



Maryland
Holding Power Accountable



TO: Chair Smith, Vice Chair Waldstreicher, and members of the
Judicial Proceedings Committee

FROM: ACLU of Maryland

DATE: January 18, 2022

OPPOSITION

**SB 31 Public Information Act – Inspection of Records From Body–
Worn Digital Recording Devices**

For the reasons expressed below, the undersigned organizations respectfully urge an unfavorable report on SB 31 Public Information Act – Inspection of Records From Body–Worn Digital Recording Devices.

SB 31 would prohibit disclosure of ALL body-worn camera footage of:

- Incidents that do not result in:
 - the use of force, arrest, attempted arrest, temporary detention, attempted temporary detention, search, attempted search, citation, death, or injury of an individual; and
 - a complaint or allegation of police misconduct against the officer involved in the incident.

Additionally, it specifically prohibits the disclosure of body-worn camera footage of:

- Incidents that depict victims of certain offenses or information that could identify such victims;
- Incidents that depict the death of a law enforcement officer in the performance of their duties;

1. The recently amended MPIA already protects against improper disclosure.

The MPIA grants custodians broad discretion to withhold documents—including body-worn camera footage—during the pendency of an investigation. Md. Code, Gen. Prov. §§ 4-343, 4-351(a)(1). After the investigation is complete, custodians may nonetheless withhold documents if disclosure would meet any of the following criteria:

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.*

Md. Code, Gen. Prov. § 4-351(b). Therefore, when requests are made for material that may be an invasion into victims' privacy or endanger the life or physical safety of a victim, custodians already have full license to withhold that material.

Moreover, some sensitive materials may never be disclosed:

- Medical and psychological information about an individual (§ 4-329(b)(1))
- Information about a person with or perceived to have a disability (§ 4-

2. Custodians have the right and responsibility to redact body-worn camera footage.

As with other documents—photographs, documents, etc.—custodians may redact portions of body-worn camera footage that ought not be released. The power to redact material negates the need for categorical bans on disclosure.

3. The implementation of Anton’s Law (SB 178, 2021) has not been fully seen.

Less than a year ago, this body passed Anton’s Law to allow for greater transparency over policing. Anton’s Law needs more time to be implemented before further restrictions on release are made to the MPIA.

4. SB 31 is a solution in search of a problem

There has been no incident in Maryland where material about victims of violence has been improperly released by a state agency. SB 31 is at best unnecessary.

5. The PIA is rooted in transparency

The Maryland Public Information Act is based on the *enduring principle that public knowledge of government activities is critical to the functioning of a democratic society*; that a Government of the people, by the people, and for the people must be open to the people. (emphasis added).¹

For these reasons, the undersigned organizations respectfully urge an unfavorable report on SB 31.

Respectfully,

ACLU of Maryland
Common Cause Maryland
Jews United for Justice
Maryland Center on Economic Policy

¹ Office of the Attorney General, Maryland Public Information Act Manual (Fourteenth Edition, 2015).

Marylanders for Open Government
Public Justice Center