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House Bill 304: Public Information Act – Data Manipulation

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Position: FAVORABLE

The Public Justice Center (PJC) is a nonprofit legal services organization which advocates for social justice, and economic and racial equity in Maryland, including by upholding the rights of historically excluded and underserved students through individual representation, community outreach, and systemic advocacy. In my capacity as an education attorney and advocate, I work extensively with student discipline data to identify discriminatory discipline practices, track longitudinal trends, and focus my advocacy on school districts with the most concerning data.

HB 304 addresses an impediment on access to public records that has long plagued the Maryland Public Information Act (MPIA). The “new records” exemption is used by government agencies to deny access to critical data pertaining to the operation of the government and how it treats its constituents.

Agencies increasingly store public records as data in databases, sometimes *only* in databases. For example, the Maryland State Department of Education (MSDE) receives student suspension and expulsion records only through data files submitted by school districts. These records are uploaded into MSDE’s powerful Oracle database management system. The agency extracts data by writing a SQL database query.

The “new records” exemption in the MPIA says an agency does not have to fulfill a public records request if the request requires it to “create, compile, or program a new record.” Md. Code Gen. Provis. § 4-205(c)(4)(iii). More and more, as agencies rely on complex databases, they are refusing to produce data by claiming that doing so would create a new record. Writing a query, extracting subsets of data, aggregating data, and combining data from two spreadsheets in the same database are all things government agencies have claimed create “new records.” Yet these functions are now routine, performed regularly in the normal course. In my work with student discipline data, this is particularly confounding because individual student records are protected from disclosure where the student is feasibly identifiable. 20 U.S.C. § 1232g. So, while MSDE can’t provide individual discipline data, it also refuses to provide aggregate discipline data under the “new records” exemption. This means the public can’t know, for example,

- How many Black students with disabilities are suspended and which districts suspend the most,
- How many days each year students spend out of class due to suspension, or
- Which districts suspend Black girls at much higher rates than white girls.

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This is information of the utmost importance about the operation of the government and how school systems treat the children entrusted to them. By amending the “new records” exemption to exclude use of a database’s native data manipulation tools, this bill gives the public access to information like this. This fulfills the core purpose of the MPIA which carries a strong presumption in favor of disclosure of public records.

Databases today are incredibly powerful; they all have built-in capabilities to do complex statistical analysis of massive data sets. This is a good thing. Governments should be invested in understanding what their data says so it can inform good policy making. But that data is The People’s data, and it is almost invariably *about* The People. Maryland should be increasing access to public records, not hiding behind computer programs.

The PJC as a public interest advocacy organization makes frequent use of the MPIA in a wide variety of contexts in addition to education: health care, housing, subsistence benefits, courts, the criminal legal system, among others. Access to public data in all realms of government must be secured by the MPIA in the digital age.

The MPIA has safeguards against abuse. Agencies can seek protection from requests that are frivolous, vexatious, or in bad faith. Gen. Provis. § 4-1A-04(b). They can charge requesters a “reasonable fee” if the request requires a lot of work. Gen. Provis. § 4-206(b). And there is a Public Information Act Compliance Board that regularly settles disputes about burdensome requests. § 4-1A-01 et seq.

Maryland continues to embrace open government. Accessibility and accountability are vital to the flourishing of democracy. Keeping up with technology is critical to an effective MPIA, and this bill is a major step toward a more transparent and accountable government.

For these reasons, the PJC supports House Bill 304.

For more information, please contact:

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