

Written Testimony for Hearing on HB 395 – The Transparency and Public Records Act of 2022 February 15th, 2022

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Delegate Stewart and distinguished members of the Maryland General Assembly, my name is Gregory Porumbescu and I am an Associate Professor in the School of Public Affairs and Administration at Rutgers University – Newark, where I also serve as associate director of the Transparency and Governance Center and a co-principal investigator for the New Jersey State Policy Lab. In my research, I explore the effects of technology on government transparency as well as its implications for government performance and accountability. My research has been shared with senior officials in the European Commission, the Romanian Central Government, and the Municipality of Milan, Italy and has been funded by the National Science Foundation, the State of New Jersey’s Office of the Secretary of Higher Education, and the Korean Research Foundation. Based upon my expertise, I am writing in support of Maryland HB 395 – The Transparency and Public Records Act of 2022. This bill is important because of its potential to improve government performance and enhance democratic accountability.

Expanding transparency can improve government performance

Technology has rapidly diversified the channels through which public officials communicate. One consequence of this is growing ambiguity in terms of what constitutes a public record in the eyes of the law. Such ambiguity creates opportunities for public officials to intentionally or unintentionally undermine transparency legislation by choosing to conduct official business via communication mediums that are not explicitly covered by relevant transparency legislation. In other words, the proliferation of advanced information and communications technology can result in government being less transparent. For the public, simply knowing that current legislation allows public officials to abuse technology to keep information from the public can breed suspicion and erode government legitimacy.¹ This erosion in perceived legitimacy can cause significant governance challenges by rendering the public less willing to accept and comply with government decisions and increasing the costs of policy implementation.^{2,3} In addition, research findings demonstrate that efforts to expand the types of information covered by transparency legislation, such as those taken by HB 395, strengthen politicians’ commitments to fiscal responsibility and are therefore critical to improving financial management and reducing the cost of debt.^{4,5} To this end, leaving existing legislation in place results in a missed opportunity to improve different dimensions of government performance. For the reasons outlined above, HB 395 makes

¹ De Fine Licht, J., Naurin, D., Esaiasson, P., & Gilljam, M. (2014). When does transparency generate legitimacy? Experimenting on a context-bound relationship. *Governance*, 27(1), 111-134.

² Porumbescu, G. A., Lindeman, M. I., Ceka, E., & Cucciniello, M. (2017). Can transparency foster more understanding and compliant citizens?. *Public Administration Review*, 77(6), 840-850.

³ Porumbescu, G. A., & Grimmelikhuijsen, S. (2018). Linking decision-making procedures to decision acceptance and citizen voice: Evidence from two studies. *The American Review of Public Administration*, 48(8), 902-914.

⁴ Benito, B., & Bastida, F. (2009). Budget transparency, fiscal performance, and political turnout: An international approach. *Public Administration Review*, 69(3), 403-417.

⁵ Bastida, F., Guillamón, M. D., & Benito, B. (2017). Fiscal transparency and the cost of sovereign debt. *International Review of Administrative Sciences*, 83(1), 106-128.

important contributions to improving transparency and subsequently, government performance in the State of Maryland.

Rigid definitions of transparency allow technology firms to influence government transparency and accountability

Technology has created new opportunities for public officials to skirt the spirit of freedom of information legislation. Many of these opportunities are created by technology firms responding to financial incentives to develop innovative products for government clients that allow for communication that falls outside of extant transparency legislation.⁶ The utility of these tools is determined not only by sophisticated technology, but also the rigid, antiquated definitions of transparency often used by freedom of information legislation that do not account for the complexity of contemporary information ecosystems.⁷ An important consequence of this is that the product development and marketing decisions made by a handful of technology firms, particularly those focused on social media, can have a major impact on the public's ability to access government records.⁸ For example, decisions to incorporate 'delete once read' features make it easier for public officials to hide certain types of content, while marketing practices lead firms to target certain public officials and agencies, making it easier for these units of government to avoid public scrutiny.

All told, narrow, outdated definitions of transparency create opportunities for technology firms to influence who and what the public can scrutinize. This not only violates the spirit of transparency legislation, but also harms democratic accountability by affording private interests disproportionate influence in determinations of which government entities the public is able to hold accountable. Adopting flexible legal frameworks that expand their treatment of transparency by accounting for the evolving role technology plays in shaping government communications is one promising means of reducing the financial incentives technology firms have to enable public officials to skirt transparency legislation.

Summary Evaluation

Overall, existing evidence suggests that by expanding transparency of the Government of Maryland, HB 395 – The Transparency and Public Records Act of 2022 has the potential to make important contributions to democratic governance in Maryland by improving the performance of government agencies and democratic accountability processes in the state.

⁶ Thompson, S. (2021, December 30). Md. Gov. Larry Hogan's messages to state employees self-destruct in 24 hours. *The Washington Post*. <https://www.washingtonpost.com/dc-md-va/2021/12/30/hogan-wickr-messages-disappear/>

⁷ Berliner, D., Ingrams, A., & Piotrowski, S. J. (2018). The future of FOIA in an open government agenda for freedom of information policy and implementation. *Vill. L. Rev.*, 63, 867.

⁸ Feeney, M. K., & Porumbescu, G. (2021). The limits of social media for public administration research and practice. *Public administration review*, 81(4), 787-792.