



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

February 13, 2020

**SB 535 Public Information Act - Denial of Part of a Public Record -
Victims and Witnesses**

TONI HOLNESS
PUBLIC POLICY DIRECTOR

UNFAVORABLE

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 610
TAKOMA PARK, MD 20912
T/240-274-5295

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
JOHN HENDERSON
PRESIDENT

The ACLU of Maryland respectfully urges an unfavorable vote on SB 535, which defines “contrary to the public interest” to include a situation in which a custodian reasonably believes that inspection of a part of a public record would reveal the identity of a victim or witness of domestically-related crimes, other than an active law enforcement officer. The bill also adds witnesses to the list of persons who custodians shall contact prior to disclosing a record.

SB 535 is unnecessary because current PIA provisions already give custodians discretion to deny information requests that would disclose a witness’s identity.

The PIA grants custodians broad discretion to withhold documents during the pendency of an investigation.¹ After the investigation is complete, custodians may still withhold documents if disclosure would meet any of the following criteria²:

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.

Therefore, when requests are made for material that may disclose witness information that meets any of the above criteria, custodians have full license to withhold that material.

There have been no reported incidents of witness information being improperly disclosed in Maryland.

¹ Md. Code, Gen Prov. §§ 4-343, 4-351(a)(1).

² Md. Code, Gen Prov. §§ 4-351(b).



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Maryland

We are aware of no incident in the state of Maryland wherein witness information was improperly released by a state agency. In fact, based on the ACLU of Maryland's experience having filed many requests for records, there is no evidence to suggest that state agencies err on the side of disclosure. In our experience, the exemptions under the PIA are more frequently used by agencies to shield documents from disclosure and even hide governmental misconduct than to invade Marylanders' privacy.

SB 535 is unworkable because there could be any number of witnesses to a particular crime.

SB 535 would require custodians to contact an undefined universe of persons who may be witnesses to domestically-related offenses before disclosing material in response to a records request. Virtually any material in the possession of the government *could* include information about a witness to a crime—from video footage of the outside of a courthouse to body-worn camera video footage.

SB 535 references crimes that should be struck from the Criminal Law Article.

SB 535 includes witnesses to crimes listed in Title 2 of the Criminal Law Article, which include sodomy. While there is another bill being introduced to strike that reference from the law, we would be concerned about passing SB 535 prior to that bill's passage.

In 2019, the General Assembly passed into law the victim notification provision.

During the 2019 legislative session, the ACLU of Maryland worked with the proponents of this legislation to reach a compromise to require notification to victims who may be identified in a records disclosure. That law went into effect on October 1, 2019. We would urge this body to learn more about the implementation of that law before further amending it.

For the foregoing reasons, the ACLU of Maryland respectfully urges an unfavorable report on SB 535.