



Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Gregory Slater
Acting Secretary

February 11, 2020

The Honorable Shane E. Pendergrass
Chair, Health and Government Operations Committee
241 House Office Building
Annapolis MD 21401

RE: Letter of Information – House Bill 502 – Public Information Act - Revisions

Dear Chair Pendergrass and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on House Bill 502, but offers the following information for the Committee's consideration during its deliberations.

MDOT takes seriously our commitment to being open, transparent, and collaborative with the public and communities we serve. Allowing the public to request and inspect documents under the Public Information Act (PIA) is a vital element of the public's trust in our governmental institutions. MDOT is committed to safeguarding, archiving, and maintaining public records as well as individual Personally Identifiable Information (PII), in accordance with all laws and regulations. MDOT works in good faith to provide timely and cost-efficient responses, while also balancing the legal and ethical obligations to protect personal and proprietary information. We are entrusted with millions of public records dispersed throughout the State and have established a robust records management program to maintain records while also ensuring transparency.

MDOT would like to bring three specific provisions of House Bill 502 to the Committee's attention. First, Section 4-105(B)(2) provides reporting data that must be measured and published. Second, Sections 4-1A-02, 4-1A-03, and 4-1A-04 expand the authority for the Compliance Board and Ombudsman. Finally, Section 4-402(2) expands the penalties and may deny employees their right to due process.

MDOT welcomes the data collection provisions in Section 4-105, which specify what data all governmental entities must track and report. Section 4-105(B)(2), provides four data points: (I) the total number of requests granted in full, to which we refer as approved; (II) the total number of requests granted in part, to which we refer as partially denied; (III) the total number of requests denied in full, to which we refer as denied; and (IV) the total number of requests for which redacted public records were provided, to which we also refer to as partially denied.

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In practice, if MDOT receives a single request for five total documents, three documents could be approved, one document denied, and one document redacted. Today, MDOT would consider that request partially denied. With the four dispositions provided in the legislation, there would be no consistency in data collection from request to request or government entity to entity. This may become problematic if/when the data is then analyzed and compared. Further, should the bill become effective July 1, 2020, the first report would be due July 1, 2021 and it would only include six months of data, on the calendar year. MDOT would not be able to provide a timely report on July 1, 2021 that included data up to and until June 30, 2021.

Regarding the amendments to Sections 4-1A-02, 4-1A-03, and 4-1A-04, MDOT is concerned that the proposed legislation does not account for the confidential nature of many of the records maintained by the Department. For example, MDOT has a legal responsibility to maintain the privacy of records with HIPPA and/or PII information as well as critical infrastructure and homeland security records.

Finally, MDOT has concerns about the proposed language that would subject employees acting as agents on behalf of a governmental entity to criminal misdemeanors. It is unclear how an employee would be criminally prosecuted for a violation of the proposed legislation.

The Maryland Department of Transportation respectfully requests the Committee consider this information as it deliberates House Bill 502.

Respectfully submitted,

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Maryland Department of Transportation
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