

RIGHT ON TRANSPARENCY

**Written Testimony
Regarding Maryland Senate Bill 554
Before the Senate Committee on Education, Energy, and the Environment**

February 20, 2025

Dear Chair Feldman and Members of the Committee:

We, the undersigned organizations, represent the Right on Transparency coalition.¹ As leaders in the movement for free markets, limited government, and individual liberty, we strongly support comprehensive government transparency reform. When government is open and public-information laws are robust, citizens, members of the media, and even elected officials enjoy a powerful tool to discover inefficiencies and hold public institutions accountable.

SB 554, which would amend the Maryland Public Information Act (“PIA”), would also likely undermine open government. The bill’s proposed reforms to the PIA’s existing “vexatious requester” standard, Md. Code Ann., Gen. Provisions § 4-1A-04 (2024), and its creation of a right of action by the government against its own citizens, will not only endanger the public’s right to request information from the state, but they will ultimately set a dangerous precedent by weaponizing the PIA *against* the public. For reasons detailed below, we ask the Committee to consider the policy implications of SB 554 and its potentially negative impact on transparency.

I. The Creation of a Government Right of Action Defeats the Purpose of Open Government

Proposed Section 4-362(a)(2) would grant custodians the right to file a lawsuit against citizens who submit PIA requests. That provision fundamentally shifts the PIA from a tool for public oversight to one that can suppress scrutiny of state government and its official activities. Indeed, the introduction of a right of action *against* the public by the government runs counter to the very purpose of transparency laws.

A government right of action will undoubtedly chill the submission of requests, especially among those who lack the resources to defend themselves in costly litigation. Investigative journalists, citizen activists, and everyday people will now think twice before seeking information about what the government is up to. Although Proposed Section 4-362(b)(3) would place the burden on a custodian to sustain a “vexatious requester” suit—no doubt a silver lining to an otherwise problematic reform—courts would still be given remedial authority to enjoin future requests for an indeterminate period. SB 554 would give the same authority to State Public Information Act Compliance Board (“Board”), too. For the reasons detailed below, *see infra* III, this is an undesirable change.

¹ See Statement of Principles, <https://rightontransparency.org/> (last visited Feb. 18, 2025).

From a constitutional perspective, the creation of a government right of action under the PIA also risks infringing on the Maryland Declaration of Rights, which protects as inalienable the right of the people to alter or reform their government (art. 1), to regulate the internal government of the state (art. 4), to petition the government for the redress of grievances (art. 13), and to enjoy freedom of speech (art. 10) and liberty of the press (art. 40). Relatedly, the potential for lawsuits by custodians raises serious anti-SLAPP concerns, as such suits could be understood as legally prohibited insofar as they reflect an effort to silence or punish those who seek to scrutinize government actions through use of the PIA. *See generally* Md. Code Ann., Courts & Judicial Proceedings § 5-807 (2024).

Again, allowing custodians to initiate legal actions against PIA applicants dramatically shifts the balance of power in favor of the government, contradicting the democratic principle that government transparency is a public good. The PIA already provides sufficient safeguards for custodians facing vexatious requests in the form of the Board and the Public Access Ombudsman. Involving the courts, as SB 554 envisions, would be a step in the wrong direction.

II. The Addition of “Abusive” to Section 4-1A-04 is Ambiguous and Redundant

As it stands, the PIA already contains a strong “vexatious requester” standard that empowers the Board to adjudicate complaints from custodians about a “request” or “pattern of requests” that is “frivolous, vexatious, or in bad faith.” Md. Code Ann., Gen. Provisions § 4-1A-04(b)(1) (2024). The addition of “abusive” to the criteria for excusing a custodian’s obligation under the PIA is both ambiguous and redundant.

SB 554 fails to offer any definition of “abusive.” It would therefore be left to the Board’s discretion to define. That might result in an unfairly broad and inconsistent interpretation. In some instances, applicants need to file complex requests, and custodians might try to improperly characterize such requests as “abusive.” More importantly, there is little reason to think the addition of the word “abusive” is necessary for effective implementation of the PIA.

The Board has recently entered decisions that apply the existing “vexatious requester” standard against requesters who are deemed “abusive.” As the Board has explained, the statutory term “vexatious” already *includes* requests that “are intended to harass or annoy a custodian,” are “recurring, repetitive and unrelenting,” or which “contain *abusive*, disparaging, or profane language.” Md. Pub. Info. Act Compliance Bd. Case No. 24-106 at 12 (Sept. 26, 2024) (cleaned up and emphasis added); *see also* Md. Pub. Info. Act Compliance Bd. Case No. 24-114 (Oct. 25, 2024) (same). Insofar as the Board understands existing law to cover “abusive” requests, then the revisions contained in SB 554 are unnecessary.

III. Preemptively Blocking Future Requests Undermines the Goals of the PIA

SB 554 would permit the Board—and courts, as addressed above—to preemptively excuse custodians from responding to PIA requests, even in instances where future requests do not concern the same or similar topics as existing vexatious request. Moreover, the Board would be empowered to provide this type of relief for any “specified period of time,” including perhaps indefinitely. These proposed changes are deeply problematic.

It would undermine the purpose of the PIA to allow a custodian to ignore an applicant's request for disclosure without any consideration of the substance of his or her request and its merits. Not only does this reform raise due-process concerns, but it is a poor approach to open government. The PIA is meant to promote transparency and democratic engagement. It protects the right of any person to access information about the affairs of government, and it creates a presumption in favor of disclosure. *See* Md. Code Ann., Gen. Provisions § 4-103 (2024). Granting the Board the power to shield custodians from applicants based effectively on their identity severely undercuts the promise of the PIA.

Conclusion

A healthy democracy depends on the public's ability to engage with its government and access information without fear of retaliation. The PIA recognizes that end by enshrining a general right to inspect "information about the affairs of government and the official acts of public officials and employees." Md. Code Ann., Gen. Provisions § 4-103(a). SB 554 would work against this stated goal of openness by empowering the Board, circuit courts, and custodians to undermine transparency under the guise of addressing "abusive" requests. Indeed, the bill's reforms, if realized, would only embolden secrecy. The PIA already contains strong safeguards against so-called "vexatious requesters." There is simply no demonstrated need for injecting ambiguous language—let alone a constitutionally suspect government right of action—into the law.

We urge the Committee to consider alternative solutions that strengthen, rather than weaken, the public's right to information. Thank you for your consideration of our concerns.

The Right on Transparency Coalition

- [Americans for Prosperity Foundation](#)
- [Goldwater Institute](#)
- [Mackinac Center for Public Policy](#)
- [National Taxpayers Union](#)
- [Parents Defending Education](#)
- [Southeastern Legal Foundation](#)