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February 20, 2025

To: The Honorable Brian J. Feldman
Chair, Senate Education, Energy, and the Environment Committee

From: Office of the Attorney General

Re: SB 554 - Public Information Act - Frivolous, Vexatious, or Abusive Requests – Remedies (Favorable With Amendments)

The Office of the Attorney General ("OAG") is committed to the principles of open access to public records and to promoting a consistent application of the Public Information Act ("PIA") throughout the State. Indeed, OAG has long worked toward ensuring the correct implementation of the PIA through, among other things, publication of its Public Information Act Manual.

The primary purpose of this bill is to clarify and improve upon the process that the General Assembly first created in 2021 for custodians to seek relief from the Public Information Act Compliance Board ("PIACB") when PIA requests are frivolous, vexatious, or in bad faith. Last year, the PIA Compliance Board issued its first decisions under that new provision, and the experience revealed some ways that the provisions could be improved and clarified. Although frivolous and vexatious PIA requests are rare, when they do target an agency, they can disrupt the operations of government and make it hard for an agency to respond timely to legitimate PIA requests from the press, interest groups, and members of the public. Here are links to two of the decisions issued by the PIACB that illustrate the types of issues that can arise:

- https://www.marylandattorneygeneral.gov/Opinions%20PIACB%20Documents/2022/PIACB24_106.pdf

- https://www.marylandattorneygeneral.gov/Opinions%20PIACB%20Documents/2022/PIACB24_029.pdf

To address these types of problems, which have continued even after the enactment of this new process, the bill proposes three changes, which will be discussed below. In addition, based on

feedback from interested parties and questions from House members on the cross-filed House version of the bill, we are proposing a series of amendments to the legislation.

First, the bill would permit custodians to go directly to circuit court, rather than through the PIACB, to seek an order that a request is frivolous, vexatious, abusive, or in bad faith. When a vexatious or frivolous requester is truly disrupting the work of the agency, the relief that can be obtained through the Public Access Ombudsman and the PIACB will not always be sufficient. As the Ombudsman has explained in her written testimony in support of bill, "mediation and even [PIA Compliance] Board review following unsuccessful mediation often prove insufficient to resolve problems involving a pattern of intentional and persistent abuse of the PIA." Courts, meanwhile, have the authority to enforce their orders, and that authority will sometimes be necessary to solve the problem when a requester is acting in bad faith. This also gives custodians the same sort of options as requesters, who can generally choose whether to go directly to court to challenge a PIA response or instead use the PIACB process. To the extent that custodians choose to file in circuit court, it also has the benefit of freeing up the PIACB to focus on more substantive issues about the interpretation of the PIA.

We emphasize that this proposal would not allow a custodian to ignore a PIA request merely because, in the custodian's view, the request is frivolous, vexatious, or in bad faith. Rather, the bill's remedies are available only if *the court* finds that the request meets at least one of those criteria. We also emphasize that custodians would not use this option lightly. In fact, custodians have only used the existing process for seeking relief from frivolous or vexatious PIA requests a handful of times since the law was enacted, showing that custodians are using the process in good faith as a last resort. And the costs of bringing an action in circuit court are even higher than the costs of informal review before the PIACB, meaning that, as a practical matter, the option for court review would only be used in those egregious instances when intervention from a court is needed to prevent the PIA from being abused and ensure that the agency can timely respond to legitimate requests.

Second, the bill would clarify exactly what types of relief the PIACB (or a court) can provide after determining that a request or pattern of requests is frivolous, vexatious, or in bad faith. Right now, the law provides that the PIACB can issue an order authorizing the custodian to "ignore the request that is the subject of the custodian's complaint." But that remedy is effectively meaningless if the PIACB or a court can only permit the agency to ignore the request(s) that gave rise to the challenge but the custodian would then have to start the process over again if there is a new vexatious request that is part of the same pattern from the same requester. The PIACB's regulations already interpret the statute to give it some latitude to preclude future PIA requests on the same topic, but the bill would clarify the possible relief that the Compliance Board or a court could give. To address some questions about the scope of the precise language, we are suggesting an amendment to proposed §§ 4-1A-04(b)(3)(iii) and 4-362(c)(4)(iii) such that they would allow the PIACB (or a court) to:

> **PROVIDE OTHER APPROPRIATE NONMONETARY RELIEF COMMENSURATE WITH THE CONDUCT FOUND TO BE FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH, INCLUDING AN ORDER THAT A CUSTODIAN**

NEED NOT RESPOND TO FUTURE REQUESTS FROM THE VEXATIOUS REQUESTER FOR A SPECIFIED PERIOD OF TIME, NOT TO EXCEED ONE YEAR.

This language is adapted from Connecticut's similar statute. To be clear, the custodian would not have the discretion to decide what remedy is appropriate. Rather, the bill would leave it to the discretion of a neutral decisionmaker (the PIACB or a court) to make the remedy match the problem.

Third, the bill attempts to solve a different, but related, problem. The PIACB has been flooded over the past year with numerous complaints *from requesters* that, on their face, are frivolous, vexatious, or in bad faith. Under current law, the PIACB has had to give full consideration to those complaints, asking for a response from the custodian and issuing a full written decision. That, however, has wasted custodians' time and slowed the PIACB's ability to issue decisions in response to legitimate complaints and on important issues. Thus, the bill would give the PIACB more control over its own docket by authorizing the Board to immediately dismiss complaints to it that are frivolous, vexatious, abusive, or in bad faith. This would allow the PIACB to focus on the important substantive issues within its jurisdiction, rather than frivolous complaints. Again, this provision does not give any discretion to custodians to ignore a complaint from a requester. It merely gives *the PIACB* discretion to control its own docket.

Finally, note that our proposed amendments remove the word "abusive" where the bill as introduced had proposed adding that term to the pre-existing list of frivolous, vexatious, and in bad faith requests.

The OAG thus urges a favorable report on SB 554, as amended.