



Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary (Acting)

2021 SESSION POSITION PAPER

BILL NO: SB 449 – Public Information Act – Revisions (Equitable Access to Records Act)
COMMITTEE: Education, Health, and Environmental Affairs
POSITION: Letter of Concern

TITLE: Public Information Act – Revisions (Equitable Access to Records Act)

BILL ANALYSIS: Requires each official custodian to adopt a policy of proactive disclosure of public records; requiring each custodian to publish an online report on the requests received in the preceding year for inspection of public records; requiring the Public Information Act Compliance Board to receive, review, and resolve certain complaints from applicants.

POSITION AND RATIONALE:

SB 449 introduces several new requirements for state agencies that receive requests for records under the Public Information Act. The Board of Physicians (the “Board”) is committed to transparency and access to public information. However, the Board is concerned that, as written, SB 449 would create operational difficulties and undue costs.

The Board receives hundreds of Public Information Act requests annually. These requests are often complicated and require significant steps and staff time to complete, including conferring with Board counsel, requesting off-site records from the state’s storage facilities, waiting for transcription services, and redacting records. The Board fulfills the majority of its Public Information Act requests within days, but the process is often costly and requires significant staff time. SB 449 would introduce multiple new steps that would further increase these costs.

First, the Board would be responsible for establishing a policy of “proactive disclosure.” The term “proactive disclosure” has not been defined, and the Board would need to work closely with counsel to ensure that its policy aligned with that of the Public Information Act Compliance Board and the Public Access Ombudsman, who may have their own definitions of proactive disclosure.

Second, the Board would be responsible for collecting and publishing information regarding the number of Public Information Act requests it receives, the number of requests that were denied, the amount of time it took the Board to fulfill the requests, the fees collected for these records, the number of fee waivers granted, the outcomes of the requests, and the efforts made to “proactively

disclose” information. Collecting, recording, and publishing this data would add several new steps to an already lengthy process, and would require dedicated staff to complete.

Finally, the expanded language found on page 7, line 22 of SB 449 would allow for the investigation of any complaint alleging that the Board charged more than \$200 to complete a Public Information Act request and qualifies such fees as “unreasonable.” While the Board makes every effort to produce records in the most cost-effective manner possible, large or complex requests can easily exceed \$200. For example, the Board received a single request in 2019 that included 12 boxes of records. Many of the costs associated with fulfilling Public Information Act requests, such as transcription fees and the costs of consulting with counsel, are outside of the Board’s control.

The Board remains committed to providing public information in the quickest and most cost-effective way possible and efforts to improve transparency. However, for the reasons listed above, the Board respectfully submits this letter of concern regarding SB 449.

For more information, please contact Wynee Hawk, Manager, Policy and Legislation, Maryland Board of Physicians, 410-764-3786.

The opinion of the Board expressed in this document does not necessarily reflect that of the Maryland Department of Health or the Administration.