



Testimony for the Senate Education, Health, and Environmental Affairs Committee

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SB 193 Public Information Act - Denial of Part of a Public Record - Investigations by Inspectors General

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As a general matter, the ACLU of Maryland supports greater transparency over public records with exceptions to disclosure only when necessary. The Maryland Public Information Act (MPIA) 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 (emphasis added).¹

It is not clear to the ACLU of Maryland why SB 193 is needed.

Current law allows Inspectors General to withhold information related to ongoing investigations

Under the MPIA, a custodian of records (including Inspectors General) have the discretion to withhold documents if the investigation is ongoing, because the public interest in denying inspection is substantial and the state may deny inspection without articulating a particular basis.

If an investigation is closed, Inspectors General must make a more particularized justification to withhold the record

If the investigation is closed, disclosure is less likely to compromise the public interest, and the state must articulate one of seven bases for denying inspection, if disclosure would:

- 1) interfere with a valid and proper law enforcement proceeding;
- 2) deprive another person of a right to a fair trial or an impartial adjudication;
- 3) constitute an unwarranted invasion of personal privacy;
- 4) disclose the identity of a confidential source;
- 5) disclose an investigative technique or procedure;
- 6) prejudice an investigation; or
- 7) endanger the life or physical safety of an individual

¹ Office of the Attorney General, Maryland Public Information Act Manual (Fourteenth Edition, 2015).



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About the investigatory records provision of the MPIA

“Investigatory records” are records compiled for law enforcement, judicial, correctional, or prosecution purposes which may be withheld under the MPIA (Gen. Prov. §4-351). However, some specifically named agencies (sheriff and police departments, correctional facilities, states attorneys and other prosecutorial offices, police departments, and the Attorney General) may withhold investigatory records without a showing that the records were compiled for law enforcement, judicial, correctional, or prosecution purposes.

SB 193 seeks to add Inspectors General to the list of enumerated agencies who may withhold investigatory records without showing that that the records were compiled for law enforcement, judicial, correctional, or prosecution purposes.

It is not clear to the ACLU of Maryland why SB 193 is needed—why Inspectors General need not demonstrate that investigatory records in their possession are records compiled for law enforcement, judicial, correctional, or prosecution purposes and may therefore be withheld under the MPIA.

As noted at the outset—unless there is a compelling reason to obscure transparency over the government, the ACLU of Maryland urges the Committee to resist adding more exceptions to disclosure or presumptions against disclosure of information to the public.