

HOUSE BILL 821 (HB0821)

OPPOSED (UNF)

WRITTEN TESTIMONY OF:

**JOHN GALBREATH
2516 CHESTNUT WOODS CT.
REISTERSTOWN, MD 21136**

I am a Maryland citizen, and I oppose this bill for the following reasons:

I. OPEN AND TRANSPARENT GOVERNMENT, AND BROAD ACCESS TO GOVERNMENT RECORDS BY ALL PERSONS, ARE FOUNDATIONAL PRINCIPLES OF THE PUBLIC INFORMATION ACT (“PIA”).

The PIA grants all persons a broad right to inspect government records. Maryland Code, Gen. Prov., § 4-103(a) and (b) (General right to information) state:

- a. “All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.”
- b. “To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.”

These foundational principles are attached for the Committee’s convenience as Exhibit 1.

Indeed, the Attorney General’s own PIA manual states at the very start:

“The Maryland Public Information Act is based on the enduring principle that public knowledge of government activities is critical to the functioning of a democratic society; that a Government of the people, by the people, and for the people must be *open* to the people.” December 2024 edition, Preface.

The PIA manual cover and preface pages are attached for the Committee’s convenience as Exhibit 2.

II. THIS BILL GOES AGAINST THOSE IMPORTANT FOUNDATIONAL PRINCIPLES, BY ALLOWING CUSTODIANS TO DENY REQUESTS SIMPLY BECAUSE THE RECORDS INVOLVE OR MIGHT INVOLVE LITIGATION BY OR AGAINST THE STATE.

A. Every PIA Record Request Could Potentially Involve Litigation Against the State, and This Bill Would Allow a Custodian to Refuse a Request for That Reason Alone.

By its very nature, every PIA record request could potentially involve litigation against the State – because if the request is denied, the requestor’s ultimate remedy is litigation in the Circuit Court against the State, State agency, or political subdivision that denied the request. Thus, a custodian could take the position that any record request could involve litigation, and deny the request on that basis. Said another way, no *other* pending or anticipated litigation need exist in order to allow the custodian to deny the record request – the mere fact that a record request was made means that litigation could be anticipated.

B. The Bill Would Hurt the Press’s Ability to Inform the Public About Important Litigation Involving the State or State Entities.

But even if the requested record involves or might involve litigation *other* than that needed to overcome a denial, custodians should not be permitted to deny a request solely on the basis of that litigation. For example, members of the press would certainly have a legitimate interest in records pertaining to a pending or anticipated public corruption case in which the State, state entity, or state employee was a party. This bill would allow custodians to deny members of the press access to such records, and would thus prevent the public from learning about the case. Preventing public knowledge about the practices of government, just because the State, state entity or state employee is involved or might become involved in litigation concerning those practices, runs counter to the ideal of open and transparent government.

As another example, members of the press would certainly have a legitimate interest in records pertaining to a case which the State was bringing or anticipated bringing *against* a company or other entity. With this bill, members of the press could also be denied access to those records, thus preventing the public from learning about the case.

C. The Bill Would Allow Custodians to Discriminate Against Citizens or Organizations Who Have Been Forced to Resort to Litigation to Obtain Public Records in the Past, Even If That Litigation Was Successful.

The PIA’s foundational principles hold that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. These principles do not exclude persons or organizations who may have been forced to resort to litigation or other legal action to obtain public records in the past.

This bill would allow custodians to contend that such persons or organizations can be anticipated to pursue litigation with future PIA requests, because they did so in the past – even if that past litigation was merely to appeal a record request denial, and even if that past litigation was successful. They can thus be denied access to records right off the bat, independent of any other reason. Said another way, the fact that a citizen or organization has had to fight to obtain access

to public records can be held against them in a subsequent request – even if that subsequent request concerns an entirely different matter than the past request.

With this bill, persons or organizations can be denied access to even their own records – and to do so, the custodian just has to contend that litigation can be anticipated with that person or organization.

III. OTHER REASONS THIS BILL WILL MOVE MARYLAND AWAY FROM OPEN AND TRANSPARENT GOVERNMENT.

Maryland does not have a State Inspector General to provide independent oversight of state agency practices and procedures, and the PIA thus functions as a critical tool for public oversight. We should be strengthening the Act, not weakening it.

The Attorney General's Office is not acting in the public interest here. Instead, in proposing this bill, it is acting as the attorney for the State and state agencies. Said another way, the Attorney General's Office is using its governmental position and influence to change the law to benefit its clients – the executive branch and its agencies. This bill would raise the wall around the State and state agencies, and make it more difficult for the public and the press to see in.

The bill provision which states that a party to litigation is not prevented from obtaining the records in discovery is not satisfactory, because a press organization might not be a party but could certainly still have a legitimate interest in the records, to keep the public informed. And even for parties, obtaining the records via discovery is hardly guaranteed and could involve a lengthy wait.

Custodians of public records already have enough reasons to deny record requests. They do not need yet another reason – especially a reason as broad and far-reaching as this one.

SUMMARY

For all the above reasons, this bill is not in the public interest. Open and transparent government is the cornerstone of a free and democratic society, and this bill would usher in a new era of closed, not open government – and opaque, not transparent government. It will move Maryland away from a government of the people, by the people, and for the people.

We should not be further restricting the people's access to information about the workings of their government. If anything, we should be making the Public Information Act less restrictive. Said another way, we should be strengthening the Public Information Act, not weakening it.

[Home](#) [Table of Contents](#)**§ 4-103. General right to information**

West's Annotated Code of Maryland

General Provisions

Effective: October 1, 2014

West's Annotated Code of Maryland
General Provisions (Refs & Annos)
Title 4. Public Information Act (Refs & Annos)
Subtitle 1. Definitions; General Provisions (Refs & Annos)

Effective: October 1, 2014

MD Code, General Provisions, § 4-103
Formerly cited as MD CODE, SG, § 10-612

§ 4-103. General right to informationCurrentness**In general**

(a) All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

General construction

(b) To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

General Assembly

(c) This title does not preclude a member of the General Assembly from acquiring the names and addresses of and statistical information about individuals who are licensed or, as required by a State law, registered.

Credits

Added by Acts 2014, c. 94, § 2, eff. Oct. 1, 2014.

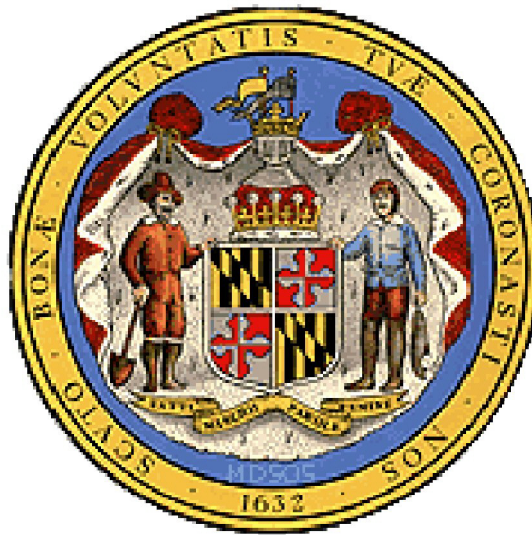
MD Code, General Provisions, § 4-103, MD GEN PROVIS § 4-103

Current through all legislation from the 2024 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

END OF DOCUMENT

EXHIBIT 2

Maryland Public Information Act Manual



Office of the Attorney General

**Anthony G. Brown
Attorney General**

Nineteenth Edition
2024

PREFACE

The Maryland Public Information Act is based on the enduring principle that public knowledge of government activities is critical to the functioning of a democratic society; that a Government of the people, by the people, and for the people must be *open* to the people. Members of the public need and deserve complete information as they make the decisions and form the opinions that determine our future path, and the Act ensures that those needs are met fairly and expeditiously while protecting important privacy rights and other public policy goals.

As Attorney General, I am committed to open access to information, and to promoting a consistent application of the Act throughout State and local government. The Office of the Attorney General has long worked toward ensuring the correct implementation of the Act, and I am continuing and expanding on that tradition.

This manual is designed to be a resource for a range of users, from members of the public and the media who request information, to the government officials who have the responsibility to implement the Act's requirements.

The 19th edition of this manual, like those that precede it, is the work of many talented and committed individuals from the Office of the Attorney General. Special credit goes to former Deputy Attorney General, later Judge, Dennis M. Sweeney for preparing the first several editions, and to former Assistant Attorneys General Jack Schwartz and Robert N. McDonald (now Judge McDonald), as well as to Assistant Attorney General Adam D. Snyder, who assumed responsibility for subsequent editions. This most recent edition has been produced under the supervision of Patrick B. Hughes, the current Chief Counsel for Opinions & Advice.

I also wish to thank the local government officials, the Public Access Ombudsman, members of the private bar, and representatives of the media and open-government advocacy groups for their many constructive suggestions about how best to implement the PIA.

In addition to being available in printed version, the Manual is on-line at <http://www.oag.state.md.us/Opengov/pia.htm>.

Please let me know if you have suggestions for further refinements.

*Anthony G. Brown
Attorney General
December 2024*