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To: Senate Judicial Proceedings Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

Date: March 15, 2022

Re: **SB 777 – SUPPORT with AMENDMENTS**

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of newspaper publications, from large metro dailies such as the Washington Post and the Baltimore Sun, to hometown newspapers such as The Frederick News Post and Hagerstown Herald-Mail to publications such as The Daily Record, Baltimore Jewish Times, and online-only publications such as Baltimore Fishbowl, MarylandReporter.com and Baltimore Brew.

This bill seeks to solve some of the problems we are facing as Anton's Law has been implemented. Disclosure of records under the Public Information Act is critical to news media organizations as they provide primary source materials for objective reporting. Anton's Law made internal police discipline and complaint records available to the public, erasing an exemption that had placed them off limits under the Maryland Public Information Act. Until Anton's Law was enacted, members of the public could not find out if police officers in Maryland had been disciplined for misconduct or were the subject of numerous complaints reviewed by internal police investigators.

MDDC's Sunshine Week project focused on the implementation of Anton's Law. This package, reported by award-winning journalist Miranda Spivack, is being carried in many of our member publications this week. The main article in the package is attached to this testimony. Through our broad, statewide reporting, we find that implementation has been rocky and uneven as police departments struggle with providing these documents. This is not a new or unique problem. Journalists tell me often about how requests for all types of documents that should be available under the PIA are ignored or denied. The PIA law needs teeth.

The amendments proposed by the sponsor provides consequences for departments that do not comply with the law.

We urge a favorable report.



**We believe a strong news media is
central to a strong and open society.**

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About this story: Maryland recently joined a handful of states seeking to make law enforcement agencies more transparent. With the passage of Anton's Law in 2021, many details about internal police discipline could be released to the public. But so far, journalists, advocates and others seeking to find out more about how police agencies handle complaints about misconduct are learning that getting the records is proving to be, at best, a mixed experience. Law enforcement agencies say they are trying to comply with the law, but for many, it is a matter of sifting through reams of documents, many on paper, an expensive and time-consuming process. For [Sunshine Week](#), the annual national exploration of transparency in government, running from March 13 to 19, the Maryland-Delaware-D.C. Press Association is assessing how well Anton's Law has been working in Maryland since it took effect on Oct. 1, 2021.

Implementing Anton's Law

By Miranda S. Spivack

A community group in Montgomery County was asked to pay \$95,000 for copies of police discipline and complaint records, which, under a 2021 change in Maryland law, are no longer automatically private.

Local public defenders in Baltimore seeking those records have been told to pay as little as \$10 to the Harford County Sheriff's Office but as much as \$224,000 to the Calvert County Sheriff's Office and nearly \$500,000 to the Montgomery County Police Department.

Reporters in Washington and Baltimore and student journalists at the University of Maryland say they have received some internal police discipline records they've requested, but also have encountered long delays and huge fees.

Anton's Law, formally known as the [Maryland Police Accountability Act of 2021](#), went into effect on Oct. 1, 2021. The measure makes internal police discipline and complaint records available to the public, erasing an exemption that had placed them off limits under the [Maryland Public Information Act](#). Until Anton's Law was enacted, members of the public could not find out if police officers in Maryland had been disciplined for misconduct or were the subject of numerous complaints reviewed by internal police investigators.

But five months since taking effect, Anton's Law has not yet lived up to its promise.

Anton's Law is named for Anton Black, a 19-year-old Black man from Greensboro in Caroline County, Md., who [died in 2018 in police custody](#), after he was wrestled to the ground by three white officers and a white civilian [bearing a Confederate emblem](#). While Black was struggling to breathe, his mother was standing nearby, witnessing the encounter and shouting his name.

Black's death, several other deaths in police custody in Maryland, and the death of George Floyd in Minneapolis in 2020 in police custody helped spur Maryland lawmakers last year to take steps to open up information about police conduct, discipline, complaints and work history.

While some Maryland law enforcement agencies are now providing, upon request, documents that Anton's Law says are now public records, many departments are struggling to comply with the law. Advocates for police transparency, defense lawyers and journalists say their requests for documents and data have been met with a wide range of responses — and many have not even been acknowledged.

"We would certainly argue that the legislature has determined that these records are in the public interest," said Deborah Jeon, the legal director of the Maryland branch of the American Civil Liberties Union, which often relies on obtaining law enforcement and other government records without incurring high fees. And the legislature's intent with Anton's Law, she said, was minimal fees and expansive public disclosure by Maryland law enforcement agencies.

Anton's Law works in tandem with the [Maryland Public Information Act](#), which requires state and local governments to provide broad access to their records.

The MPIA, as it is commonly called, also gives requesters the right to ask for data and documents for free, or minimal cost, if they can show that public disclosure serves the public interest.

But the state's largest police departments say they need more funds and more staffing to comply with new requirements under Anton's Law. The upshot is that some law enforcement agencies in Maryland say they are being compelled to produce reams of documents, videos and audios without new employees or money to pay for the thousands of hours of work they say it takes.

In Montgomery County, Assistant Police Chief Darren Francke said the police department has about 1,500 internal investigative files that could be eligible for disclosure under Anton's Law. Each contains between 200 and 5,000 pieces of paper, he said, and many also have video and audio. All must be reviewed to ensure that private information and other data that the MPIOA says can be withheld are not inadvertently disclosed.

Little, if any of the paper, is digitized, though the Montgomery department is beginning to scan documents and create digital files, which eventually will make it easier to review and release the material. The department has asked County Executive Marc Elrich, a Democrat, to include more money for Anton's Law in his budget proposal, which will be released on March 15 but must then win approval from the County Council. Elrich's budget proposal includes about \$427,000 for additional staffing — some civilians and some sworn officers — to improve compliance with Anton's Law, according to Scott Peterson, a spokesman for Elrich.

"We are working very hard. We have many people assigned to work on this," Francke said. "It is not our intent not to answer requests."

The Baltimore Police Department and the Prince George's County Police Department are reporting similar issues.

In Baltimore, police spokeswoman Lindsey Eldridge wrote in an email that the department is "staffing up ... to better fulfill all MPIOA requests." But because of the high volume of requests, she wrote, the department plans to contract with an outside firm that will provide contract lawyers to help review the material. "This will come at a cost, either to the department or the requestor, which is determined on a case-by-case basis as provided by state law. BPD intends to fulfill these requests and does not intend to redact officer names. While we're experiencing some logistical challenges getting this operation off the ground, that should not be misinterpreted as resistance or lack of transparency."

In Prince George's, where advocates and journalists say the process has been particularly slow, Gina Ford, a spokeswoman for County Executive Angela Alsobrooks, a Democrat, wrote in an email that the "county is working diligently to meet these mandates."

But she predicted "a greater strain on county resources." The email said the county plans to continue to charge fees for record requests if they require more than two hours to fulfill, as the Public Information Act allows.

Elena Russo, a spokeswoman for Maryland State Police, wrote in an email that the agency had received 26 requests for personnel records under Anton's Law since the law took effect.

Police provided information in 17 cases (other requests were pending or withdrawn, or there were no matching records). Of the 17, police did not charge for records in 14 cases and had minimal charges in two. In the remaining case, there was an \$1,822 charge for an extensive request, Russo wrote.

The push for greater transparency

When the General Assembly approved Anton's Law in 2021 — sponsored by state Sen. Jill P. Carter (D-Baltimore) and Del. Gabriel Acevero (D-Montgomery) — Maryland joined [several other states](#), including California, Colorado, Massachusetts and New York, in opening up internal police discipline and complaint records. Most have pushed ahead with the disclosure laws despite considerable resistance from police unions, and in some cases, police chiefs.

However, some chiefs who manage law enforcement agencies around the country have said they would [welcome more transparency](#), because they, too, are often prevented from getting access to officers' internal personnel records, a limit frequently written in to state and local government contracts negotiated with police unions.

In Maryland, Anton's Law took effect after legislators overrode Republican Gov. Larry Hogan's veto of the bill and several other bills requiring more public accountability from law enforcement.

But the General Assembly may not have fully accounted for how police agencies would react to Anton's Law. The legislators did not include additional funding or apply pressure to local governments to fund the law, which may partly explain the resistance to disclosure and the high fees to locate, review and provide the documents. ([An MDDC review in 2019](#) found that Maryland police agencies traditionally charge much higher fees for records than other government entities do.)

On March 15, [a bill Carter proposed](#) to place limits on fees that law enforcement charges for police misconduct records will be the subject of a legislative hearing.

Carter wrote in an email that it's hard to measure the impact of Anton's Law based on several months.

"What we do know, however, is that some jurisdictions have forestalled specific components from being enacted. For example, some police departments charge astronomical fees to obtain public information, and some have outright refused its release," she wrote. She expects her bill limiting fees to help.

"I unquestionably believe that, when in its full implementation, Anton's Law will be the defining standard of police accountability for the rest of the country," Carter wrote.

Law aims for more transparency in policing

The goal of Anton's Law is to make it easier for the public to gain access to information about officers disciplined or in some other way penalized in internal probes or who had numerous complaints lodged against them, and whether they had similar issues in previous employment.

The effect of the law was to revise how the Maryland Public Information Act handled internal police discipline and complaint records. The records had been exempted from disclosure under the public information law and treated as non-public personnel records, an exemption that continues to apply to other state and local government employees.

Anton's Law reclassified police internal records so that they are no longer considered exempt personnel records.

A recent ruling by a three-judge panel of the Maryland Court of Special Appeals, the middle statewide appellate court, has given supporters hope that law enforcement agencies will do more to comply. The ruling, which still could be reviewed by the state's highest court, said that the [Baltimore Police Department must hand over](#) a set of discipline records at no cost, and found that the police department "arbitrarily and capriciously denied" a request from [Baltimore Action Legal Team](#), a nonprofit advocacy group, to waive fees of \$1,421,082.50 for the records "to which (BALT) was entitled."

Matthew Zernhelt, head of litigation for BALT, said he was encouraged by his organization's victory in the Feb. 7 ruling, and would prefer the issue to play out in the courts, rather than enact Carter's proposed limits on fees — depending on whether the appellate court ruling stands.

Separately, the Maryland branch of the American Civil Liberties Union [recently sued](#) the Calvert County Sheriff's Office and the sheriff for refusing to provide documents and videos unless the ACLU paid \$12,000 for records. The ACLU said the records might provide information about the police use of strip searches and body cavity searches, which the ACLU said has targeted Black people.

Giving police officers a chance to block disclosure

Another issue that could slow down or stymie requests in Montgomery County is a recent agreement with the police union to give the officers whose records are sought by the public 10 days to review them and potentially take steps to formally oppose release. Francke, the assistant chief, said that so far, no officers have used the review time to block release of documents.

That review system is far from unique. State and local governments often have similar agreements to give advance notice to private companies with government contracts. Cable companies and Amazon, for instance, [regularly seek advance notice](#) that a member of the public is seeking information about them.

Those arrangements often are written into their agreements with state and local governments, giving them time to mount a legal effort to block release.

Compiling a statewide database

At the University of Maryland's Philip Merrill College of Journalism, students working with journalism professions are compiling a statewide database of records disclosed under Anton's Law.

Sean Mussenden, the data editor for the journalism school's Howard Center for Investigative Journalism, said student reporters made about 120 records requests to Maryland police agencies. The results are trickling in, slowly. Part of the challenge is that police across the state do not have a uniform system for tracking cases, Mussenden said.

In some cases, smaller departments use paper records; others track with software programs. And the infractions that are logged vary widely — one officer may get written up for failing to wear his uniform properly; another for excessive force.

All may appear on the same spreadsheet, which the University of Maryland reporters are sifting through to figure out which are the most significant cases. Then they want to return to the police departments for more details for those cases. That, too, is contributing to a slowed response, and in some cases, requests for big fees.

"The sticking point has been the case files themselves," Mussenden said. He said he understood that reviewing those before releasing them publicly could take police departments more time and effort, and could come with a cost.

But the price tags have ranged greatly. Some police department want to show the records to a lawyer whose hourly cost is usually in the hundreds of dollars. Others will run them by a clerk, who is well versed in the law, but whose hourly cost is substantially less.

"We have seen huge variations in fees," Mussenden said, from about \$250 per hour for a lawyer to about \$30 per hour for a clerk to review the documents.

Documents released for smaller requests

Justin Fenton, a reporter with The Baltimore Banner, formerly with The Baltimore Sun, has [been seeking a wide range of records](#) from the city's police department for several years. Since Anton's Law took effect, he has received records of internal investigations involving three officers, he said. But it has been slow and frustrating, he said, part of a pattern of delays from the Baltimore Police Department and other city agencies he has experienced for years.

"Some agencies feel they do not have to comply at all. They are reading the law differently. But the whole point of this was to create transparency," he said.

Late last year, The Capital Gazette asked Anne Arundel County police for records under Anton's Law and was rebuffed by department attorney Christine Ryder, who said disclosure could have a "chilling effect" on police and would be contrary to the public interest. Shortly after Fenton contacted the department, it reversed course and agreed to provide records.

Steve Thompson, a reporter for The Washington Post, wrote in an email that he has yet to receive records from Baltimore, Prince George's County or Montgomery County police departments, but that Maryland State Police produced documents. He [filed about 150 requests](#) across the state.

"I would estimate more than two-thirds of the agencies have responded in some way, and most of these have produced internal affairs records or data. The great majority of those who have provided records or data have done so for free," Thompson wrote.

"Only a few have charged what I would consider to be unreasonable fees. In most cases, I'm able to work with a department to narrow requests so that the labor in fulfilling them is not too burdensome, and that helps keep the fees down."

He has filed two complaints about fees to the [Maryland Public Information Act Compliance Board](#).

In Montgomery County, Joanna Silver, a defense lawyer active with the community-based Silver Spring Justice Coalition, said her group sought records in a handful of cases. While the coalition did not receive complete records within the 30-day deadline by which government entities must at least acknowledge a request, Silver said that the Montgomery County Sheriff's Office and the Gaithersburg Police Department eventually provided the records without charging any fees.

Her organization also negotiated with the Montgomery County Police Department to narrow a request, eliminating the original \$95,000 fee the department originally said it needed to charge once the group agreed to forego video footage, she said.

Angela Valdez, a staff investigator for the federal public defender's office, which covers all of Maryland, also reported mixed responses to the agency's requests. The St. Mary's County Sheriff's Office complied relatively quickly and without a fee for information about one deputy, she said.

"Compared to everybody else, it was outstanding," she said.

In Prince George's County, the police department responded quickly to Valdez — in about 90 minutes — but only to say that the file Valdez's office needed could not be released under the law because it was part of an investigative file exempt from disclosure. (Once an investigation is completed, files can be released, but some departments spend months or years on an internal investigation, a move that some seeking records believe can be a delay tactic.)

Lisa Kershner, [the Maryland public access ombudsman](#), who often mediates complaints about public records disputes, declined to describe what her office is seeing and hearing about how Anton's Law is working. She said doing so could affect the perception that she is a neutral arbiter when she mediates complaints about record access. Kershner's office produces annual reports near the end of each calendar year that could offer some clues.

While police agencies and the public grapple over Anton's Law, Black's family is moving ahead with a federal wrongful death lawsuit that could provide more pressure for police accountability. With support from the Maryland branch of the American Civil Liberties Union, Black's family [sued](#) officers; the state medical examiner, [who had ruled the death accidental](#); the three towns where the officers served (Centreville, Greensboro and Ridgely) and the two police chiefs involved in the case.

[The case](#) alleges a wide range of violations. The family's lawsuit recently survived a [motion by defendants to dismiss the case](#), and is slated to proceed.

Miranda S. Spivack is a former reporter and editor for The Washington Post. She has written extensively about open government issues for [Reveal from The Center for Investigative Reporting](#) and the [McClatchy](#) newspapers. Follow her on Twitter @mirandareporter and <https://www.mirandaspivack.com>.

