



MARYLAND GENERAL ASSEMBLY

House Health and Government Operations Committee

Written Testimony of Timothy G. Nelson on behalf of the Maryland-DC-Delaware Broadcasters Association Regarding House Bill 806

(Public Information Act – Frivolous, Vexatious, or Abusive Requests – Remedies)

Submitted February 7, 2025

Thank you for the opportunity to submit this written testimony regarding House Bill 806, “Public Information Act – Frivolous, Vexatious, or Abusive Requests – Remedies.” My name is Tim Nelson, and I serve as counsel to the Maryland-DC-Delaware Broadcasters Association (“MDCD” or the “Association”).¹ On behalf of the Association and its Members, which include approximately 20 television stations and 110 radio stations, I thank the Committee for holding a hearing on House Bill 806 and for considering the Association’s perspective.

I write to express MDCD’s strong opposition to House Bill 806. As proposed, House Bill 806 would empower the State Public Information Compliance Board (the “Board”), as well as the judicial system, to muzzle—through orders permitting certain public records requests to be ignored or summarily denied—those members of the public, including journalists, whose requests are deemed frivolous, vexatious, abusive, or in bad faith. HB 806 runs contrary to the Public Information Act, and, potentially, the First Amendment.

House Bill 806 would grant the Board and, in certain instances, circuit courts, the authority to permit the custodian of public records to “ignore the request or pattern of requests that is the subject of the custodian’s complaint” including by ordering that “the custodian need not respond to future requests . . . for a specified period of time.” It is one thing to permit the Board or a circuit court to authorize a custodian to ignore or respond in a narrowly tailored fashion to a particular public records request, as is allowed under current Maryland law. It is quite another for the State to empower the Board to effectively prohibit a member of the public from requesting access to government records. House Bill 806, in bestowing upon the Board the authority to punitively prevent future public records requests, is likely to undermine transparency and to have a chilling effect on those seeking access to public records. MDCD wonders whether the government’s ability to, for practical purposes, dictate that certain individuals and entities are not allowed to make future

¹ The Maryland-DC-Delaware Broadcasters Association is a voluntary, non-profit trade association that advocates for the interests of its member radio and television stations and, more generally, the interests of broadcasting in Maryland, Delaware, and Washington, D.C.

public records requests would amount to an unlawful prior restraint on speech in violation of the First Amendment.²

In addition, House Bill 806’s language permitting the Board to take administrative action regarding “abusive” information requests is unnecessary and potentially confusing. Current law already allows the Board to deal with requests that are “frivolous,” “vexatious,” or in “bad faith.” And Maryland courts have started to interpret this “frivolous,” “vexatious,” or in “bad faith” language, establishing the contours of the law. Inserting a new, arguably redundant term therefore seems unwarranted at best.

MDCD’s Members—local television and radio stations—are the most trusted source of news and information here in Maryland and across the country. One of the central, critical roles the Association’s member stations perform is to inform the public about the actions of Maryland’s public bodies, figures, and officials. As the United States Supreme Court has recognized, “[b]eyond question, the role of the media is important; acting as the ‘eyes and ears’ of the public[.]”³ Accordingly, MDCD has long advocated for transparency in government and against measures that seek to limit rights of this State’s citizens and its newsgathering entities to access public records. Maryland’s law already provides a process for dealing with public records requests deemed frivolous, vexatious, and/or made in bad faith. HB 806 is unnecessary. Worse, it goes too far and allows the State to silence its citizens.

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² Indeed, unlawful prior restraints on speech are “the most serious and least tolerable infringement on First Amendment rights [that bears] a heavy presumption against its constitutional validity.” *Baltimore Sun Co. v. State*, 340 Md. 437, 448, 667 A.2d 166, 171 (1995).

³ *Houchins v. KQED, Inc.*, 438 U.S. 1, 8 (1978).