Chapter 8:
Penalties for Noncompliance

The PIA provides for both civil and criminal penalties for violations of the Act. Given this potential liability and the salutary purposes of the PIA, care should be taken to make certain that an agency's officials and employees comply with the Act.

A. Liability of Agency

In addition to injunctive relief, a court may award actual damages and statutory damages of up to $1,000 against a governmental unit if the court finds that a defendant knowingly and willfully failed to disclose a public record or part of a record that the person was entitled to inspect. GP § 4-362(d)(1). The official custodian is also liable for actual damages for failure to petition a court for an order to continue a temporary denial. GP § 4-362(d)(2). The statutory term "actual damages" does not include emotional damages. *ACLU v. Leopold,* 223 Md. App. 97, 123 (2015).

Reasonable attorneys' fees and other litigation costs are available if an applicant "substantially prevails." GP § 4-362(f). The awarding of attorneys' fees lies with the discretion of the trial court. *Caffrey v. Department of Liquor Control for Montgomery County*, 370 Md. 272, 289 (2002). While an actual judgment in favor of the applicant is not necessarily required for an applicant to "substantially prevail," the applicant must demonstrate that filing suit could reasonably be regarded as having been necessary to gain access to the records sought, that there is a causal nexus between the suit and the agency's release of the record, and that "key documents" were recovered. *Id.* at 299 (citing *Kline v. Fuller*, 64 Md. App. 375, 385 (1985)). Among the pertinent considerations to be taken into account are the benefit to the public derived from the suit, the nature of the applicant's interest in the released information, and whether the agency's withholding of the information had a reasonable basis in law. *Id.* (citing *Kirwan v. Diamondback*, 352 Md. 74, 96 (1998)); *see also Stromberg Metal Works, Inc. v. University of Maryland*, 395 Md. 120, 128 (2006).

If the statute creating the agency specifically grants immunity from liability, that specific enactment will prevail over GP § 4-362(d). *A.S. Abell Publishing Co. v.*

Mezzanote, 297 Md. 26, 40-41 (1983). However, protection from "damages" does not equate to protection from all liability and, thus, does not protect against the award of attorney fees under the PIA. *Caffrey*, 370 Md. at 296.

The standard for attorneys' fees is very close to the standards under FOIA (5 U.S.C. § 552(a)(4)(E)) and the Civil Rights Attorneys Fees Act (42 U.S.C. § 1988), and the same liberal construction of "substantially prevailing" would probably apply under the Maryland Act. For a discussion of cases under 5 U.S.C. § 552(a)(4)(E), *see* 179 A.L.R. Fed. 1; *see also Stromberg*, 395 Md. at 131 n.4 (questioning whether a litigant who obtains favorable court decision with respect to one item of information has "substantially prevailed"). Once a trial court has determined that attorneys' fees should be awarded, to determine the amount of the award, the court starts with the so-called "lodestar approach" to determining fees, and the amount can then be adjusted in the discretion of the court depending on the factors listed in Maryland Rule 2-703(f). *Sugarloaf Alliance, Inc. v. Frederick County*, 495 Md. 84 (2025). Although that determination is within the discretion of the circuit court, it can be reviewed for abuse of discretion. *Id.*

Fees and costs are available under the PIA only to a prevailing complainant. Compare this provision with the Open Meetings Act, § 3-401(d)(5)(i) of the General Provisions Article, which makes any "party" eligible for fees and costs. Note that the PIA Compliance Board has no authority to award damages, fees, or costs.

B. Liability of Persons Who Violate the Act

1. Criminal Penalties

GP § 4-402(b) provides for a criminal fine not to exceed $1,000 for any person who willfully or knowingly violates the Act. 61 *Opinions of the Attorney General* 698, 701 (1976). This section applies to any person, not just to custodians or agency employees. 65 *Opinions of the Attorney General* 365, 360-71 (1980).

GP § 4-402(a)(3) also provides that a person may not "by false pretenses, bribery, or theft, gain access to or obtain a copy of a personal record if disclosure of the personal record to the person is prohibited by [the Act]." This provision was added to the law to protect an individual's privacy. *See* Governor's Information Practices Commission,

Final Report 549-50 (1982). These "personal records" are the individually identifiable public records defined in GP § 4-501(a).

2. Disciplinary Action

When a court finds that the custodian acted "arbitrarily or capriciously" in withholding a public record, it is to refer the matter to the appointing authority of the custodian for appropriate disciplinary action. GP § 4-362(e)(1). The appointing authority must investigate the matter and take such disciplinary action as is warranted under the circumstances. GP § 4-362(e)(2).

3. Unlawful Disclosure or Use of Personal Records

GP § 4-401(a) authorizes an award of actual damages, attorney fees and litigation costs against:

> A person, including an officer or employee of a governmental unit . . . if the court finds by clear and convincing evidence that:
>
> (1) (i) the person willfully and knowingly allows inspection or use of a public record in violation of [the Act]; and
>
> (ii) the public record names or, with reasonable certainty, otherwise identifies the individual by an identifying factor such as:
>
> 1. an address;
> 2. a description;
> 3. a fingerprint or voice print;
> 4. a number; or
> 5. a picture; or
>
> (2) the person willfully and knowingly obtains, discloses, or uses personal information in violation of § 4-320 of [the Act].

Paragraph (1) of this provision applies to personal *records* defined by GP § 4-501, while paragraph (2) applies to personal *information*, defined by GP § 4-101(h), within Motor Vehicle Administration records. This section authorizes actual damages against officers or employees of a governmental unit and any other "person" who has willfully and knowingly violated the law. *See* GP § 1-114 (defining "person"); *see also Leopold,* 223 Md. App. at 121 (county was an "entity" within the definition of "person" in § 1-101 of the State Government Article, which applied to the PIA prior to its recodification in the General Provisions Article). This provision is not itself a basis for denying a PIA request. Rather, it is an additional sanction for failing to comply with PIA provisions that prohibit disclosure of certain "personal records" and certain "personal information" in records of the Motor Vehicle Administration. *Police Patrol Security Systems v. Prince George's County*, 378 Md. 702, 718 (2003). The sanction also applies to the *misuse* of personal information that was legitimately collected. *See Leopold*, 223 Md. at 116-18.

4. Disclosure of Certain Information to the Attorney General

A custodian is protected from civil and criminal penalties if the custodian transfers or discloses the content of any public record to the Attorney General as provided in § 5-313 of the State Personnel and Pensions Article. GP § 4-403. Section 5-313, part of the "Whistleblower Law," authorizes State employees to disclose to the Attorney General information otherwise made confidential by law.