



February 12, 2019

Hand Delivered

Delegate Shane Pendergrass, Chair
Delegate Joseline A. Pena-Melnyk, Vice Chair
House Health and Government Operations Committee
Maryland House of Delegates
House Office Building, Room 241
Annapolis, MD 21401

RE: House Bill 413 – Public Information Act – Personnel and Investigatory Records – Formal Complaints Against Public Employees – FAVORABLE

Dear Chairperson Pendergrass and Vice Chairperson Pena-Melnyk:

On behalf of the NAACP Legal Defense and Educational Fund, Inc., I appreciate the opportunity to submit written testimony in support of House Bill (HB) 413, which would amend the Maryland Public Information Act (MPIA) to allow the release of records relating to formal misconduct complaints against public employees under certain circumstances. This bill comes at a time when public confidence in law enforcement nationwide remains low in communities of color due in part to highly publicized police-involved deaths of people of color,¹ such as the 2015 Baltimore police in-custody death of Freddie Gray. Also, last year, the nation witnessed federal racketeering convictions of over a half dozen Baltimore officers who robbed residents and engaged in other acts of misconduct while serving as members of the Baltimore Police Department's (BPD) Gun Trace Task Force (GTTTF). A former GTTTF officer is scheduled to be sentenced today.²

Now, more than ever, Maryland must adopt laws and policies that will allow members of the public, particularly persons who file misconduct complaints against police, to have access to information relating to the investigation of their complaints. HB 413 is a step toward accomplishing that goal.

During its investigation of the BPD, the U.S. Department of Justice found that residents who file complaints against officers face many obstacles; and, when the complaints are filed, it is difficult for complainants to access information about the status of the complaint and whether discipline has

¹ See, e.g., Jim Norman, *Confidence in Police Back at Historical Average*, GALLUP, July 10, 2017 (noting a troubling loss of confidence in police among African Americans and Latino communities), <https://news.gallup.com/poll/213869/confidence-police-back-historical-average.aspx>. See also, Sofia Kluch, *Race, Income, Gender, and Safety in America*, GALLUP, July 13, 2018 (noting that Americans of color have less confidence in police than white Americans), <https://news.gallup.com/opinion/gallup/236972/race-income-gender-safety-america.aspx>.

² See, Justin Fenton, *Former Baltimore Police Gun Trace Task Force detective to be sentenced in corruption case next week*, Feb. 4, 2019, <https://www.baltimoresun.com/news/maryland/crime/bs-md-ci-gttf-gondo-sentencing-20190204-story.html>.

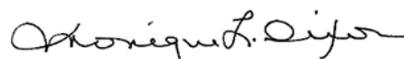
been imposed.³ The Justice Department explained that the MPIA hinders individuals' ability to obtain information about their complaints. Specifically, current law prohibits the release of personnel records,⁴ and Maryland's appellate court has interpreted this prohibition to include records relating to hiring, promotion, dismissal and discipline of public employees.⁵

HB 413 would amend the MPIA by removing from the category of "personnel files" any records relating to a formal complaint filed against a public employee for job-related misconduct, including an investigative record or a disciplinary decision. The bill also includes limitations to the release of information concerning misconduct complaints. For example, HB 413 would allow custodians to deny access to these records if the custodian finds that release of the information would: interfere with a law enforcement proceeding; deprive a person of a right to a fair and impartial trial; invade personal privacy; reveal a confidential source; disclose an investigative procedure; prejudice an investigation; or risk the life of an individual. 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.

Finally, HB 413 is aligned with changes the Maryland legislature made to the state's Law Enforcement Officers Bill of Rights in 2016 that opened police disciplinary hearings to the public.⁶ HB 413 will permit access to information about misconduct complaints that do not reach the hearing stage.⁷

To build confidence in police, community members must be assured that misconduct complaints are thoroughly investigated, and officers are held accountable. By giving public officials the discretion to release misconduct complaint files to the public, HB 413 could lead to increased police accountability. We urge you to vote favorably for HB 413.

Sincerely yours,



Monique L. Dixon
Deputy Director of Policy and Senior Counsel

cc: Members of the Health and Government Operations Committee

³ U.S. Dep't of Justice Civil Rights Div., *Investigation of the Baltimore City Police Department*, 147-48, Aug. 10, 2016, <https://www.justice.gov/crt/file/883296/download>.

⁴ See, MD Code General Provisions §4-311 (a)

⁵ See, e.g., *Montgomery County v. Shropshire*, 420 Md 362, 378 (2011).

⁶ See, MD Code Public Safety §3-107 (2016).

⁷ See, e.g., Catherine Rentz, *Baltimore sees the first public police discipline hearing – then the next seven are canceled*, The Baltimore Sun, Oct. 6, 2016, <https://www.baltimoresun.com/news/maryland/investigations/bs-md-sun-investigates-trial-board-20161008-story.html> (noting that the details of misconduct complaints against individual officers are private until they reach the hearing stage).