



MARYLAND COUNTIES

House Bill 1638

Public Information Act - Revisions

MACo Position: **SUPPORT**

To: Health & Government Operations and
Judiciary Committees

Date: March 7, 2018

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **SUPPORTS** HB 1638. This bill updates the Maryland Public Information Act (PIA) to address privacy and abuse issues posed by changing technologies.

Disclosure of Personal Surveillance Video

Rationale

The PIA is still largely driven by paper documents and is not configured to properly address the massive amounts of video that is generated in an age of body cameras, drones, or robots that follow the activities of first responders or other government employees. Even the update to the PIA several years ago to better handle electronic records focused more on static records like documents, spreadsheets, and database search results.

Body cameras and other forms of personal surveillance video can help provide transparency and accountability for police officer and other government employee actions as well as protect both citizens and the government. However, recognizing that body cameras pose significant implementation issues, the General Assembly passed legislation (HB 533/SB 482 of 2015) creating the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers. The Commission did not undertake a thorough review of how body camera video should be handled under the PIA, but acknowledged the importance of such a review as part of its recommendations; specifically noting concerns with the public release of videos showing victims of violent crime or domestic abuse.

Unlike dashboard or stationary mounted cameras, which are limited in both use and the areas they film, there will be far more personal surveillance video generated by the use of new technology and it will show scenes never before subject to public scrutiny – including the insides of private homes and businesses. The potential for abusive use of such video, including posting on the internet, is extremely high.

Finally, the time and costs for attorney review and potential redaction of body camera video are significant and a single large request could quickly run into the thousands or tens of thousands of dollars and consume many hours of staff time.

HB 1638 addresses these concerns while not altering any rights under criminal or civil discovery or existing PIA exceptions.

Transparency and Accountability

The bill would provide that, subject to existing law and PIA exceptions, a records custodian shall provide personal surveillance video of an incident where something happened that could raise public concern. This includes everything from issuing a citation, conducting a stop and frisk, or making an arrest, to causing injury or death of an individual. Even a mere allegation of officer misconduct subjects the video to PIA disclosure.

Victim Protections

HB 1638 would prohibit the release of video showing victims of domestic violence, sexual crimes, or abuse unless requested by a person in interest. If the person in interest making the request is the alleged perpetrator of the crime or has been found responsible for the crime, the person may view the video but not receive a copy of it. This prevents further shaming or abuse of the victim. The bill also requires law enforcement to notify a victim of the listed crimes whenever anyone makes a request for their video under the PIA.

Finally, the bill also prohibits the release of video that directly depicts the death of a law enforcement officer, first responder, or other government employee that occurred in the performance of the individual's duties.

Clarity and Protection from Abusive Requests

The bill would restrict the release of other personal surveillance video (essentially where nothing of public concern happened) unless requested by a person in interest. This will save significant time and resources for records custodians. Such video must still be maintained under existing record retention laws and for liability purposes.

Protection of Personal Contact Information Used for Government Newsletters or Emergency Alerts

HB 1638 would require a record custodian to deny inspection of a distribution list, or the inspection of a request to be added to a distribution list, that identifies a physical address, an e-mail address, or a telephone number of an individual that is used by a government agency or elected official for the sole purpose of: (1) periodically sending news about the official activities of the governmental agency or elected official; or (2) sending informational notices or emergency alerts.

However, under the PIA, anyone can request a person's contact information contained in these distribution lists and the State or local governments are generally required to provide them. This has led to some recent issues in Montgomery, Carroll, and Howard Counties. Disclosure of personal contact information has led to people being spammed with unwanted commercial or political communications.

The protections provided by the bill are designed to encourage government openness and the public's access to information and foster trust in our governmental institutions. The language in HB 1638 regarding this provision is identical to that of another bill (HB 677 of 2018) that this Committee has passed out unanimously.

Closing a Social Security and Date of Birth Loophole

Finally, the bill clarifies that the PIA does not allow the inspection of a social security number or date of birth of an individual, except to a person in interest or unless otherwise provided by law. This commonsense provision makes absolutely certain this fundamental personal information is protected under the PIA and cannot be obtained for the purposes of identity theft.

Approach to the Legislation

When approaching the issue of personal surveillance video and the PIA, MACo took a comprehensive and collaborative approach, reaching out to the Maryland Municipal League, the Maryland Association of Boards of Education, state and local law enforcement, the Maryland-Delaware-DC Press Association, Common Cause of Maryland, the ACLU of Maryland, and the Maryland Coalition Against Sexual Assault. As a result of those deliberations, this bill has addressed almost all of the concerns of these stakeholders.

Conclusion

In conclusion, MACo believes that HB 1638 provides thoughtful and reasonable solutions to the PIA challenges posed by changing technologies. The bill promotes transparency and accountability, protects victims and individuals who passively receive government information, and addresses the expense and potential for abusive requests facing local governments and State records custodians. Accordingly, MACo urges the Committee to give HB 1638 a **FAVORABLE** report.