



HOWARD COUNTY COUNCIL
AFFIDAVIT OF AUTHORIZATION
TO TESTIFY ON BEHALF OF AN ORGANIZATION

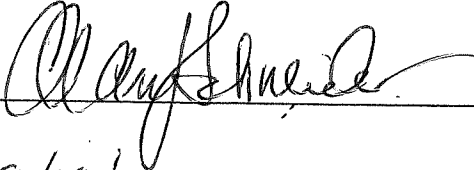
I, Alan Schneider, have been duly authorized by
(name of individual)

Howard County Citizens Association to deliver testimony to the
(name of nonprofit organization or government board, commission, or task force)

County Council regarding CB51-2022 to express the organization's
(bill or resolution number)

support for / opposition to / request to amend this legislation.
(Please circle one.)

Printed Name: Alan Schneider

Signature: 

Date: 9/19/22

Organization: Howard County Citizens Association

Organization Address: PO Box 89, Ellicott City, Md 21041

PO Box 89, Ellicott City, Md 21041

Number of Members: 500+

Name of Chair/President: Stu Kohn, President

This form can be submitted electronically via email to councilmail@howardcountymd.gov no later than 2 hours prior to the start of the Public Hearing.



Howard County Citizens Association
Since 1961...
The Voice Of The People of Howard County

Date: September 19, 2022.

Subject: CB 51-2022

Testimony in SUPPORT WITH AMENDMENT by Howard County Citizens Association

Good evening Council Members. I am Alan Schneider of Clarksville, speaking for HCCA. The Howard County Citizens Association, HCCA, thanks Council Member David Yungmann for introducing CB 51-2022 to require consultation with an attorney for advice before any determination by the custodian that there is a legal basis for withholding the public record, in part or in its entirety.

CB 51 promotes consistency and transparency, however an AMENDMENT is needed.

AMENDING the bill is necessary.

Replace “the Office of Law” with “the Office of the Attorney General”.

- a. The Office of the Attorney General has expertise that will ensure conformity and consistency with the interpretation and application of the Maryland Public Information Act. This Office has readily available access to Maryland decisions and previously recorded questions and answers. The will be efficient and a matter of normal routine for the Office of the Attorney General.
- b. The Office of Law is overworked, understaffed and reports to the County Executive. It would be a burden to the Office of Law. Advice from the Office of Law would raise the perception of incomplete, inaccurate, and potentially biased influence by existing or potential relationships.

CB 51 is a positive step for an improved Public Information Act process. Your vote of APPROVAL would be appreciated.

Please AMEND the bill as requested to facilitate consistency and conformity in the use of any denial.

Thank you for your consideration.

Alan Schneider
HCCA Board Member



HOWARD COUNTY COUNCIL
AFFIDAVIT OF AUTHORIZATION
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I, Barbara Krupiarz, have been duly authorized by
(name of individual)

The People's Voice to deliver testimony to the
(name of nonprofit organization or government board, commission, or task force)

County Council regarding CB51-2022 to express the organization's
(bill or resolution number)

support for / opposition to / request to amend this legislation.
(Please circle one.)

Printed Name: Barbara Krupiarz

Signature: Barbara Krupiarz

Date: 9/16/2022

Organization: The People's Voice

Organization Address: 3600 Saint Johns Lane Ellicott City, MD 21042

3600 Saint Johns Lane Ellicott City, MD 21042

Number of Members: 4392

Name of Chair/President: Lisa Markovitz

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Public Hearing.*

The People's Voice, LLC

Ethics Ballot TM

3600 Saint Johns Lane, Suite D, Ellicott City, MD21042

CB51-2022 – Maryland Public Information Act –
Withholding of Records

Position: Support

Recently, the County denied public information requests regarding development attorney emails which were later provided in a court case and resulted in the County payment of fines and legal fees. The decision to deny the documents was made without review by the County's Office of Law. We need to codify this necessary legal review process. It would only affect the denial of records, and therefore should not be overly burdensome.

The Maryland Public Information Act is a state law required of all state agencies and political subdivisions, including county governments and public school systems. The number of public record requests have gone up across the state signifying the public's interest in the business of their government, which should be considered a positive trend. Of the 657 requests of the County this year, as of August 18th, over half were from organizations requesting environmental, real estate, building, and investment information and slightly less than half from individuals.

The law states that responses shall be construed in favor of allowing inspection of a public record, with the least cost and least delay. The law also requires denials of records under specific circumstances, for example, the identity of victims of sexual assault, domestic violence, and child abuse. If records required to be withheld are improperly provided to the general public, there could be serious consequences. Hence the importance of legal review.

However, the law also requires the legal authority to be given for any redaction or denial of records, which is the job of an attorney versed in State and Federal law, rules adopted by courts, and what constitutes a deliberative process or attorney-client privilege, among others.

The law is complex, as are the legal reasons for denials and should not be left to laypersons for their own protection and for compliance with this state law. The Maryland Attorney General's PIA Manual is 275 pages long, with 58 pages dedicated to the legal basis for denials of public records. The manual states "Given the PIA's policy in favor of public access and the requirement that the PIA generally 'be construed in favor of permitting inspection of a record,' these exceptions should be construed narrowly, unless an 'unwarranted invasion' of personal privacy would result." In addition, the Maryland Attorney General's Public Access Ombudsman's website currently lists 19 Maryland Appellate case decisions, 23 Articles and Comments, and 18 links as references all to aid in PIA compliance. Again, the realm of attorneys.

Unfortunately, citizens have been charged over \$101 per hour for PIA responses by the Administration's Chief of Staff, which goes against the provision in the law to provide records with the least cost. The Office of Law's hourly rate is significantly lower.

The Howard County Office of Law has 18 attorneys and 7 paralegals with salaries totaling over \$4.4M. Surely, they have the staff to review records that are proposed to be denied, which should be few and far between.

The People's Voice, LLC

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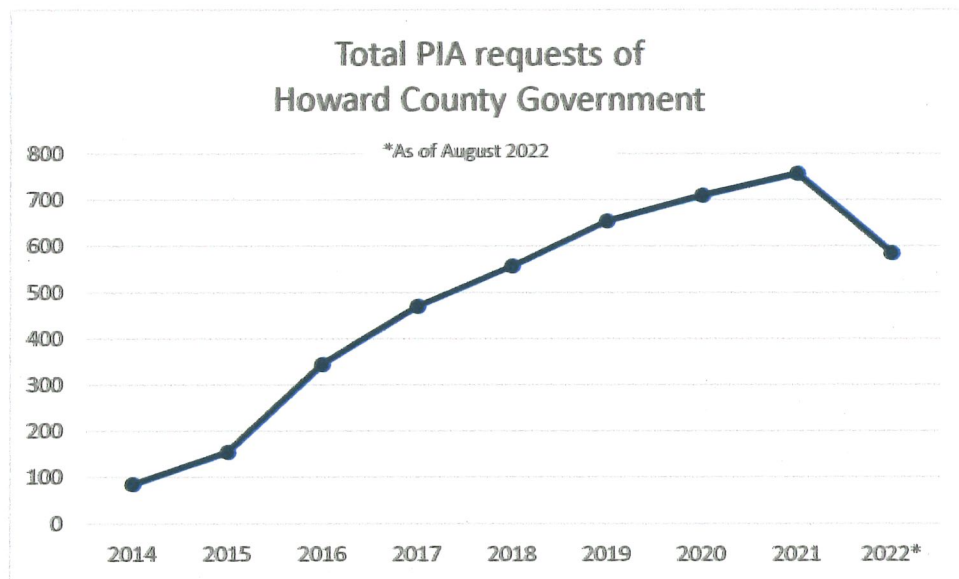
3600 Saint Johns Lane, Suite D, Ellicott City, MD21042

Many other state and local agency's policies already require legal review of denials of public records. This will codify that requirement for Howard County for all future administrations to ensure compliance with legally required withholdings for privacy protection and citizens will not have to resort to circuit court complaints to obtain public records that they are legally entitled to receive.

The People's Voice strongly endorses the passage of this bill to provide appropriate legal responses to requests for Howard County government's public records.

Barb Krupiarz

Secretary, The People's Voice



I'm Bob Flanagan, 6133 White Marble Court Clarksville 21029:

The lawsuit that I filed is over because the County paid the maximum fines permitted by law and admitted to hundreds of violations of the Public Information Act. The lawsuit itself is moot but not the lessons learned. Public trust has been damaged. Three lawyers employed by Howard County worked on my lawsuit for a year. This expensed would have been easily avoided if the Office of Law had reviewed the emails before they were refused. Councilman Yungman's bill will ensure that the Office of Law reviews any emails or other information before it is withheld. I know this was standard practice during the Kittleman administration and I believe for prior administrations.

Maryland law gives all persons a general right to access information about the affairs of government:

§ 4-103. General right to information.

(a) All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

(b) To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

To withhold almost 700 hundred emails the County relied upon an exception to the general rule, But it is not reasonable to expect a layman to understand how to apply it .

§ 4-344. Interagency or intra-agency letters or memoranda.

A custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit.

There were only six emails that were lawfully withheld. The rest should have been produced. The emails revealed meetings and special access for lobbyists and developers with the office of County Executive.

When public information is withheld knowing that the law is being violated it is a criminal act punishable by \$1,000 fine. At the hearing it was clear that Judge Greenbaum understood that the refusal to have the Office of Law review the emails supported such a finding (excerpt of transcript attached as Exhibit). When the County tried to deny this, he disagreed. He relied upon recommendations in the record by career employees and the County Executive's Chief of Staff. All three knew a review by the Office of Law was needed.

Jamila Ratliff was empowered to make the final decisions and refused suggestions that the Office of Law review her decisions. She happens to be the County Executive's sister-in-law and was getting paid as his campaign manager during her employment in the Office of County Executive. She resigned shortly after the County admitted her involvement. She is gone but not the issue. The guard rail of a long-standing informal practice is broken. The bill is needed to restore public trust.

CB51-2022

IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

ROBERT L. FLANAGAN,

Plaintiff

v.

Civil Docket

Case No.: C-13-CV-21-000579

HOWARD COUNTY

CUSTODIAN OF RECORDS,

Defendant

OFFICIAL TRANSCRIPT OF PROCEEDINGS
MOTIONS HEARING

Ellicott City, Maryland

Friday, July 29, 2022

BEFORE:

HONORABLE ROBERT A. GREENBERG, JUDGE

APPEARANCES:

For the Plaintiff:

ROBERT L. FLANAGAN, Esq./Pro se

For the Defendant:

MELISSA E. GOLDMEIER, Esq.

CYNTHIA G. PELTZMAN, Esq.

Transcribed from electronic recording by:

Bonnie L. Golian
Official Court Reporter
Howard County Circuit Court
9250 Judicial Way
Ellicott City, MD 21043

1 MR. FLANAGAN: All right. So it is -- the statute
2 involved -- can I read the statute involved?

3 THE COURT: Yes. I've got it here but go ahead.

4 MR. FLANAGAN: It says, a defendant government unit
5 is liable to the complainant for statutory damages and actual
6 damages that the court considers appropriate if the court finds
7 that any defendant knowingly and willfully failed to disclose
8 or fully disclose a public record.

9 So it's not -- and what is their defense to this?
10 They filed a motion for summary judgment. And all their motion
11 for summary judgment says is that the woman who reviewed the
12 Public Information Act request didn't understand it. And she
13 also rejected 90 emails on the ground that they were non-
14 responsive. And she didn't understand how to figure out
15 whether something was non-responsive.

16 They did not defend --

17 THE COURT: So let me --

18 MR. FLANAGAN: Yes.

19 THE COURT: -- turn to you, Ms. Goldmeier. Why
20 couldn't I conclude based upon people -- I think there was some
21 evidence that people counseled her to run this by the County
22 Attorney and she just said no, I'm doing it my way. Why
23 couldn't I ultimately conclude that that was a knowing and
24 willful violation?

25 MS. GOLDMEIER: Well I mean, Your Honor, first I

1 suppose you could make that conclusion if you were so inclined.
2 But what I would suggest is that there's no duty under the PIA
3 that somebody seek legal counsel. I mean, the woman who
4 handled --

5 THE COURT: Yes, but it was more than that as I
6 recall. There were several instances where people said, hey,
7 you really need to run that by and she sort of --

8 MS. GOLDMEIER: Yes, she said I don't have any
9 questions. I don't have any questions --

10 THE COURT: Okay.

11 MS. GOLDMEIER: -- I think I understand the statute.

12 THE COURT: Okay. I'm not sure I agree with you on
13 that. So that answers that question.

14 So what I'm going to do it, I'm going to go back and
15 I'm going to read the *Frazier* case. And then Mr. Flanagan,
16 I'll give you the chance to respond to if -- were you done with
17 argument or is there anything else you wanted to tell me?

18 MS. GOLDMEIER: I think the only evidence that Mr.
19 Flanagan puts forth that this was a willful violation is -- I
20 mean, when you asked him what facts do you have to suggest that
21 this is willful he said, well the County has defended the claim
22 on saying it was inadvertent and she didn't know what she
23 didn't know.

24 But that does not answer your question which is what
25 facts have you put forth at the summary judgment stage to meet