



February 8, 2021

Office of the
General Counsel
8000 York Road
Towson, MD 21252

The Honorable Shane E. Pendergrass
Chair Woman
Health and Government Operations Committee
Maryland House of Delegates
House Office Building, Room 241
6 Bladen Street
Annapolis, MD 21401
Via: First Class Mail

Re: House Bill 183

Dear Chair Pendergrass

Towson University (the “University”) writes in respectful opposition to the proposed amendments to the Maryland Public Information Act., General Provisions Article (“GP”) §4-101 through §4-601 *et seq.* (“MPIA”) as set forth in House Bill 183 – Public Information Act- Revisions (Equitable Access to Records Act).

The University has significant concerns with the additional time and resources that will be necessary to comply with the new annual reporting requirements, and with the required, mandatory arbitration process set forth in the amendments, which the University deems unnecessary given the current ability of requestors to challenge denials of requests with the Ombudsman and to seek judicial review of agency decisions under the MPIA.

The University also has serious reservations with, and is **strongly opposed to**, any proposed requirement, as contemplated in GP §4-1A-06(b), that agencies be mandated to disclose any records (or a descriptive index of any records) agencies deem either privileged or protected under the law, or otherwise exempt under specific provisions of the MPIA to “the Public Information Act Compliance Board” (the “PIACB”), or “the Office of the Public Ombudsman” (the “Ombudsman”). Even the submission of a descriptive index as proposed in HB183 may risk breaching the legal protections certain documents must be afforded under both state and federal law. Moreover, certain federal laws, such as the Family Educational Rights and Privacy Act (FERPA), may prohibit disclosure of certain records to the PIACB as contemplated in HB183, creating state and federal conflicts. Resolution of **legal** questions involving the review of specific records deemed **legally privileged or exempt from disclosure under the law**, are more appropriately resolved **in a court of law** where they can be reviewed *in camera* by judges who have the judicial training

and resources necessary to make such **legal** determinations, and who are subject to legal and judicial rules of ethics and professional conduct.

Currently, the MPIA already provides that a requestor can challenge the denial of a request based on exemptions with the Ombudsman, requiring the agency to demonstrate to the Ombudsman that the denial or the exemption is clearly applicable to the requested public record, without requiring the agency to disclose to the Ombudsman the specific privileged record(s) at issue (or a descriptive index of such record(s)). A requestor may also currently challenge the denial of a request for certain records based on a privilege or exemption in a court of law, where a judge may review any such records, *in camera*, if necessary.

While the University appreciates that the Ombudsman wishes to establish another avenue of appeal to MPIA request determinations by state agencies in an effort to be better able to resolve certain disputes, not all state agencies operate in the same manner or maintain the same types of records, and a one-size-fits-all approach is not appropriate. Towson University is a large, decentralized state institution that houses vast amounts of private and confidential state personnel, student, and research-related records (in both electronic and hard-copy form) by numerous different custodians that **must** be maintained in compliance with various state and federal privacy laws, including, but not limited to, FERPA, which mandates that the University maintain the privacy of student educational records with very limited exceptions. The University maintains records regarding tens of thousands of current and former students, and thousands of current and former employees. The University also maintains numerous other records subject to legal privileges and specific enumerated exemptions under the MPIA.

Given all of the different types of records and the detailed review they require to determine if they are subject to legal privileges or exemptions, as it stands now, for example, responding to a request for custodian emails and attachments containing broad search terms can require the coordination of several University departments and the expenditure of thousands of dollars in staff time for the collection, review, and processing of just one request, which is not always recoverable as a significant number of requestors seek fee waivers.

Adding an additional, mandatory layer of review by the PIACB will be extremely time-consuming, and will significantly increase the work-load and burden on University custodians and staff tasked with responding to MPIA requests and appeals. While the University is not opposed to expanding PIACB oversight and enforcement with respect to certain responsive time limits, the University is opposed to the creation of what it views as an unnecessary, additional layer of review of certain denials when adequate appeal opportunities already exist. It is the University's

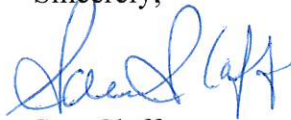


position that the proposed amendments in HB183 as written will remove any incentive for requestors to carefully craft the scope of their records requests, or to work collaboratively with agencies (including the State's institutions of higher education) in resolving any disputes or seeking any clarifications necessary to ultimately assist the requestor in receiving the responsive, non-exempt documents they ultimately seek.

If adopted, the proposed amendments will significantly increase the University's MPIA workload with respect to the mandatory, public reporting requirements, which will require the creation and maintenance of an outward facing webpage, and the number of anticipated challenges and appeals (including mediations, hearings, and litigation). These increased costs will be both operational and fiscal. Towson University anticipates that the increased work-load would likely require the University to hire at least one attorney and one staff person, whose sole responsibilities would include administering, processing, reviewing, responding, and reporting on MPIA related matters.

For all of these reasons, Towson University respectfully opposes HB183 in its current form.

Sincerely,



Sara Slaff
Vice President, Legal Affairs and General Counsel

CC: Members, Health and Government Operations Committee

