



CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

House Bill 821

Public Information Act - Denials - Pending Litigation

Date: February 11, 2025

To: Health & Government Operations Committee

Position: **FWA**

From: Matt Stegman,
MD Staff Attorney

Chesapeake Bay Foundation (CBF) **SUPPORTS WITH AMENDMENT** HB 821, which would establish that a custodian may deny a request to produce public records related either to active litigation or related to a matter that can *reasonably be anticipated* to be the subject of litigation. While we understand the intention of the bill and its clarification that it would, if enacted, not limit existing rights of discovery for litigants. However, CBF believes that giving a custodian discretion to deny requests based on matters they may “reasonably believe” would be subject to future litigation goes too far to stymie transparency. Indeed, adoption of such a provision could foreseeably lead to an increase in litigation actions against agencies and employees of the state.

CBF's Litigation Department defends the laws and regulations that protect our waterways and serves as a watchdog to hold governments and polluters accountable to their clean water commitments through carefully chosen legal action. With a record of precedent-setting cases, we work to bring about lasting change within our legal system that ensures the equitable and long-term health of the Bay, its rivers and streams, and its communities.

For permits and other administrative decisions, judicial review or litigation is often the only remedy for parties that believe an entity of state or local government has acted in error. A well-timed PIA records request can often be determinative whether litigation is necessary or not. Likewise, CBF regularly works with local partners on citizens' suits to spur an agency or entity to enforce existing law. On occasion public records requests have spurred an agency to reevaluate their own determination about whether enforcement is necessary, sparing the need for formal litigation.

Parties engaged in active litigation have established and well-understood processes to engage in discovery and CBF recognizes the reasonable discretion to deny records requests for matters in active or pending litigation. However, allowing reasonable requests for access to public records for matters a custodian may reasonably believe could be subject of possible future litigation poorly serves the interests of the public and government entities alike. For this reason, **CBF urges the Committee's FAVORABLE WITH AMENDMENTS report on HB 821.**

For more information, please contact Matt Stegman, Maryland Staff Attorney, at mstegman@cbf.org.

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The Chesapeake Bay Foundation (CBF) is a non-profit environmental education and advocacy organization dedicated to the restoration and protection of the Chesapeake Bay. With over 200,000 members and e-subscribers, including 71,000 in Maryland alone, CBF works to educate the public and to protect the interest of the Chesapeake and its resources.