

HOUSE BILL 806 (HB0806)

OPPOSED (UNF)

WRITTEN TESTIMONY OF:

**JOHN GALBREATH
2516 CHESTNUT WOODS CT.
REISTERSTOWN, MD 21136**

I am a Maryland citizen, and I oppose this bill for the following reasons:

I. OPEN AND TRANSPARENT GOVERNMENT, AND BROAD ACCESS TO GOVERNMENT RECORDS BY ALL PERSONS, ARE FOUNDATIONAL PRINCIPLES OF THE PUBLIC INFORMATION ACT (“PIA”).

The PIA grants all persons a broad right to inspect government records. Maryland Code, Gen. Prov., § 4-103(a) and (b) (General right to information) state:

- a. “All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.”
- b. “To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.”

These foundational principles are attached for the Committee’s convenience as Exhibit 1.

Indeed, the Attorney General’s own PIA manual states at the very start:

“The Maryland Public Information Act is based on the enduring principle that public knowledge of government activities is critical to the functioning of a democratic society; that a Government of the people, by the people, and for the people must be *open* to the people.” December 2024 edition, Preface.

The PIA manual cover page and preface are attached for the Committee’s convenience as Exhibit 2.

II. THIS PROPOSED BILL GOES AGAINST THESE IMPORTANT FOUNDATIONAL PRINCIPLES, BY ADDING DRACONIAN PUNISHMENTS AND ADDING THE THREAT OF DIRECT COURT ACTION BY THE STATE AGAINST CITIZENS AND ORGANIZATIONS WHO REQUEST PUBLIC RECORDS.

A. Under This Bill, Custodians Can Be Authorized To Ignore a Citizen's Future Requests On The Same Or Similar Topics As a Past Request, Even If the Future Requests Are Not Frivolous, Vexatious, Abusive, Or In Bad Faith.

This bill provides that the Public Information Act Compliance Board ("PIACB") and the Circuit Court can authorize custodians to ignore future record requests on the same or similar topics as a past request which was found to be frivolous, vexatious, abusive, or in bad faith. However, a future record request might concern the same or similar topics as a past request – yet be different enough in other respects so that it is not frivolous, vexatious, abusive, or in bad faith. For example, a future request can be significantly narrower in the scope of the information sought, or can be significantly narrower in the time frame for which records are requested.

And once the PIACB or Circuit Court authorizes a custodian to ignore future record requests on the same or similar topics, the custodian is free to do that even if a future request is significantly narrower in scope or time frame, or materially different in some other respect. In other words, a future request would not be judged on its own merits. This would be unfair to citizens and organizations who make a new or amended record request that is not frivolous, vexatious, abusive, or in bad faith, even though a past request on the same or a similar topic may have been so. Simply put, each request should be judged on its own merits.

B. Under This Bill, a Citizen or Organization Can Be Banned Forever From Receiving Any Records They Might Request, On Any Topic and Of Any Scope.

This bill goes even further than the unfair provision discussed above, by also allowing the PIACB and the Circuit Court to provide "any other nonmonetary relief" to the custodian. So other than being nonmonetary, there is no limit on what a custodian can be awarded against a citizen or organization. That includes authorizing the custodian to ignore all their future requests – no matter what the topic of the future request is, and no matter what its scope is. And this total ban can be for any "specified period of time", which could be 5 years, 20 years, or even the lifetime of the citizen or organization.

This is simply too draconian. It goes against the foundational principles of the PIA, which hold that "all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees" and that this right "shall be construed in favor of allowing inspection of a public record, with the least cost and least delay."

C. This Bill Also Grants a Broad New Right For Custodians To Sue Citizens And Organizations Directly In Circuit Court, Without Having the PIACB Weigh In On The Matter. This Will Have a Profound Chilling Effect On The Public's Right Of Access To Information About Their Government.

And as if the draconian provisions discussed above were not enough, this bill also grants a broad new right for custodians to sue citizens or organizations in Circuit Court, alleging that their

record request is frivolous, vexatious, abusive, or in bad faith. The Attorney General's Office, which has vast legal resources, would file and litigate these lawsuits for its clients – i.e., the State and state agencies. These lawsuits could be filed directly in Circuit Court, without having the PIACB weigh in on the matter.

In addition, these custodian lawsuits against citizens and organizations could be filed in the Circuit Court where the public record is located. Since many state records are located in Annapolis or Baltimore, the citizen or organization could be located in Western Maryland and be forced to defend a lawsuit against them in Annapolis or Baltimore.

If passed, this threat of direct court action by the Attorney General's Office against requestors of public records will have a profound chilling effect on citizens and organizations who request those records, including the press. This chilling effect may be what the Attorney General's Office is looking for – but it does not comport with the PIA's foundational principles.

D. Adding “Abusive” to the Litany of Allowable Reasons For a Custodian Complaint Is Overkill.

The PIA already authorizes custodians to file a complaint with the PIACB if a record request is frivolous, vexatious, or in bad faith. This litany is already sufficient, and does not need to be even further supplemented. Also, “abusive” is a term which primarily means “harsh and insulting”, or “using harsh, insulting language”. The Merriam-Webster definition of “abusive” is attached for the Committee's convenience as Exhibit 3.

Thus, under this bill a custodian could file a PIACB complaint or even a Circuit Court lawsuit concerning a legitimate record request, simply because in the custodian's opinion the request was “harsh” or “insulting”. The PIACB or Circuit Court could then deny the request on that basis, and also trigger the draconian punishments discussed above. This is not what the PIA should be about.

III. OTHER REASONS THIS BILL WILL MOVE MARYLAND AWAY FROM OPEN AND TRANSPARENT GOVERNMENT.

Maryland does not have a State Inspector General to provide independent oversight of state agency practices and procedures, and the PIA thus functions as a critical tool for public oversight. We should be strengthening it, not weakening it.

The Attorney General's Office is not acting in the public interest here. Instead, in proposing this bill, it is acting as the attorney for the State and state agencies. Said another way, the Attorney General's Office is using its governmental position and influence to change the law to benefit its clients – the executive branch and its agencies. This bill would raise the wall around the State and state agencies, and would discourage the public and other organizations, including the press, from trying to see in.

SUMMARY

For all the above reasons, this bill is not in the public interest. Open and transparent government is the cornerstone of a free and democratic society, and this bill would usher in a new era of closed, not open government – and opaque, not transparent government. It will move Maryland away from a government of the people, by the people, and for the people.

We should not add draconian punishments to the PIA, nor should we add the threat of direct lawsuits by the State against citizens and organizations who request access to information about the workings of their government. If anything, we should be making the PIA more citizen-friendly and less restrictive. In short, we should be strengthening the PIA, not weakening it.

[Home](#) [Table of Contents](#)**§ 4-103. General right to information**

West's Annotated Code of Maryland

General Provisions

Effective: October 1, 2014

West's Annotated Code of Maryland
General Provisions (Refs & Annos)
Title 4. Public Information Act (Refs & Annos)
Subtitle 1. Definitions; General Provisions (Refs & Annos)

Effective: October 1, 2014

MD Code, General Provisions, § 4-103
Formerly cited as MD CODE, SG, § 10-612

§ 4-103. General right to informationCurrentness**In general**

(a) All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

General construction

(b) To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

General Assembly

(c) This title does not preclude a member of the General Assembly from acquiring the names and addresses of and statistical information about individuals who are licensed or, as required by a State law, registered.

Credits

Added by Acts 2014, c. 94, § 2, eff. Oct. 1, 2014.

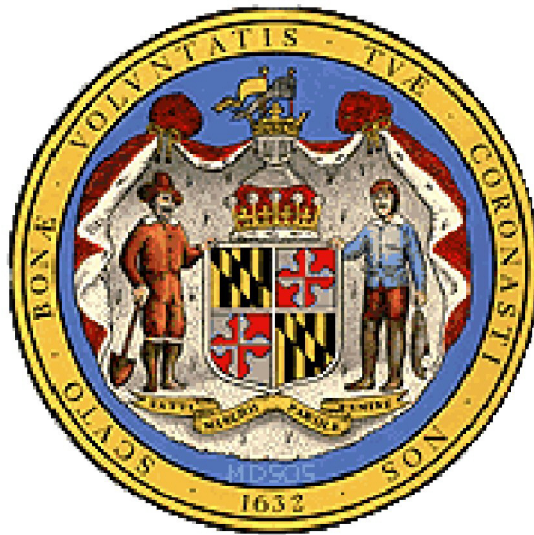
MD Code, General Provisions, § 4-103, MD GEN PROVIS § 4-103

Current through all legislation from the 2024 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

END OF DOCUMENT

EXHIBIT 2

Maryland Public Information Act Manual



Office of the Attorney General

**Anthony G. Brown
Attorney General**

Nineteenth Edition
2024

PREFACE

The Maryland Public Information Act is based on the enduring principle that public knowledge of government activities is critical to the functioning of a democratic society; that a Government of the people, by the people, and for the people must be *open* to the people. Members of the public need and deserve complete information as they make the decisions and form the opinions that determine our future path, and the Act ensures that those needs are met fairly and expeditiously while protecting important privacy rights and other public policy goals.

As Attorney General, I am committed to open access to information, and to promoting a consistent application of the Act throughout State and local government. The Office of the Attorney General has long worked toward ensuring the correct implementation of the Act, and I am continuing and expanding on that tradition.

This manual is designed to be a resource for a range of users, from members of the public and the media who request information, to the government officials who have the responsibility to implement the Act's requirements.

The 19th edition of this manual, like those that precede it, is the work of many talented and committed individuals from the Office of the Attorney General. Special credit goes to former Deputy Attorney General, later Judge, Dennis M. Sweeney for preparing the first several editions, and to former Assistant Attorneys General Jack Schwartz and Robert N. McDonald (now Judge McDonald), as well as to Assistant Attorney General Adam D. Snyder, who assumed responsibility for subsequent editions. This most recent edition has been produced under the supervision of Patrick B. Hughes, the current Chief Counsel for Opinions & Advice.

I also wish to thank the local government officials, the Public Access Ombudsman, members of the private bar, and representatives of the media and open-government advocacy groups for their many constructive suggestions about how best to implement the PIA.

In addition to being available in printed version, the Manual is on-line at <http://www.oag.state.md.us/Opengov/pia.htm>.

Please let me know if you have suggestions for further refinements.

*Anthony G. Brown
Attorney General
December 2024*

EXHIBIT 3

abusive adjective

abu·sive (ə-'byü-siv «») also -ziv

Synonyms of *abusive* >

1 a : using harsh, insulting language

| an angry and *abusive* crowd

b : harsh and insulting

| *abusive* language

c : using or involving physical violence or emotional cruelty

| *abusive* behavior

| an *abusive* husband

| an *abusive* relationship

2 : characterized by wrong or improper use or action

especially : **CORRUPT**

| *abusive* financial practices

• **abusively** adverb

• **abusiveness** noun

Synonyms

contumelious

opprobrious

scurril

invective

scurrile

scurrilous