



**Testimony for the Senate Education, Health, and Environmental Affairs Committee
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TONI HOLNESS
PUBLIC POLICY DIRECTOR

**SB 1054 Public Information Act - 9-1-1 Communications - Denial of Part of a Public
Record**

UNFAVORABLE

The ACLU of Maryland opposes SB 1054, which would require a custodian to deny inspection, under the Maryland Public Information Act (PIA), of any part of a 9-1-1 communications record that contains images that may be considered gory or gruesome or convey scenes of murder or suicide.

The phrase “may be gory or gruesome” is undefined and subjective

SB 1054 requires denial of material that may be considered gory or gruesome—the universe of material that could be covered by this language is infinite. First, gory and gruesome are undefined in the bill and are therefore practically impossible to implement by custodians. Second, because the standard is so subjective, it could encompass a wide variety of information, and gives custodians far too much discretion to withhold records that should be disclosed.

Goriness and gruesomeness are improper standards for ensuring transparency

The fact of material being gory or gruesome does not have any bearing on whether the public should have access to it. In fact, it is arguable that in some circumstances the gruesomeness or goriness of the material is in fact what warrants public disclosure. Consider, for example, material showing gross misconduct by the state, which results in the injury or murder of a Marylander, which may be gory or gruesome. In these circumstances—which are unfortunately not uncommon—the public ought to have some transparency to see the footage.

Current PIA provisions have long protected against the improper disclosure of private documents, these provisions have the same force with regard to records documented by new technologies

The PIA grants custodians broad discretion to withhold documents—including video or audio recordings—during the pendency of an investigation. Md. Code, Gen. Prov. §§ 4-343, 4-351(a)(1). After the investigation is complete, custodians may nonetheless withhold documents if disclosure would meet any of the following criteria--

1. Interfere with a valid and proper law enforcement proceeding;
2. Deprive another person of a right to a fair trial or an impartial adjudication;
3. Constitute an unwarranted invasion of personal privacy;
4. Disclose the identity of a confidential source;

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

WWW.ACLU-MD.ORG

COLEMAN BAZELON
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

5. Disclose an investigative technique or procedure;
6. Prejudice an investigation; or
7. Endanger the life or physical safety of an individual.

Md. Code, Gen. Prov. § 4-351(b). Therefore, when requests are made for material that may be gory or gruesome, custodians have full license to withhold that material if it would invade a person's privacy, or endanger someone, etc.

SB 1054 is a solution in search of a problem

We are aware of no incident in the state of Maryland wherein material was improperly released by a state agency. In fact, based on the ACLU of Maryland's experience having filed many requests for records, there is no evidence to suggest that state agencies are erring on the side of disclosure. In our experience, the exemptions under the PIA are more frequently used by agencies to shield documents from disclosure and even hide governmental misconduct than to invade Marylanders' privacy. We are therefore wary of laws that mandate jurisdictions to withhold records where discretionary authority to do so is sufficient, absent some indication that that authority has been or is likely to be abused.

The PIA is rooted in transparency

Finally, we believe it is worth reminding the committee that the PIA is undergirded by a belief in transparency and open government. According to the Attorney General's Public Information Act Manual--

The Maryland Public Information Act is based on the enduring principle that public knowledge of government activities is critical to the functioning of a democratic society; that a Government of the people, by the people, and for the people must be open to the people. (emphasis added).¹

As an organization that advocates for transparency and open government, we are deeply troubled by the persistent and dogged attempts of local governments—year after year—to carve out exceptions to disclosure of public information, very often without any actual examples of prior improper disclosures. We urge the committee to remain true to the spirit of the PIA and reject these attempts.

For these reasons, the ACLU of Maryland urges an unfavorable report on SB 1054.

¹ Office of the Attorney General, Maryland Public Information Act Manual (Fourteenth Edition, 2015).