



Senate Bill 40

Public Information Act – Inspection of Records from Body-Worn Digital Recording Devices

MACo Position: **SUPPORT**

To: Judiciary Committee

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From: Sarah Sample

The Maryland Association of Counties (MACo) **SUPPORTS** SB 40. This bill makes important updates to the Maryland Public Information Act, to reflect the complexities arising from body-worn camera footage, stored by public agencies as custodians. The bill creates important protections for victims and others whose identities may be captured via camera operation. It also prevents these laws from being abused by bad actors, or for overbroad and nonspecific requests. Finally, it advances best practices, by regulations, for all local agencies to follow in implementing this important public safety technology – as mandated for county agencies by 2025.

Video Footage is Fundamentally Different than Paper Documents

SB 40 recognizes that Maryland’s open government laws require modernization to account for more complex technologies than originally envisioned. Some years ago, Maryland legislation spelled out new rules to encourage distribution of information through electronic media, while creating reasonable standards to protect metadata and other information beyond the document contents. Similarly, footage from body cameras is replete with challenges beyond those presented by paper documents and deserves a law to properly frame its distribution.

On a paper police report, an incidental mention of a confidential informant or victim by name is a matter appropriate for redaction before release to a requestor. This may be accomplished by a brief review and “magic marker” redaction by a trained staff member. But the comparable review and redaction of video footage is dramatically more laborious and technical. However, the potential for such incidental inclusion of personal matters on camera footage is exponentially more likely due to the broad-view and unfocused nature of body worn camera footage. SB 40 creates a far clearer framework for public custodians to follow to manage requests for this footage.

Mandatory Denials Are An Important Part of the Public Information Act, and Protecting Victims is Important

While the general tone of the Maryland Public Information Act is to presume that public documents are available to requestors, the General Assembly has created numerous exceptions to this presumption to serve important policy goals. SB 40 simply seeks to do so in one more category – dealing with the sensitive nature of wide-frame camera footage.

Maryland law already sets forth specific protections for information regarding an individual's adoption (General Provisions, §4-305), certain hospital records (§4-306), details of library usage (§4-308), most personnel and academic information (§§4-311 and 4-313), and certain details about individuals' prior arrests (§4-316), among numerous others. In each case, the General Assembly has weighed the importance of public access to information of general or community interest with the appropriate right to privacy for individuals referenced in such public documents.

SB 40 extends that logic to recognize that victims and other people are sure to appear on the footage from wide-angle cameras. Similarly, information about a home or business, where law enforcement have responded to a call, will be captured. This incidental capture of camera footage is inescapable, but its distribution to document requestors is not. SB 40 creates a clear rule that footage containing this information must not be shared through the Public Information Act, in the same way that the many categories above are specified in current law. These vulnerable people deserve the knowledge that their information will be protected, rather than it "may" be protected by a judgment call subject to second-hand scrutiny, as is effectively the case under current law.

Without This Clarity, Redaction is Difficult, Expensive, and will Frustrate Requestors

SB 40 deals only with information requests under the Public Information Act, and even more narrowly only with such requests that are not tied to an incident where an injury or misconduct is alleged to have occurred. So, the ability of an affected party, or media organization, to request footage of an incident of general interest is retained. The ability of a litigant to secure relevant footage through the discovery process is also completed unaffected by the bill.

Without SB 40, an agency may be left to face a daunting task to fulfill the current law regarding a broad, sprawling request for footage unrelated to any incident or allegation. In that case, the agency must conduct a detailed and thorough analysis of the footage, frame by frame, by legally trained staff familiar with the complicated web of mandatory inspections, permissive inspections, and mandatory denials. Under Maryland law, the custodian as an individual may be personally liable for errors made in exercising this judgment. Murky laws regarding what should be provided, and what must be withheld, do not serve the public interest, and can leave requestors facing towering costs for the legal staff time to fully redact universal or over-broad requests.

SB 40 creates clearer rules, ensures that affected people have the access they need, and that victims and others will be protected from inadvertent release of their identifying information. SB 40 reinforces and improves Maryland's historic police accountability measures, and assures the protection of victims whose identity may be captured by the use of this technology. Accordingly, MACo urges a **FAVORABLE** report for SB 40.