manager, of the City of Takoma Park, Maryland, acting pursuant to the Proclamation of Governor Lawrence J. Hogan, Jr. (the "Governor") dated March 5, 2020, proclaiming a state of emergency and a catastrophic health emergency related to COVID-19, as it may be amended or renewed from time to time, and the Order of the Governor dated March 12, 2020, entitled "Extending Certain Licenses, Permits, Registrations, and Other Governmental Authorizations, and Authorizing Suspension of Legal Time Requirements," as it may be amended from time to time, after finding that the actions described herein will not endanger the public health, welfare, or safety.

The legal time requirements imposed upon the City by Maryland Code, § 4-203 of the General Provisions Article, more commonly referred to as "Maryland's Public Information Act" are suspended until thirty (30) days have elapsed from the expiration of the state of emergency and public health catastrophe as determined by Governor Hogan. Section 4-203(b)(1) states "[a] custodian who approves the application [for a public record] 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." Accordingly, Maryland's Public Information Act ordinarily requires the City to respond to approved requests for public information within ten (10) or thirty (30) days of receipt. These time requirements are hereby suspended.

This Notice is effective immediately. It shall remain in effect until thirty (30) days after the state of emergency has been terminated and the proclamation of the catastrophic health emergency has been rescinded.



Suzanne Ludlow
City Manager
City of Takoma Park, Maryland

STATUS OF RESPONDING TO RECORDS REQUESTS UNDER THE MARYLAND PUBLIC INFORMATION ACT – APRIL 26, 2020

The City Clerk issued this public notice in the April 24 issue of the *Takoma Insider*:

Notice of Order Temporarily Suspending Legal Time Requirements Regarding MD Public Information Act Timeline:

The legal time requirements for the City's response to requests under the Maryland Public Information Act are temporarily suspended until thirty (30) days have elapsed from the expiration of the State of Emergency and public health catastrophe, as determined by Governor Hogan. Maryland's Public Information Act ordinarily requires the City to respond to requests for public records within ten (10) days, if there are no responsive records, or thirty (30) days, if responsive records exist. These time requirements are suspended. [Link to signed notice.](#)

Publication of the notice has caused concerns that the City will no longer be responding to questions or requests for information. This is not the case. The information below is being provided to clarify the City's intentions.

Information from the Maryland Attorney General's [Open Government Website](#):

What is the Public Information Act? *Maryland's Public Information Act ("PIA") gives the public the right to access government records without unnecessary cost and delay.*

The PIA grants you the right to review the available records that are disclosable and to obtain copies of those records. It does not require an agency to answer informational questions or to create a record to satisfy your request.

What is a public record? *A public record is defined as the original or copy of any documentary material in any form created or received by an agency in connection with the transaction of public business. Included in this definition are written materials, books, photographs, photocopies, films, microfilms, records, tapes, computerized records, maps, drawings and other materials.*

City of Takoma Park staff members routinely respond to questions and requests for information. This has not changed during the pandemic. Additionally, if requests for records are received, staff continues to provide records that are accessible under the circumstances. Please be assured that PIA requests will be responded to during the current health crisis. The notice that was published is regarding the normal 30 day requirement within which governments are required to respond to such requests. Given the current crisis, meeting the 30 days will not always be feasible. This course of action has been recommended by the Maryland Municipal Attorneys Association which took the lead on addressing the issue with the Governor's Office. The City's notice was submitted to the Governor's Office of Legal Counsel and approved by it before it was signed and posted. Please [email the City Clerk](#) with any questions.

Access to Government Records Under the Maryland Public Information Act

What is the Public Information Act?

Maryland's Public Information Act ("PIA") gives the public the right to access government records without unnecessary cost and delay.

The PIA applies to all three branches of Maryland state government as well as local government entities. The PIA is found in the General Provisions Article ("GP"), §§ 4-101 through 4-601, Annotated Code of Maryland.

It is similar to the federal Freedom of Information Act which applies to federal executive branch agencies and independent federal regulatory agencies.

The PIA grants you the right to review the available records that are disclosable and to obtain copies of those records. It does not require an agency to answer informational questions or to create a record to satisfy your request.

What is a public record?

A public record is defined as the original or copy of any documentary material in any form created or received by an agency in connection with the transaction of public business. Included in this definition are written materials, books, photographs, photocopies, films, microfilms, records, tapes, computerized records, maps, drawings and other materials.

Who can submit a PIA request?

Anyone.

Are all government records available?

No. The PIA attempts to balance the public's right to access government records with other policies that respect the privacy or confidentiality of certain information.

For example, some public records are confidential under federal or state statutes, under court rules, or under various common law privileges such as attorney-client privilege and executive privilege. GP § 4-301. The PIA itself also protects certain records from disclosure (for example, adoption records, personnel records, certain personal information in Motor Vehicle Administration records). In addition, some information contained in public records must remain confidential (for example, an individual's medical information, confidential commercial information and trade secrets). GP §§ 4-304 to 4-327 (Part II), §§ 4-328 to 4-342 (Part III). In some cases, these protections may be waived.

Other records may be withheld if the agency decides that disclosure of those records would be “contrary to the public interest.” Examples of records subject to discretionary disclosure include investigatory records, information related to academic, licensing, and employment examinations, and documents of a pre-decisional and deliberative nature. GP §§ 4-343 to 4-357 (Part IV).

Do I have a right to obtain a record about me even if it is otherwise confidential under the PIA?

In some cases, yes. The PIA grants a “person in interest” a right to access some records that are otherwise not available to the public under the PIA. A person in interest is usually the person who is the subject of the record.

Whom do I contact to get access to a record under the PIA?

There is no central agency that is responsible for PIA requests. You should contact the agency that has the type of record you are seeking. If you are uncertain about what agency would have the record, you might review the “Maryland Manual” (available online at www.mdarchives.state.md.us/msa/mdmanual/html/mmtoc.html), check agency web sites, or contact your local library where the reference staff might be able to help identify the agency that has the particular type of record. As for to whom to direct your request, check the agency's website; it should have the relevant contact information. You can also check the Attorney General's website and Appendix J to this Manual, both of which have a list of the PIA representatives for various State, county, and municipal bodies.

Is there a particular form that I must use?

No, although some agencies have created request forms to help the agency respond to PIA requests.

In some cases, a telephone call to the appropriate person in a government agency may satisfy your request for a document. In other cases, you will need to submit your request in writing. Address your request to the individual the agency identifies as its PIA contact. If you do not know who that is, address your request to the agency's public information officer or to the head of the agency.

It is important that you specifically describe the records you seek so that the agency can research your request. Sometimes discussions with agency personnel will clarify your request and help the agency find the records you are seeking.

How long will it take for an agency to respond to my request?

In many instances, an agency will be able to respond to your request immediately. In fact, for some frequently requested records, an agency may already have records available on its web site. (For example, the State Department of Assessments and Taxation makes property assessment information publicly available through its web site). Otherwise, an agency is normally expected to comply with a PIA request within 30 days, but there may be instances where an agency needs additional time to locate and review the requested records.

Is there a charge for obtaining records under the PIA?

The PIA allows an agency to charge a "reasonable fee" for copies of public records.

An agency may also charge a reasonable fee for searching for a public record – a charge that may include the time required for locating and reviewing the record. The first two hours of search time are free, but an extensive search may prove time-consuming and therefore expensive. Thus, it is in both your interest and the agency's interest to ensure that a PIA request clearly and accurately describes the records sought. Sometimes discussing your request with agency staff is the best way to gain access to the records you seek promptly and at little or no cost.

Actual fee schedules may be found in agency regulations. Agencies may choose to waive fees in particular cases.

What happens if I am dissatisfied with the agency's response?

If an agency denies all or part of your request, it must provide you with a written explanation that includes the reason for the denial, the legal authority justifying the denial, and your appeal rights.

You have three options if you are dissatisfied with the agency's response: (1) You can go to court if you wish to challenge any aspect of the agency's decision and, if you prevail, potentially receive attorneys' fees and damages; (2) If the agency has charged you more than \$350 and you believe that fee to be unreasonable, you can file a complaint with the Public Information Act Compliance Board; and (3) You can initiate informal mediation of the dispute through the Public Access Ombudsman within the Office of the Attorney General.

How can I learn more about the PIA?

The Office of the Attorney General publishes a detailed legal analysis of the PIA in the Maryland Public Information Act Manual. The Manual also includes the text of the PIA and a sample request letter to help you make a PIA request. The Manual is available on the Attorney General's website, <http://www.marylandattorneygeneral.gov/Pages/OpenGov/pia.aspx>.