

January 19, 2021

Via Electronic Delivery

William C. Smith, Jr., Chair
Jeffrey D. Waldstreicher, Vice Chair
Senate Judicial Proceedings Committee
Maryland Senate
Miller Senate Office Building, 2 East Wing
11 Bladen St., Annapolis, MD 21401 - 1991

RE: Senate Bill 178: Public Information Act-Personnel Records – Investigations of Law Enforcement Officers - **Favorable**

Dear Chairperson Smith and Vice Chairperson Waldstreicher:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),¹ we appreciate the opportunity to submit written testimony in support of Senate Bill (SB) 178, which would amend the Maryland Public Information Act (MPIA) to permit the release of records relating to police misconduct investigations and disciplinary decisions. This bill would align Maryland with states that allow public access to a range of police disciplinary records.² LDF supports this bill because it promotes the transparency that is an essential component of accountability. SB 178 appropriately recognizes the public's interest in transparency in law enforcement officers' misconduct complaint histories and permits access to administrative or criminal investigatory records subject to reasonable limitations that balance the rights of officers and the interests of the public.

Currently, the MPIA prohibits the release of personnel records, and Maryland's appellate court has interpreted this prohibition to include records relating to hiring, promotion, dismissal, and discipline of

¹ Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. LDF's work to address police violence and misconduct dates back to its inception. *See, Shepherd v. Florida*, 341 U.S. 50 (1951) (reversing the convictions of Black men accused of raping a white woman in 1949; the men were brutally beaten by sheriff's deputies in an attempt to force confessions). Today, LDF's Justice in Public Safety Project uses litigation, policy advocacy, research, community organizing, and strategic communications to: (1) ensure accountability for police brutality and misconduct through community oversight and changes to laws and policies; (2) promote policing and public safety practices that eliminate the pernicious influence of racial and other biases; and (3) support a new paradigm of public safety that drastically reduces the presence of armed law enforcement in communities of color.

² Indeed, a dozen states give members of the public more access to police discipline records than Maryland. *See* Brief of Amici Curiae NAACP Legal Defense and Educational Fund, *et al.*, [Uniformed Fire Officers Association, et al. v. Bill de Blasio, et al.](#), Case No. 1:20-cv-05441-KPF, 16 (S.D. N. Y. Aug. 18, 2020) (providing overview of states that allow public access to police misconduct complaints and disciplinary records); *see also* Robert Lewis, *et al.*, [Is Police Misconduct a Secret in Your State](#), WNYC NEWS, Oct. 15, 2015; Erin Durkin, [NYCLU publishes more than 300,000 NYPD misconduct complaints after judge's ruling](#), Politico, Aug. 20, 2020.

public employees.³ Consequently, persons who have filed complaints against law enforcement officers for misconduct know little about the investigative process or the outcome.⁴ This shroud of secrecy has led to a lack of public confidence in the investigation of police complaints.

If SB 178 passes, the MPIA would continue to permit a custodian to deny disclosure of police misconduct investigatory records if release of the information would: interfere with a law enforcement proceeding or deprive a person of a right to a fair and impartial trial among other circumstances.⁵ Similarly, a dozen other states generally allow for the release of police disciplinary records with narrow exceptions to protect personal privacy or where investigations have not been completed.⁶ These safeguards appropriately balance public employees' privacy interests and the public's right to know about the investigation and outcome of misconduct complaints against public employees. Any denial of records should be exercised judiciously given the public's strong interest in understanding the complaint history of officers with whom they interact. Members of the public should be permitted in most cases, subject to limitations in the MPIA, § 4-351(b), to evaluate the complaint histories of officers who serve, and exercise their law enforcement authorities, in their communities.

SB 178 appropriately allows access to police misconduct investigations without making a distinction in the type of misconduct alleged or the outcome of the investigation. Likewise, it rightly balances the privacy interest of public employees and the public's interest in police accountability for misconduct. Therefore, we urge the Committee to vote in favor of SB 178. Doing so would usher in the type of transparency in police misconduct complaints that the public deserves.

Thank you for considering our testimony. If you have questions, please do not hesitate to contact us at 202-682-1300.

Sincerely yours,

Puneet Cheema

Puneet Cheema
Manager, Justice in Public Safety Project

Monique L. Dixon
Deputy Director of Policy & Director of State
Advocacy

cc: Senator Jill Carter

³ See e.g., *Montgomery County v. Shropshire*, 23 A.3d 205, 214 (Md. 2011).

⁴ U.S. Dep't of Justice C.R. Div., *Investigation of the Baltimore City Police Department*, 148 (Aug. 10, 2016) (concluding that the MPIA "has repeatedly blocked attempts to access information about the resolution of complaints and other issues of public concern related to BPD's policing activities."), available at <https://www.justice.gov/opa/file/883366/download>.

⁵ See MD. CODE ANN., GEN. PROVISIONS § 4-351(b).

⁶ For example, police disciplinary records in Florida and Georgia are public once the investigations are complete. See FLA. STAT. § 112.533(3)(a) and GA. CODE ANN. §50-18-72(a)(8); see also Brief of Amici Curiae NAACP Legal Defense and Educational Fund, et al., *Uniformed Fire Officers Association, et al. v. Bill de Blasio, et al.*, Case No. 1:20-cv-05441-KPF, 16 (S.D. N. Y. Aug. 18, 2020).