



March 3, 2020

## Via Hand Delivery

Luke H. Clippinger, Chair  
Vanessa E. Atterbeary, Vice Chair  
House Judiciary Committee  
Maryland House of Delegates  
House Office Building  
6 Bladen St., Room 101  
Annapolis, MD 21401

RE: House Bill 1221: Public Information Act-Personnel and Investigatory Records –  
Complaints Against Law Enforcement Officers - **Oppose Unless Amended**

Dear Chairperson Clippinger and Vice Chairperson Atterbeary:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),<sup>1</sup> we appreciate the opportunity to submit written testimony concerning House Bill (HB) 1221, which would amend the Maryland Public Information Act (MPIA) to permit the release of records relating to formal police misconduct complaints under certain circumstances. We respectfully oppose this bill and recommend amendments that will permit the release of additional categories of misconduct complaints as indicated below.

Currently, the MPIA prohibits the release of personnel records,<sup>2</sup> and Maryland's appellate court has interpreted this prohibition to include records relating to hiring, promotion, dismissal, and discipline of public employees.<sup>3</sup> Consequently, persons who have filed complaints against law enforcement officers for misconduct know little about the investigative process or the outcome.<sup>4</sup> Indeed, the U.S. Department of Justice's (DOJ) *Investigation of the Baltimore City*

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<sup>1</sup> Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. Throughout its history, LDF has consistently worked to promote unbiased and accountable policing policies and practices at the national, state, and local levels. For the past five years, we have partnered with advocates, activists, and attorneys to reform unlawful policing practices in Baltimore City by joining the community call for a federal investigation of the police department, advocating for fair provisions in the police union contract, and calling for more transparency regarding police misconduct complaints.

<sup>2</sup> MD. CODE ANN., GEN. PROVISIONS § 4-311(a).

<sup>3</sup> See, e.g., *Montgomery County v. Shropshire*, 23 A.3d 205, 214 (Md. 2011).

<sup>4</sup> U.S. Dep't of Justice C.R. Div., *Investigation of the Baltimore City Police Department*, 148 (Aug. 10, 2016) (concluding that the MPIA "has repeatedly blocked attempts to access information about the resolution of complaints and other issues of public concern related to BPD's policing activities."), available at <https://www.justice.gov/opa/file/883366/download>. [hereinafter "DOJ Report"]; see also *Maryland Dep't of State*

*Police Department* found that even when a complaint resulted in discipline of an officer, the Baltimore Police Department (BPD) did not notify the complainant or the public “except in unusual circumstances where the Department determines that a broader announcement of the discipline is in the public interest.”<sup>5</sup> This shroud of secrecy has led to a lack of public confidence in BPD’s investigation of complaints.

HB 1221 takes a step in the right direction toward addressing this problem by allowing the disclosure of a limited category of job-related police misconduct complaints involving: the discharge of a firearm; the use of force by a law enforcement officer resulting in deadly or serious bodily injury; and a sustained investigatory finding that a law enforcement officer committed a sexual assault against a member of the public, engaged in dishonesty, committed perjury or falsified reports or evidence or engaged in prohibited discrimination related to the reporting, investigation, or prosecution of a crime. The bill, however, does not go far enough.

We urge amendments to HB 1221 that would permit the release of all personnel records relating to investigations of police misconduct complaints regardless of the type of complaint and outcome and limited only by the exemptions that already exist in the MPIA. Doing so would bring Maryland in line with a dozen other states that release most police disciplinary records.<sup>6</sup> Additionally, in the spirit of transparency, Maryland law enforcement agencies must collect, analyze and report on the complaints filed against law enforcement officers and their outcome.

**1. HB 1221 must allow the disclosure of information about the police misconduct complaints regardless of type of complaint and outcome.**

HB 1221 appropriately permits the disclosure of alleged misconduct involving discharge of firearm and use of force resulting in death or serious injury, regardless of the outcome of the complaint. While this is encouraging, the bill must also allow the release of complaints about common instances of police use of force, such as incidents involving officers who inappropriately draw or point their firearms at a person. The DOJ found that BPD officers “drew and pointed their firearms at individuals when the use of deadly force did not appear to be justified, including an incident that resulted in an accidental discharge that fortunately did not strike anyone.”<sup>7</sup> BPD officers also pointed tasers at persons to threaten them to comply with orders.<sup>8</sup> Although these incidents may not result in physical injury, they present problematic instances of use of force misconduct that must be fully investigated and be assessible to the public.

Additionally, all complaints alleging police misconduct that may have a direct impact on law enforcement integrity, such as allegations of discourtesy and harassment should be disclosed to the public. For example, the DOJ investigation of BPD revealed that in 2011 a Black woman filed a complaint alleging her nephew was repeatedly stopped and harassed by police near his

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*Police v. Dashiell*, 117 A.3d 1 (Md. 2015) (holding law enforcement investigatory records are exempt from disclosure under the MPIA and complainant is not a person of interest under investigatory records exemption).

<sup>5</sup> *DOJ Report*, *supra* note 4, at 147-48.

<sup>6</sup> See Robert Lewis, et al, *Is Police Misconduct a Secret in Your State*, WNYC NEWS, Oct. 15, 2015, <https://www.wnyc.org/story/police-misconduct-records/>. For example, police disciplinary records in Florida and Georgia are public once the investigations are complete.

<sup>7</sup> *DOJ Report*, *supra* note 4, at 79.

<sup>8</sup> *Id.* at 84.

West Baltimore home. She filed the complaint as harassment, but the sergeant categorized it as a “supervisor complaint” and closed it without interviewing the officers involved or the woman’s nephew.<sup>9</sup> This underscores the need to release all records related to complaints of alleged police misconduct.

Additionally, HB 1221’s limited disclosure of disciplinary files that are sustained would result in the release of very few complaints. In its investigation of BPD, the DOJ found the agency failed to sustain complaints and discipline officers on a consistent basis, leading to wide variations in how allegations were classified, investigated, if investigated at all, and the type of discipline imposed, if any discipline was imposed.<sup>10</sup> Indeed, the DOJ found that “BPD administratively close[d] 33 percent of all allegations received from 2010 through 2015” whether they were categorized as minor or serious misconduct and after minimal investigation, effectively permitting officers to evade accountability and discipline.<sup>11</sup> Moreover, even when BPD conducted investigations into excessive use of force, it sustained a meager 2.2 percent of allegations, which the DOJ noted was likely inconsistent with their interviews with community members.<sup>12</sup>

Also, the limitations that exist in HB 1221 arbitrarily preclude the release of certain records and send conflicting messages to law enforcement officers and investigators. As written, HB 1221 works to encourage transparency in some of the highest profile incidents of alleged law enforcement misconduct – the discharge of a firearm and the use of force resulting in deadly or serious bodily injury – which are likely to already gain wide public attention and scrutiny. However, it does nothing to lift the shroud of secrecy around investigations of the type of conduct resulting from the thousands of interactions Maryland law enforcement officers have with the public daily.

We strongly urge an amendment to the bill that would permit the disclosure of discipline records regardless of the type of complaint or outcome of the investigation.

## **2. The MPIA already contains adequate limitations on the disclosure of police misconduct complaints**

A dozen states allow the release of police disciplinary records in most circumstances, so long as the investigation of the complaint is complete.<sup>13</sup> The MPIA allows a custodian to deny disclosure of investigatory records if release of the information would: interfere with a law enforcement proceeding; deprive a person of a right to a fair and impartial trial; invade personal privacy; reveal a confidential source; disclose an investigative procedure; prejudice an investigation; or risk the life of an individual.<sup>14</sup> These safeguards appropriately balance public employees’ privacy interests and the public’s right to know about the investigation and outcome of misconduct complaints against public employees. Thus, there is no need to limit the category of police misconduct complaints in the manner H.B. 1221 seeks to do.

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<sup>9</sup> *Id.* at 142.

<sup>10</sup> *Id.* at 141-42.

<sup>11</sup> *Id.* at 142.

<sup>12</sup> *Id.* at 146-47.

<sup>13</sup> For example, police disciplinary records in Florida and Georgia are public once the investigations are complete. *See* FLA. STAT. § 112.533(3)(a) and GA. CODE ANN. §50-18-72(a)(8)

<sup>14</sup> *See* MD. CODE ANN., GEN. PROVISIONS § 4-351(b).

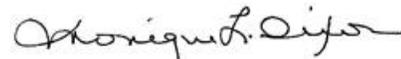
**3. HB 1221 must require law enforcement agencies to annually report the number of complaints received and resolved**

To ensure an accurate record of complaints and their outcomes, we urge an amendment to HB 1221 requiring law enforcement agencies to annually report the number of complaints received and resolved. National policing experts have promoted this type of reporting as a best practice that permits law enforcement agencies to reflect on and better assess their needs and for the public to determine the adequacy of existing accountability measures.<sup>15</sup> Indeed, a more transparent and open process may work to improve trust and confidence between communities and law enforcement, increasing public safety.

Therefore, while HB 1221 is promising, its limited application is unlikely to lead to the type of transparency in police misconduct complaints that the public deserves. We strongly urge the amendment of HB 1221 in accord with our comments provided above.

Thank you for considering our testimony. If you have questions, please do not hesitate to contact us at 202-682-1300.

Sincerely yours,



Monique L. Dixon  
Deputy Director of Policy &  
Director of State Advocacy

Allen Liu  
Law and Policy Fellow

cc: House Judiciary Committee members

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<sup>15</sup> THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, *Final Report of the President’s Task Force on 21<sup>st</sup> Century Policing*, 12, 2015 (“Law enforcement agencies should establish a culture of transparency and accountability . . . .”); *see also id.* at 13 (“Law enforcement agencies should make all department policies available for public review and regularly post on the department’s website information about stops, summonses, arrests, reported crime, and other law enforcement data aggregated by demographics”).