



MARYLAND GENERAL ASSEMBLY

House Health and Government Operations Committee

Written Testimony of Timothy G. Nelson on behalf of the Maryland-DC-Delaware Broadcasters Association Regarding House Bill 821

(Public Information Act – Denials – Pending Litigation)

Submitted February 7, 2025

Thank you for the opportunity to submit this written testimony regarding House Bill 821, “Public Information Act – Denials – Pending Litigation.” My name is Tim Nelson, and I serve as counsel to the Maryland-DC-Delaware Broadcasters Association (“MDCD” or the “Association”).¹ On behalf of the Association and its Members, which include approximately 20 television stations and 110 radio stations, I thank the Committee for holding a hearing on House Bill 821 and considering the Association’s perspective. I write to express MDCD’s strong opposition to House Bill 821.

House Bill 821 would amend the Public Information Act (the “Act”) to allow records custodians to deny requests for inspection of records pertaining to pending or anticipated litigation when the State, a State officer or employee in their official capacity, or a political subdivision is or may be a party (“Pending Litigation Denial”).

The Pending Litigation Denial is vague, overbroad, and unnecessary; moreover, it contravenes the Act’s purpose and runs contrary to the principle that citizens must be accorded wide-ranging access to public information, especially information about the affairs of government. As written, such legislation would grant custodians—hundreds of authorized individuals who have physical custody and control of a public record across the State—seemingly unchecked discretion in determining when to employ a Pending Litigation Denial.² The Association finds problematic the broad authority HB 821 would confer upon hundreds of separate, unelected arbiters to make such determinations, especially given the bill’s expansive “pertaining to pending or reasonably anticipated litigation” language. Arguably, litigation regarding any matter of even minimal controversy could be “reasonably anticipated” for years—at least until the limitations period for a given claim runs—and records and information that should be in the public domain could be shielded from view for such time.

¹ The Maryland-DC-Delaware Broadcasters Association is a voluntary, non-profit trade association that advocates for the interests of its member radio and television stations and, more generally, the interests of broadcasting in Maryland, Delaware, and Washington, D.C.

² A 47-page list of the Act’s custodians can be found here:
https://www.marylandattorneygeneral.gov/OpenGov%20Documents/Appendix_J.pdf.

In addition, the Act already protects from public disclosure many categories of information, such as records that are privileged or confidential or would otherwise be contrary to state or federal law, rule, or court order. Similarly, the Act already provides that custodians should deny requests for certain private information (e.g., adoption records, hospital records, welfare records, library records, etc.). The Pending Litigation Denial is unnecessary and redundant given the Act's numerous exceptions to disclosure (including, specifically, the safeguard for confidential information).

MDCD's Members—local television and radio stations—are the most trusted source of news and information here in Maryland and across the country. One of the central, critical roles the Association's Member stations perform is to inform the public about the actions of Maryland's public bodies, figures, and officials. As the United States Supreme Court has recognized, "[b]eyond question, the role of the media is important; acting as the 'eyes and ears' of the public[.]"³ Oftentimes, MDCD's Member stations must gain access to information about government activity in order to serve and inform the public. Accordingly, MDCD has long advocated for transparency in government and against measures that seek to limit rights of this State's citizens to access public records. House Bill 821 would do just that, striking a blow to government transparency by adding an unnecessary, overbroad exception to the general rule that public records are the property of the people, while empowering custodians throughout the State with excessive discretion in determining whether records could pertain to "reasonably anticipated" litigation and therefore remain secret.

The Act already has the necessary safeguards in place to keep from public view certain records. HB 821 is not needed and would undermine government transparency. MDCD opposes this legislation.

* * * * *

³ *Houchins v. KQED, Inc.*, 438 U.S. 1, 8 (1978).