



UNIVERSITY OF MARYLAND

HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE

HB 183 : Public Information Act – Revisions

(Equitable Access to Records Act)

February 11, 2021

Unfavorable Report

Chair Pendergrass, Vice Chair Pena-Melnyk and members of the committee,

Thank you for the opportunity to share our thoughts on HB 183. This bill makes significant changes to the Public Information Act (PIA) by, among other things, expanding the Public Information Act Compliance Board's (PIACB or Board) jurisdiction to hear complaints, and lowering the threshold for appeals of fees charged from \$350 to \$200.

However, the changes contemplated are in the absence of sufficient evidence that such an expansion is warranted. Requesters currently can challenge denials with the Ombuds and seek judicial review of agency decisions under the PIA. Resolution of disputes involving the review of specific documents should take place in a court of law, where such review can take place by a judge during an in camera review. The PIA already permits a requestor to challenge the denial of a request with the Ombuds, requiring the agency to demonstrate to the Ombuds that the denial or the exemption is clearly applicable to the requested public record, without requiring the agency to disclose to the Ombuds any records. If either party is dissatisfied with the Ombuds' determination, the party may currently seek redress in a court of law, where any disputes can be resolved by the court. The addition of the Ombuds as a resource is working. To be clear, the overall process is working; there is no justifiable need to amend the process as HB 183 intends.

Given the eclectic mix of records universities hold – unlike most other state agencies -- universities must retain the flexibility to navigate the requests and provide information, along with the discretion to make appropriate denials. Moreover, expanding the authority of the Board will increase the number of appeals, further stretching our ability to be responsive and timely...the exact opposite of the PIA's goal.

HB 183 imposes unfunded and needlessly burdensome requirements on custodians while expanding the authority of Board to waive fees, including fees for requests not fulfilled within 30 days. The University regularly receives extensive requests for email communications and inquiries that read like discovery requests. In CY20, we received almost 500 inquiries for close to 2000 records totaling a voluminous number of pages. Given the complexity and breadth of requests we receive, it is common for the search, preparation, review and sometimes redaction of records to involve multiple offices and personnel which takes longer than 30 days to complete. Though the PIA permits agencies to request an extension of the time limits, the power to grant such an extension is held by the requester.

To attempt to meet the strenuous demands outlined in HB 183, the combined estimated fiscal impact for the University of Maryland is expected to be \$775,000 – not including benefits. Given the current fiscal climate caused by COVID-19, cuts to institutional budgets, and the fact that sufficient remedies currently exist under the PIA, it is unclear whether HB 183 represents an appropriate allocation of fiscal and operational resources.

HB 183 will negatively impact institutions of higher education while doing little to improve transparency. In fact, should the bill pass, the operational and fiscal impact will undermine institutions' ability to comply with the law and frustrate its intended purpose. In sum, the alleged benefits of HB 183 are far lower than the significant costs which will result should the legislation pass. For these reasons, we urge an unfavorable report.