



OFFICE OF THE INSPECTOR GENERAL

Montgomery County, Maryland



MEMORANDUM OF INVESTIGATION

TO: Rich Madaleno
Acting Chief Administrative Officer

FROM: Megan Davey Limarzi, Esq. *ML*
Inspector General

DATE: September 16, 2020

SUBJECT: MPIA Compliance Issue with Police and Other Department Websites,
OIG Publication Number 21-002

While conducting a recent inquiry to address a complainant's concern, the Office of the Inspector General (OIG) noticed the information provided on the Department of Police's website relative to obtaining information under the Maryland Public Information Act (MPIA) does not fully comply with MPIA requirements and instructions issued on July 10, 2017, by the Assistant Chief Administrative Officer. We noted similar shortcomings when we expanded our review to include the County's MPIA webpage and a random sample of large Montgomery County (County) departments and offices (departments).

Background

The MPIA¹ gives the public access to government records and applies to the Maryland State government, as well as to local government entities in Maryland including the County. The MPIA grants a broad right to public records to any person, regardless of whether they are aggrieved parties or classified as persons of interest². The Maryland Attorney General's MPIA Manual states that "[i]n most cases, a person need not justify or otherwise explain a request to inspect records, and a custodian of records may not require a person to say who they are or why they want the records as a prerequisite to responding to a request."³ The law additionally allows a "person in interest" to obtain certain information not available to others, such as a record of investigation or personnel record.⁴ The MPIA requires a governmental unit's MPIA contact to be identified by name on the unit's website or maintained in a place easily accessible by the public; and that the contact's business address, business phone number, electronic mail address, and the unit's internet address also be included.⁵

¹ Md. Code, General Provisions (GP) §§4-101 to 4-601.

² GP §4-103.

³ Maryland Attorney General's Public Information Act Manual (14th Ed.) (October 2015) 2-1; GP §4-204.

⁴ GP §§4-311, 4-351(b). The MPIA contains the term "person in interest" but not "person of interest."

⁵ GP §4-503(a).

In furtherance of compliance with the MPIA, on July 10, 2017, Assistant Chief Administrative Officer (CAO) Fariba Kassiri (now the Deputy CAO) instructed County Department Directors and MPIA contacts to ensure that department internet sites included the “MPIA contact’s name, business address, business telephone number, and business e-mail address as well as [the] department’s Internet address.”

Inquiry and Outcome

The Department of Police’s website has a page specifically titled “MPIA or FOIA Records Request.” Contrary to MPIA requirements, the page does not identify an MPIA contact by name. The webpage instead instructs that requests be directed to the Police Records Division at their general email address.

Perhaps more concerning, the site states that requests may be denied unless the requestor is a “person of interest” or representing a person of interest. Instructions also direct that the “requestor should provide the date, time, and the location of the incident as well as the incident (report) number to facilitate the request.” Although these instructions may apply to a specific subset of records (e.g., personnel records or a record of investigation), they are contrary to general MPIA requirements and could dissuade people from making requests they are entitled to make and acquiring desired information.

After observing issues with the Department of Police’s compliance with MPIA and the Assistant CAO’s instructions, on July 22, 2020 we examined the County’s efforts to provide the public with required MPIA information through the pages of its website. The County’s main MPIA webpage, (<https://www2.montgomerycountymd.gov/mcgportalapps/mpiacontact.aspx>), contains a linked list of County departments and their respective MPIA contacts that enables the user to send the contact an email message. It does not include the phone number or address of the MPIA contact.

The County also provides MPIA information on its “Departments and Agencies” webpage, <https://www2.montgomerycountymd.gov/mcgportalapps/departments.aspx>. The webpage has a listing of the departments within the executive, judicial, and legislative branches, as well as County agencies. Each department’s listing when expanded provides the name of the MPIA contact, phone number, and business address. The MPIA contact’s name is a linked field that allows a user to email the contact directly.

Because MPIA contact information is available on the individual department pages, we tested a random sample of 10 large⁶ County departments’ MPIA related webpages to examine whether they provided the MPIA contact’s name, business address, business telephone number, and business e-mail address as well.⁷ We observed that the Health & Human Services, Permitting Services, and Transportation departments websites did not have any of the information required by the MPIA. The Department of Recreation, and Department of Public Libraries’ websites were missing some information as well.

⁶ The OIG assessed size by personnel costs in FY20.

⁷ We did not examine whether the department or office provided the internet address. We thought this was unnecessary as readers of the information would already be on the website.

The following table displays the results of our review:

Table: MPIA Contact Information on County Websites

DEPARTMENT	REQUIRED INFORMATION			
	Name	Address	Phone	Email
Police	N	Y	Y	Y
County Main MPIA Webpage	Y	N	N	N
Correction & Rehabilitation	Y	Y	Y	Y
County Attorney	Y	Y	Y	Y
County Council	Y	Y	Y	Y
Finance	Y	Y	Y	Y
Technology Services	Y	Y	Y	Y
Public Libraries	Y	Y	Y	N
Recreation	Y	Y	N	N
Health & Human Services	N	N	N	N
Permitting Services	N	N	N	N
Transportation	N	N	N	N

“Y” indicates item was present. “N” indicates item was not present

Generally, we found that the County publishes MPIA required information in several locations on its website. However, the data is not always clear, complete or consistent. Aside from not being compliant with law, the lack of information and ambiguous language, particularly on the Department of Police page, could prevent and discourage those seeking information from obtaining what they are lawfully entitled to. Such ambiguity is also inconsistent with the County’s commitment to transparency.

Recommendations

As a result of our observations, we recommend the Department of Police update its website to include the name and individual email address of their MPIA contact and remove language that is inconsistent with MPIA requirements. We similarly recommend that the Health & Human Services, Permitting Services, Transportation, Recreation, and Public Libraries departments add missing information to become compliant with MPIA requirements and the Assistant CAO’s previous directives.

Additionally, we recommend that all county department heads be advised to ensure their department websites include their MPIA contact’s name, business address, business telephone number, business e-mail address, and the department’s internet address.

cc: Fariba Kassiri, Deputy Chief Administrative Officer

Administration's Response to OIG Publication #21-002:

The OIG provided the County's Acting Chief Administrative Officer an advance copy of the report and an opportunity to comment on the recommendations. The following is a copy of the response in its entirety.



OFFICES OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

Richard S. Madaleno
Acting Chief Administrative Officer

MEMORANDUM

TO: Megan Davey Limarzi, Esq.
Inspector General

FROM: Richard S. Madaleno
Acting Chief Administrative Officer

signed via ScanMailDocu.com

SEP 21 2020 4:07 PM EST RSM@MONTGOMERYCOUNTY.MD

for

DATE: September 21, 2020

SUBJECT: *Response to MPIA Compliance Issue with Police and other County Websites, OIG Publication #21-002*

Thank you for the opportunity to respond to your review of MPIA compliance issues on County websites. The responses to your recommendations and actions taken are below.

Recommendation 1: The Department of Police update its website to include the name and email address of their MPIA contact and remove language that is inconsistent with MPIA requirements.

Response: Concur

An email has been sent to the Department of Police instructing them to make the recommended changes by September 23. We will follow up to ensure it was been corrected.

Recommendation 2: The Health & Human Services, Permitting Services, Transportation, Recreation and Public Libraries departments add missing information to become compliant with MPIA requirements and the Assistant CAO's instructions.

Response to MPIA Compliance Issue with Police and other County Websites,
OIG Publication #21-002
September 21, 2020

Response: Concur

An email has been sent to Health & Human Services, Permitting Services, Transportation, Recreation and Public Libraries instructing them to add the missing information by September 23. We will follow up to ensure it was been corrected.

Recommendation 3: All county department heads be advised to ensure their department websites include their MPIA contact's name, business address, business telephone number, business e-mail address, and the department's Internet address.

Response: Concur

A policy reminder email has been sent to all departments instructing them to review their websites and ensure that their MPIA contact's name, business address, business telephone number, business e-mail address, and the department's Internet address are included on the website in a user friendly location by September 25. We will follow up to ensure it was been corrected.