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HB 401

Public Information Act – Remote Access, Fee Complaints, Fee Waivers, and Inspection of Judicial Records (Open Government, Better Government Act)

**Hearing before the Judiciary Committee
February 12, 2020**

Position: FAVORABLE

HB 401 represents a major improvement in Maryland’s Public Information Act (PIA). As reflected in the recent report of the Public Access Ombud and the PIA Compliance Board (Report), to fulfill the promise of 2015 reforms, there is a significant need to make access to public records faster and less expensive.

HB 401’s provisions on fees for access to public records are crucial to the fulfillment of the Act’s purpose. As the Report makes clear, fee waivers in the public interest are routinely denied without justification, and this may not be surprising, as the current law provides no standard to guide government entities in making that determination. HB 401 provides a tried and true legal standard analogous to that in the federal Freedom of Information Act and other state public access statutes. It’s time for Maryland to explicitly provide this guidance to its government agencies.

The bill’s provision on mandatory fee waivers for indigent applicants is long overdue. There is simply no justification for discretion on a fee waiver requested by an indigent applicant. If the request is improper for some other reason, let it be denied and subject to review on that basis. If not, there is never a circumstance in which the indigence of the applicant should stand in the way of disclosure of public records without delay. And the provision for fee waivers for applicants who are incarcerated and requesting records concerning their conviction or incarceration is a common-sense measure, as the vast majority of persons

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incarcerated in Maryland are indigent. They work for pennies per hour (if they manage to get a prison job at all) and have extremely limited access to funds otherwise, which they must usually spend on basic needs like toiletries, postage, and writing materials.

HB 401 is one of the bills offered this session that is necessary to change the culture of compliance with the PIA from essentially optional (Report at 5) to mandatory, as this body intended. The PJC urges a FAVORABLE REPORT on HB 401. If you have any questions, please feel free to contact Debra Gardner, Legal Director, gardnerd@publicjustice.org, 410-625-9409 x228.