



[Tc4health@gmail.com](mailto:Tc4health@gmail.com)  
[www.qualequityaccess.com](http://www.qualequityaccess.com)

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Dear Chairwoman Wells, Delegate Kerr, Delegate Lehman, Delegate Wu, and Honorable Committee Members

I am Alita-Geri Carter, the mother of two disabled children, a pediatric nurse practitioner, and the owner of Qualequity Access, LLC a consultancy that advocates for quality, equity, access, and accessibility in healthcare and education. I am writing to express my strong opposition for the HB 0304 Public Information Act-Data Manipulation as a current constituent of Howard County and former constituent of Prince George's County.

While House Bill 304 ostensibly seeks to clarify that data manipulation does not constitute the creation of a "new record," the specific language proposed in Section 4-205(c)(5)(II) creates a dangerous technical loophole that will likely be weaponized by agencies to deny transparency and extend delays.

By tying the definition of a public record to the specific technical capabilities of an agency's software, this bill risks codifying a new excuse for non-compliance, particularly for agencies like the Maryland State Department of Education (MSDE) and local school districts that frequently rely on antiquated or proprietary "legacy" systems.

### **The "Capability" Loophole (Section 4-205(c)(5)(II))**

The bill states that data manipulation is not a new record only if the "records database program is capable of performing" the request. This clause is fatal to transparency for the following reasons:

**Legacy Systems as a Shield:** Agencies can now legally deny requests by simply claiming their specific, outdated software version is not "capable" of the requested aggregation or extraction without custom coding. Instead of the information being public, the right to access becomes dependent on the features of the vendor software the agency chose to buy.

**Vendor Reliance:** This language allows custodians to claim they cannot fulfill a request because they must "contact the vendor" to determine capability. This introduces a third-party bottleneck, allowing agencies to pause the statutory 30-day clock while they await technical assessments that may take months.



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## **Codifying Delays and "Investigation" Time**

Citizens already face routine violations of the 30-day response mandate. I personally am still waiting to receive information requested on September 10, 2024.

**New Fact-Finding Phase:** By making the "capability" of the database a matter of law, this bill gives agencies a statutory reason to delay production. Custodians will argue they need additional time, often extending into months or over a year to "investigate the technical capabilities" of their systems before even processing the request.

**Burden of Proof:** If a request is denied because the software is deemed "incapable," the requester is left with no recourse other than the Public Information Act Compliance Board (PIACB). Proving what a closed-source government database "is capable of" is technically impossible for a member of the public, effectively rendering the denial unchallengeable.

## **Narrowing the Definition of "Manipulation"**

The bill creates an exclusive list of actions (compilation, extraction, querying) that qualify as existing records.

**Exclusionary Logic:** Agencies may argue that any data processing not explicitly listed in this section defaults to "creating a new record," thereby allowing them to charge exorbitant "creation" fees or deny the request entirely.

**Cost Shifting:** If an agency claims their system is not "capable" of the specific manipulation requested, they may offer to perform the work only if the requester pays for a "custom report" or external vendor fees, making public data accessible only to those with significant financial resources.

## **Impact on Parents of Children with Disabilities**

Parents of children with disabilities are uniquely harmed under the current framework, as agencies are already exploiting technical loopholes to do the bare minimum in responding to requests. Rather than providing full and accurate responses, agencies often recharacterize requests or upload arbitrary documents simply to check a box and claim compliance. This pattern of minimal response is particularly detrimental to parents who rely on timely and accurate information to advocate for their children's educational needs and ensure compliance with legal requirements.



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The proposed changes in HB 304 will only exacerbate this issue by providing agencies with more avenues to delay or obscure access to critical information. It will create further barriers for parents seeking to ensure their children receive the support and accommodations required under the law.

### **Conclusion**

For citizens who have already waited more than a year for basic documents and suffered through the PIACB complaint process, this bill offers no relief. Instead, it creates a new "technical capability" standard that agencies will inevitably use to justify further inaction. We urge the committee to vote unfavorable concerning HB 304 or amend it to state that any data held by an agency is a public record, regardless of the database's native features, and to ensure that parents of children with disabilities are not further disadvantaged in their efforts to secure the necessary information for their children's education and well-being.

Kind regards,

Alita-Geri Carter, RN, MSN, CPNP-PC, BCPA