

# **Maryland General Assembly**

## **Joint Committee on Transparency and Open Government**

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This report is submitted to satisfy the requirement of State Government Article §2-10A-14.

Subject to § 2-1246 of this title, the Committee shall submit a report to the General Assembly on or before December 1 of each year. The report shall include: (1) a description of the work of the Committee; and (2) any recommendations of the Committee.

**Maryland General Assembly  
Joint Committee on Transparency and Open Government  
2012 Interim  
Membership Roster**

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**William C. Ferguson IV, Senate Chairman  
Kumar P. Barve, House Chairman**

**Senators**

Joseph Getty  
J.B. Jennings  
Nancy King  
Katherine A. Klausmeier  
Nathaniel J. McFadden

**Delegates**

Talmadge Branch  
Robert A. Costa  
Wade A. Kach  
Heather R. Mizeur  
Dan K. Morhaim

**Committee Staff**

Kathryn H. Selle  
Lisa J. Simpson



THE MARYLAND GENERAL ASSEMBLY  
ANNAPOLIS, MARYLAND 21401-1991

December 18, 2012

The Honorable Thomas V. Mike Miller, Jr., Co-chairman  
The Honorable Michael E. Busch, Co-chairman  
Members of the Legislative Policy Committee

Ladies and Gentlemen:

The Joint Committee on Transparency and Open Government respectfully submits its 2012 interim activities report. The committee had three meetings in which it reviewed the new Department of Legislative Services' website, held briefings on Maryland's transparency laws, and discussed legislation within the jurisdiction of the committee. The committee's work covered the following:

**1. The New General Assembly Website**

Last January, the Department of Legislative Services showed the committee a preview of the new General Assembly website. After reviewing the website, members expressed concern that the website was not utilizing the latest technology and was too dense and difficult to navigate. Further, the committee wanted the website to allow the public to have more interaction in the legislative process including the incorporation of more links to social media.

On July 18, 2012, Michael A. Gaudiello, Director of the Office of Information Systems, shared with the committee an updated version of the website. Although the committee had continued concerns that the website did not utilize the most up-to-date technology, the committee did find that the updates resulted in a better organized and more user-friendly site. The committee found that the features for tracking specific legislation and contacting legislators were an improvement. Mr. Gaudiello advised the committee that the website was a work in progress and that even after it is launched, there will be changes made and opportunities for the committee to have input.

Additionally, at the July 18, 2012 meeting, the committee heard public testimony on the website. Jim Snider of iSolon.org expressed his opinion that the legislature is lacking in modern technology and should look to the federal government and other states for ways to improve the website and transparency within the Legislative Branch. He also expressed concern over the length of time video minutes will be archived and the accessibility of legislative data. The committee also heard from members of the National Federation of the Blind of Maryland who

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shared their concern that the new website would not be nonvisually accessible and expressed an interest in testing the new website.

## **2. The Maryland Open Meetings Act**

On October 17, 2012, Assistant Attorney General Ann MacNeille, Counsel for the Open Meetings Compliance Board, briefed the committee on the Maryland Open Meetings Act. Ms. MacNeille explained the policy, purpose, scope, and requirements of the Act. She also described the role of the Open Meetings Compliance Board and the courts. Ms. MacNeille's briefing highlighted issues concerning notice and closed meetings that generate many of the complaints made to the board.

At the October 17 meeting, the committee also heard public testimony concerning the Act. Jim Snider of iSolon.org suggested that open meeting records are untrustworthy and difficult to access. Additionally, the committee heard from Len Lazarick of the Maryland Reporter, who opined that the Open Meetings Compliance Board has little power or disciplinary authority.

## **3. The Maryland Public Information Act**

On December 4, 2012, Adam Snyder, Chief Counsel for the Opinions and Advice Division of the Office of the Attorney General, briefed the committee on the Maryland Public Information Act. Mr. Snyder explained the purpose, construction, and scope of the Act. He also described the exceptions to the Act's general presumption favoring the disclosure of documents and the procedure for requesting public records. Mr. Snyder noted that complaints about the Public Information Act have focused on the limited options for review of an agency's denial of a disclosure request, inconsistent agency implementation of the Act, and the lack of an oversight body similar to the Open Meetings Compliance Board.

At the December 4 meeting, the committee heard public testimony concerning the Act. Gary Glass testified that agencies do not provide sufficient explanations for denying requests for disclosure of records or conduct adequate searches for records; the Act should prohibit the destruction of requested records and agencies from charging a fee when responding to noncommercial requests for records; the treatment of police internal affairs files needs to be clarified; and the penalties for noncompliance with the Act should be increased.

## **4. Legislation**

The committee reviewed the following legislation from the 2012 session and potential legislation for the 2013 session concerning the Maryland Public Information Act:

- Senate Bill 740/House Bill 37 of 2011, State Government – Access to Public Records – Electronic Documents, require a custodian of a public record to provide a copy of the public record in a searchable and analyzable electronic format if the record is in a searchable and analyzable electronic format, the record is requested in a searchable and analyzable electronic format, and the custodian can provide a copy of the record in a searchable and analyzable electronic format without disclosing confidential or protected information. The legislation is scheduled to sunset on September 30, 2013, unless further action is taken by the General Assembly.

On December 4, 2012, the committee heard testimony on whether to extend the legislation. At the meeting, representatives for local governments, the press, and the public testified. Representatives for local governments stated that they support an extension of the legislation without amendment because the full effect of the legislation on local government operations is not known due to the small number of requests for electronic records that have been made since the enactment of the legislation. Representatives of the press and public testified that they too support an extension of the legislation but would like to see the legislation amended to clarify the form in which electronic records may be disclosed and the fees that may be charged for the disclosure of electronic records.

- Senate Bill 253 of 2012, State Government – Administrative Procedure Act – Regulations, originally included a provision that would have required a department to develop a mechanism to provide a person with an electronic alert when a regulation is posted on the department's website. The House Health and Government Operations Committee struck the provision and asked the committee to make a recommendation on whether it would be beneficial for the State to have an electronic notification of regulations available to the public and if so, what would be a workable definition for "electronic alert" that takes into consideration the cost to the departments.

On December 4, 2012, the committee heard testimony from the Department of Health and Mental Hygiene and the Department of Labor, Licensing, and Regulation, two of the agencies that propose the largest number of regulations each year. The departments testified that, within existing resources, it would be possible to send an electronic alert through Twitter, Facebook, or a single email list but that multiple email lists would require additional funds.

- House Bill 1202 of 2012, Public Information Act – Required Denials – Newsletters Sent by Public Officials, would have required a custodian of records to deny inspection of the part of a public record that includes the electronic mail addresses of individuals who were sent a newsletter from a public official of the State, a county, or a municipality that was (1) sent by mass electronic mailing; (2) intended to be for informational purposes only;

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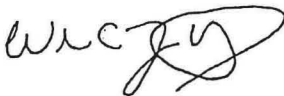
and (3) related to the official duties of the public official. The legislation did not pass but the House Health and Government Operations Committee asked the committee to review the legislation.

On December 4, 2012, committee staff provided committee members with background on the legislation. Additionally, the committee was provided potential definitions that could be added for clarification of the term "mass electronic mailing." The committee also discussed whether the issue regarding email addresses should be extended beyond the scope of the bill to include all personal electronic mail addresses included in public records.

Since the committee was appointed, committee members have received a vast amount of information regarding transparency and open government. In addition to the information summarized above, the committee has received formal written testimony and numerous emails suggesting changes to the Maryland Open Meetings Act and the Maryland Public Information Act. The committee intends to review this information at the beginning of the next interim and study specific issues that have been raised and recommendations that have been made.

In conclusion, the committee appreciates the advice and assistance of the numerous private citizens and public officials who participated in the committee's activities during the 2012 interim. We would also like to express our appreciation for the assistance provided to us by the staff of the Department of Legislative Services.

Respectfully submitted,



William C. Ferguson, IV  
Senate Co-chair



Kumar P. Barve  
House Co-chair

WCF:KPB/LJS/ncs

cc: Senator Joan Carter Conway  
Delegate Peter A. Hammen  
Mr. Karl S. Aro  
Mr. Warren G. Deschenaux  
Ms. Lynne B. Porter