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MAYOR

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HB 42

February 11, 2020

TO: Members of the House Health and Government Operations Committee

FROM: Nicholas Blendy, Deputy Director of Government Relations

RE: House Bill 42 – Public Information Act – Applications for Inspection – Responses and Time Limits

POSITION: OPPOSE

Chair Pendergrass, Vice-Chair Peña-Melnyk, and Members of the Committee, please be advised that the Baltimore City Administration **opposes** House Bill (HB) 67.

As drafted, this bill drastically reduces the time for governments to respond to requests under Maryland's Public Information Act ("PIA") where records are not immediately available. To be clear, **the law already mandates that any records immediately available be produced immediately.** (PIA Section 4-203). (Emphasis added).

This bill would therefore only impact records that need to be located or reviewed. The bill would shorten that timeframe from 30 days to 7 days. It would require the government's initial response to be within 5 days and final production of documents two days thereafter. It also reduces the time the available for extensions from 30 days to 7.

The bill would create timeframes that record custodians could not meet for three reasons: routing time, search time and review time.

The biggest hurdle is the reduced time to search. Judges have been clear that the government is required to conduct a search that is "reasonably calculated to uncover responsive records." *Glass v. Anne Arundel County*, 453 Md. 201, 212 (2017) (reasoning supported by several Federal FOIA cases). To make a search reasonable, the first step is to identify the current and former government employees that worked on a matter, and where those employees, or divisions, stored their records. This takes time. The bill would severely shorten the time allowed to find documents that are not immediately available. That time is needed even if what is sought is only one page. Electronic documents must be searched for, usually by an IT professional. If the records sought are in paper form (Baltimore City still has quite a few of those documents) a person must locate the file. Even if the gathering process could take

place in a day or two, a government employee must fit that search time into his or her already assigned job duties.

The proposed shortened timelines are also concerning because it can take several days for a request (even one that is emailed or submitted through a government portal) to make it to the record custodian charged with responding. Additionally, many citizens still mail requests; especially if they have no access to the internet. Under this bill, a response to these mailed requests would be due at nearly the same time as its receipt by the addressee. Moreover, the Maryland Rules provide that due dates that are 5 days or less do not include intervening weekends or holidays, but that due dates greater than 5 days do count those days. Md. Rule 1-203. For example, a request received by the government on Monday, and then routed through inter-office mail to the record custodian by Friday would require an initial answer by the next business day (Monday) if this law were to pass as written. The final answer with documents having been gathered and reviewed would be due that same day (Monday).

Finally, but importantly, the General Assembly has mandated (PIA Section 4-203) that a response to any request where the documents cannot be produced within 10 days explain the delay and give an estimated time for disclosure and potential fees. Shortening the 10-day timeframe would result in an explanation that more time is needed because the request was just recently received, or the government is still searching. This tells the requestor what he or she already knows: the date of the request and the fact that the records could not be produced immediately. This reduces the information given to a requestor about the storage or volume of the requested documents.

Even a denial (in part or in full) requires a written statement that covers 5 (or 7 if a denial is under PIA Section 4-343) specific points: reasons for denial, public policy rationale where required, legal authority, description of documents and remedies. Baltimore City's Law Department assisted City agencies in responding to 661 requests in Calendar year 2019 (an average of more than 2 per workday). (Many more requests were received for documents immediately available and responded to by agencies without the assistance of lawyers). Yet, each of those 600+ requests received responses tailored to the documents sought so the requestor could understand his or her government operations. Shortened timeframes would compromise the ability to provide this much-needed transparency.

We respectfully request an **unfavorable** report on House Bill 42.