



Brandon M. Scott
Mayor

BALTIMORE POLICE DEPARTMENT



Michael S. Harrison
Police Commissioner

TO: The Honorable Members of the Senate Judicial Proceedings Committee

FROM: Michelle Wirzberger, Esq., Director of Government Affairs, Baltimore Police Department

RE: Senate Bill 777 Public Information Act – Records Relating to Police Misconduct - Fees

DATE: March 15, 2022

POSITION: OPPOSE

Chair Smith, Vice-Chair Waldstreicher, and members of the Committee, please be advised that the Baltimore Police Department **opposes** Senate Bill 777.

Senate Bill 777 prohibits an official custodian of record for a law enforcement agency from charging a fee for the search and preparation of up to 500 pages of a record relating to an administrative or criminal investigation of misconduct by a police officer.

Last year, the Maryland General Assembly made police reform a top priority. In addition to establishing state-wide standard procedures for evaluation of external misconduct claims, the General Assembly passed SB 178 which makes a wide variety of personnel records available for public inspection. The thought behind this bill was that individuals had a right to know specific information regarding complaints filed against an officer as well as the subsequent investigation and discipline process. SB 178 did not, however, render all disciplinary files and all information contained in them disclosable to the public, thus a custodian must review all records responsive to every request to ensure that it does not turn over information that the law forbids disclosing. This law made the ability to recoup costs even more important in fostering transparency because if the government must do most of the work for free, it will have to do it in-house with lawyers it employs and not with outside contract workers. The time to do the work will therefore increase, making transparency take far too long.

The Baltimore Police Department is committed to ensuring transparency throughout the disciplinary process in accordance with both SB 178 and HB 670. However, we are very concerned with the fiscal impact SB 777 will have, especially on agencies like BPD that process a large number of MPIA requests. To put it into perspective, in 2021, the Department received a total of 2,592 MPIA requests and so far in 2022, we have received 536.

Under current law, a custodian is entitled to recover its actual costs in complying with an MPIA request after the first two hours of work. Current law also permits a custodian to waive these fees on a case-by-case basis if the requestor is indigent or if a multi-factor analysis determines that the fee waiver would be in the public interest. The effect of SB 777 would be to require each custodian to absorb virtually all costs of producing records, regardless of how expansive or voluminous the MPIA request may be. As explained above, without

reimbursement for these voluminous requests, governments will have to weave the work into their current employee's workload, prolonging the time to receive the requested documents.

In the Department's experience, most requests for police disciplinary records tend to implicate large volumes of responsive documents. One common type of request seeks all disciplinary records involving multiple named officers, each one of whom could have multiple disciplinary files, and each file could range from 50 to 200 pages. Since SB 178 went into effect, we have received 48 MPIA requests seeking misconduct files of 176 officers. As an example, one current request seeks records involving 7 officers, and the summaries of these cases alone spans more than 2,200 pages. Disregarding the time expended on this request by BPD and Law Department personnel, we expect to pay a vendor roughly \$4,000 for contract attorneys to spend roughly 100 hours reviewing and redacting the summaries. Without the cost to pay for the vendor, BPD's existing staff would be overloaded and unable to process the request quickly. This one request would monopolize staff time, delaying attention on any other requests. To produce full case files, instead of just summaries, would be much more voluminous, and therefore much costlier and time consuming to produce.

To further complicate matters, the law requires us to calculate costs based upon each record sought, not per request. Using the example above, although the total estimated pages needed to fulfill the request is 2,220, it involves 223 different records of approximately 10 pages each. So, if SB 777 passes, we would not be permitted to recoup the cost of fulfilling this request because no one record exceeds 500 pages

Another example of the type of complicated and labor-intensive requests we frequently receive is a request for **all** records of Public Integrity Bureau investigations (including all external complaint and Serious Incident Response Team (SIRT) files) during a set time period, for example between 07/01/2020 to 06/30/2021. This request for all the PIB files in one year implicates thousands of files, and our best estimate of the cost to fulfill this request is \$603,870.

While the BPD supports transparency, we believe that a balanced approach must be taken to ensure that agencies are not unnecessarily hampered from recouping the costs of fulfilling complicated and/or large requests. This is not merely a matter of money, but of efficient, timely transparency. When the requestor does not share the fiscal burden for the request, then all requestors suffer as the custodian simply cannot fulfill requests timely. The individual citizen that wants one record of interest will be waiting in a long line that reduces access to records and does not facilitate transparency.

Therefore, the Baltimore Police Department respectfully requests an **unfavorable** report on Senate Bill 777.