

CCMD_Fav_SB0758

Uploaded by: Bradford, Tierra

Position: FAV

February 18, 2020

Testimony on SB758**Public Information Act - Remote Access, Fee Complaints, Fee Waivers, and Inspection of Judicial Records
(Open Government, Better Government Act)****Judiciary****Position: Favorable**

Common Cause Maryland supports HB 758 would build on the successful implementation of the Public Information Act (PIA) Compliance Board and the Ombudsman program as well as ensure the process for requesting records under the PIA is equitable.

SB 758 would establish that custodians adopt an internet use policy that would expand remote access to public records and increase the transparency of government. Transparency is vital to a proper functioning government and individuals should be given every opportunity to seek information on the institutions that significantly impact their lives.

SB 758 would also give authority to the Public Information Act Compliance Board to preside over complaints alleging that a custodian unreasonably failed to waive a fee. The compliance board is under utilized and there currently is not a mechanism by which individuals can be given authoritative relief for fees that are believed to be inaccurate and unjust can. Essentially this legislation would close a loophole by which custodians could avoid disseminating information by charging unreasonable fees.

This legislation also alters the minimum fee charged under which the Board has authority to review a complaint. By lowering the current \$350 threshold to \$200, ensuring more disputes involving fees and the denial of fee waivers are able to be reviewed by the Board. This will allow the Board the opportunity to ensure that custodians are making the determination on an individualized, case-by-case basis. While the fee waiver process is still left at the discretion of the agency, many of which deny waivers with no discretion, we do believe this is a good starting point that begins to address the limited transparency available to low-income Marylanders. It also eliminates the process for judicial review of an agency's fee waiver decision which is inaccessible to a requester who is asking for a waiver.

Maryland citizens deserve access to information. They need fair and open access to data and public records concerning health, safety, natural resources, civil liberties and how government funds and subsidies are sent. While the General Assembly has taken important steps towards more open and accessible government, our current PIA dispute-resolution process leaves many requesters questioning the overall fairness and efficiency of the PIA.

The PIA Compliance Board and Ombudsman program play an integral role in ensuring government transparency which is vital to a healthy democracy. Expanding the Board's jurisdiction will improve the PIA process while ensuring requesters with limited means receive a more equitable treatment.

We urge a favorable report on SB 758.

MDDC_FAV_SB 758

Uploaded by: snyder, rebecca

Position: FAV



Maryland | Delaware | DC Press Association

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To: Judicial Proceedings Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

Date: February 18, 2020

Re: **SB 758 – Support**

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of media organizations, from large metro dailies such as the Washington Post and the Baltimore Sun, to publications such as The Daily Record and online only outlets such as Maryland Reporter.

The press works to shine light and share information on topics that affect us all. By accessing available public information, journalists are able to provide people data points to help them make more informed decisions. Information under the PIA belongs to all of us. There is a side of the story that doesn't get told if public information is withheld. Journalists connect the dots in their storytelling and help readers better understand a topic.

The bill builds on the successful implementation of the Public Information Act Compliance Board and the Ombuds programs begun in 2015. It increases the PIA Compliance Board's jurisdiction to review disputes involving fee waivers as well as those disputes where fees are \$200 or more. Currently the Board has an extremely narrow jurisdiction of fee disputes of \$350 or more. Fee waivers has been a consistent area of concern, highlighted in the Ombudsman and Board's recently published Final Report on the Public Information Act (<https://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2019/12/Final-Report-on-the-PIA-12.27.19.pdf>), which was requested by the MD General Assembly last year.

I hear regularly from members about PIA problems. Fees pose significant challenges to news gathering operations and sometimes, fees are used to discourage requestors from receiving information. This bill clarifies the language around public interest waivers and provides for specific instances when a fee waiver shall be granted. These changes will allow journalists to receive records free of charge for their reporting. Overbroad requests and other disputes would still go to the Ombuds for mediation.

The Press Association encourages a favorable report on SB 758.

FACTS

MDDCPRESS
ASSOCIATION

MATTER

**We believe a strong news media is
central to a strong and open society.**

Read local news from around the region at www.mddcnews.com

MACo_FWA_SB758

Uploaded by: Butler, Alex

Position: FWA



Senate Bill 758

*Public Information Act - Remote Access, Fee Complaints, Fee Waivers, and
Inspection of Judicial Records (Open Government, Better Government Act)*

MACo Position: **SUPPORT**
WITH AMENDMENTS

To: Judicial Proceedings and Education, Health,
and Environmental Affairs Committees

Date: February 18, 2020

From: Alex Butler

The Maryland Association of Counties (MACo) **SUPPORTS SB 758 WITH AMENDMENTS**. MACo recognizes the importance of the Public Information Act, and counties make good faith efforts to comply with both the letter and the spirit of the law, but are concerned with elements of this bill that would unnecessarily strain already limited county resources.

SB 758 would require record custodians waive fees for inmates. MACo opposes this provision. MACo recognizes inmates can be a challenging population to serve when it comes to PIA requests. While there are inmates deserving of fee waivers, which counties can and in many instances do grant, there are undeniably also abusive requests. A mandatory fee waiver for inmates invites more abusive requests, only serving to inundate counties with more burdensome requests.

SB 758 would require record custodians waive all fees for an overbroadly defined “representative of the news media” and indigent applicants. MACo opposes these provisions. Counties are generous in granting fee waivers, but will charge fees for time-intensive and costly requests as they put a significant burden on limited county resources. Counties should retain the discretion to grant fee waivers. If an applicant is unsatisfied with the fee amount charged for a request, they have the ability to seek a ruling by the Public Information Act Compliance Board provided the fee is over \$350.

Another pending bill, SB 758, proposes sweeping changes to the duties of the Compliance Board to include the ability to hear allegations that a custodian charged an unreasonable fee of \$200 or more, or that a custodian unreasonably failed to waive a fee. MACo supports these provisions that are included in both SB 590 and SB 758. This process allows individuals who feel a custodian has charged an improper fee the ability to seek an outside judgment by the Board.

For these reasons, MACo asks the committee to offer a report of **FAVORABLE WITH AMENDMENTS** for SB 758, and to actively coordinate its efforts with the Committee on Health and Government Operations on productive Public Information Act reforms this session.

BCA_UNF_SB758

Uploaded by: Blendy, Nicholas

Position: UNF



BERNARD C. "JACK" YOUNG
MAYOR

*Office of Government Relations
88 State Circle
Annapolis, Maryland 21401*

SB 758

February 18, 2020

TO: Members of the Senate Judicial Proceedings Committee

FROM: Nicholas Blendy, Deputy Director of Government Relations

RE: Senate Bill 758 – Public Information Act – Revisions

POSITION: OPPOSE

Chair Smith, Vice-Chair Waldstreicher, and Members of the Committee, please be advised that the Baltimore City Administration **opposes** Senate Bill (SB) 758.

As drafted, this bill changes the meaning of “public interest” in Maryland’s Public Information Act (“PIA”) and thereby essentially removes Part IV (Denial of Part of a Public Record) from the PIA, which currently allows the government to deny access to records when disclosing them is not in the “public interest.” The exemptions listed in Part IV include denials of copies of answer keys to for licensing tests (4-345), details of state research projects (4-346), locations of endangered species (4-350), files of ongoing criminal investigations (4-351), and emergency response plans (4-351). Denial of access to these types of records has been considered to be in the “public interest” because we all benefit when firefighters are not able to cheat on their exams with publicly available answer keys, endangered wildlife habitats are not disclosed and the police can complete an investigation before revealing confidential information that helped lead to an arrest, as examples.

Yet, the proposed language in Section 4-206(3) of the bill would mean that none of these records could be kept confidential because they all shed light on government operations, contribute significantly to public understanding and are not for commercial purposes.

Additionally, the bill would mandate fee waivers for search/review fees for all media requests. The City cannot dedicate enough staff to search and review records for such requests. The bill would also give PIA Compliance Board jurisdiction over any “unreasonable failure to waive a fee.” Since there is no legislative guidance on what is an “unreasonable failure to waive” and the City would be unable to gauge what large requests it could ask an applicant to narrow and which ones it could not.

We respectfully request an **unfavorable** report on SB 758.

BaltimoreCounty_UNF_SB0758

Uploaded by: Byrne, Julia

Position: UNF



JOHN A. OLSZEWSKI, JR.
County Executive

CHARLES R. CONNER III, ESQ.
Chief Legislative Officer

KIMBERLY S. ROUTSON
Deputy Legislative Officer

JOEL N. BELLER
Assistant Legislative Officer

BILL NO.: **SB 758**

TITLE: Public Information Act - Remote Access, Fee Complaints, Fee Waivers, and Inspection of Judicial Records (Open Government, Better Government Act)

SPONSOR: Senator Lam

COMMITTEE: Judicial Proceedings

POSITION: **OPPOSE**

DATE: February 18, 2020

Baltimore County **OPPOSES** Senate Bill 758 – Public Information Act - Remote Access, Fee Complaints, Fee Waivers, and Inspection of Judicial Records (Open Government, Better Government Act). This legislation requires public information requests be remotely accessible, waives fees for certain persons who wish to access public information, and adds certain judicial branch records to the category of “public records.”

County Executive Olszewski has been a champion of government transparency and accountability, and supports efforts to keep the public informed and engaged. The language in this bill, however, is far too broad to properly implement. As it stands, any individual with a blog could be considered “media” and have public record fees waived, which would place a significant financial burden on the County. Adopting a policy to use the internet and other technology to expand remote access would be equally burdensome, and the County takes issue with the bill’s broad policy directives that can’t be translated into operational functions.

Accordingly, Baltimore County requests an **UNFAVORABLE** report on SB 758. For more information, please contact Chuck Conner, Chief Legislative Officer, at 443-900-6582.

MML_UNF_SB758

Uploaded by: Fiore, Justin

Position: UNF



Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

February 18, 2020

Committee: House Judiciary

Bill: SB 758 – Public Information Act – Remote Access, Fee Complaints, Fee Waivers, and Inspection of Judicial Records (Open Government, Better Government Act)

Position: Oppose

Reason for Position:

The Maryland Municipal League opposes SB 758, which would broadly define the terms “public interest” and “representative of the news media.” Additionally, the bill would require fee waivers if an applicant asks for a waiver and is indigent or is an inmate seeking a record which relates to the inmate’s conviction or incarceration if they have not previously requested such a waiver. Finally, SB 758 would only allow custodians to apply a standard charge for document duplication for a “representative of the news media” if a waiver is requested.

The League is concerned that the definitions in SB 758 are way too broad. Between the definition of “public interest” and a “representative of the news media,” anyone could ask for and MUST receive a waiver – *even if they have the means to pay* – if one claims they will use the information to submit an article to a website or start a blog. We have no means of verifying such statements. We understand this is the language is shared from FOIA, but Maryland’s cities and towns do not have the resources that the federal government possesses.

Smaller municipalities simply cannot afford to produce documents and footage and hire attorneys to deny and redact materials in accordance with Maryland’s PIA laws for free. Our members have been very accommodating to new organizations in the State, waiving a majority of the costs, but anyone with a blog isn’t afford such waivers.

It can take hundreds of hours to review the most voluminous of request and cost thousands of dollars. The challenges are even greater for municipal police departments that have a

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body-worn camera program. MML and our members are committed to government transparency, but we cannot ignore the reality that fulfilling these requests costs money – money that under this bill will have to be recouped in another way, either by cutting from other programs or raising taxes.

The League therefore respectfully requests that this committee provide SB 758 with an unfavorable report.

FOR MORE INFORMATION CONTACT:

Scott A. Hancock	Executive Director
Candace L. Donoho	Government Relations Specialist
Bill Jorch	Manager, Government Relations & Research
Justin Fiore	Manager, Government Relations

USM_UNF_SB758

Uploaded by: hogan, patrick n

Position: UNF



SENATE JUDICIAL PROCEEDINGS COMMITTEE

Senate Bill 758

**Public Information Act - Remote Access, Fee Complaints, Fee Waivers, and Inspection
of Judicial Records**

February 18, 2020

Unfavorable Report

Patrick Hogan, Vice Chancellor for Government Relations

Chair Smith, Vice Chair Waldstreicher and committee members, thank you for the opportunity to share our thoughts on Senate Bill 758. The bill would require the University System of Maryland (USM) to waive fees for indigent requesters who ask for a waiver and waive fees for document requests if the request is made by a representative of the news media.

The Maryland Public Information Act (PIA) entitles each person to complete information about the affairs of government and the official acts of public officials and employees, unless otherwise expressly provided by law. The University System of Maryland is committed to providing customer-friendly service when responding to requests for public information.

Senate Bill 758 alone would have a significant fiscal impact upon USM institutions due to the high volume and complexity of PIA requests generally. For example, the University of Maryland, College Park would need to add at least 4-5 FTE **new** personnel to handle the responsibilities at a cost of approximately \$800,000. Adding the investment in technology infrastructure to meet such requirements there is no method to re-capture even a portion of the processing costs. The ability to assess fees from the university's largest segment of requesters (news media) would be taken away with this bill.

Across the USM, these changes would require all the public university campuses to devote more resources to this task. Since the majority of requests processed would fall within the expanded definition of news media, mandating fee waivers removes any incentive for a requester to submit a refined inquiry. Inquiries will be broad and voluminous if the requester knows no fee can be assessed and delay the processing of requests. One USM institution is currently processing a media request for 20 years' worth of email message sent to or from 23 different state employees. This requires locating the tens of thousands of pages for which once collected must go through legal review and redaction. These are not tasks that can be performed by a computer.

Thank you for allowing the USM to share our thoughts and the USM strongly urges an unfavorable report.

DPSCS_INFO_SB 758

Uploaded by: kahl, catherine

Position: INFO



Department of Public Safety and Correctional Services

Office of the Secretary Office of Government and Legislative Affairs

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CATHERINE KAHL
ACTING DIRECTOR

BILL: SENATE BILL 758

POSITION: LETTER OF INFORMATION

EXPLANATION: This bill will require official custodians adopt a policy to use the internet and other forms of technology to expand remote access to public records. It also gives the State Public Information Act (PIA) Compliance Board greater authority to review decisions of custodians not to waive fees for disclosure of records and expands the rights of those who claim that the custodian unreasonably failed to waive the fee. The bill further provides that custodians shall waive fees for matters of public interest and, most importantly for DPSCS, for inmates requesting records related to their incarceration or conviction.

COMMENTS:

The Department of Public Safety and Correctional Services (DPSCS) is committed to being open, transparent, and collaborative with the public and the communities we serve. The Public Information Act (PIA) allows for the public to request and inspect documents which is a crucial element of the public's trust in our government institutions. DPSCS is committed to safeguarding, archiving, and maintaining public records as well as individual personally identifiable information in accordance with all laws and regulations. DPSCS works in good faith to provide timely and cost-efficient responses, while also balancing the legal and ethical obligations to protect personal and proprietary information.

- Given the span of the agency's responsibilities, and significant number of offenders under its care, custody, and control, the Department receives hundreds of PIA requests annually.
- The Department's Division of Correction (DOC) operates approximately 17 State correctional facilities which house offenders sentenced to incarceration for 18 months and longer. The Department also runs the Baltimore City Jail, under the Division of Pretrial, Detention, and Services (DPDS), which houses pretrial detainees and inmates sentenced to incarceration for 18 months and less. Between the DOC and DPDS, the Department is responsible for an average daily population of approximately 21,000 incarcerated offenders.

- As of the end fiscal year 2019, the Division of Parole and Probation supervised 39,191 active criminal cases.
- This bill requires a Custodian to grant a fee waiver for requests that relate to the conviction or incarceration of an inmate. As previously stated, with the number of incarcerated offenders and those under supervision, such a waiver would place a significant financial burden on the Department in both manpower costs and duplication fees.

CONCLUSION: For these reasons, the Department of Public Safety and Correctional Services respectfully requests the Committee consider this information as it deliberates on Senate Bill 758.

MDOT_INFO_SB0758

Uploaded by: TSO, MDOT

Position: INFO

February 18, 2020

The Honorable William Smith, Jr.
Chairman, Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis MD 21401

RE: Letter of Information – Senate Bill 758 – Public Information Act – Remote Access, Fee Complaints, Fee Waivers, and Inspection of Judicial Records (Open Government, Better Government Act)

Dear Chairman Smith and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 758 but offers the following information for the Committee’s consideration.

MDOT takes seriously our commitment to being open, transparent, and collaborative with the public and communities we serve. Allowing the public to request and inspect documents under the Public Information Act (PIA) is a vital element of the public’s trust in our governmental institutions. MDOT is committed to safeguarding, archiving, and maintaining public records as well as individual Personally Identifiable Information (PII), in accordance with all laws and regulations. MDOT works in good faith to provide timely and cost-efficient responses, while also balancing the legal and ethical obligations to protect personal and proprietary information. We are entrusted with millions of public records dispersed throughout the State and have established a robust records management program to maintain records while also ensuring transparency.

The intent in Maryland’s current law seems to be ensuring those in the news media profession have access to records with a true public interest for the purposes of shedding light on government operations, decisions, and actions. The proposed Section 4-206(3)(1) confirms this intent for the State of Maryland. Section 4-206(5), however, includes:

“Representatives of the news media means any person that: (I) Gathers information of potential interest to a segment of the public; (II) Uses the person’s editorial skills to turn the raw materials into a distinct work; and (III) Distributes that work to an audience.”

The Honorable William Smith, Jr.
Page Two

The words chosen for this definition are quite broad and open to subjective interpretation, which will make consistent implementation Statewide challenging. Additionally, it could be interpreted that any person with a Facebook page, Twitter account, Instagram, blog, or other website could claim the right to waived fees. Under Senate Bill 758, “representatives of the news media” would automatically be granted a fee waiver. Fees that are not collected or waived, are ultimately subsidized by the citizens of Maryland. MDOT currently works with members of the media to specify their requests which often results in no fees charged. MDOT would be happy to work with the Committee and the bill’s sponsor to clarify the proposed definition of “news media.”

The Maryland Department of Transportation respectfully requests the Committee consider this information as it deliberates Senate Bill 758.

Respectfully submitted,

Jeff Tosi
Director of Government Affairs
Maryland Department of Transportation
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