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CITY OF BALTIMORE

BRANDON M. SCOTT  
Mayor



DEPARTMENT OF LAW  
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October 19, 2022

The Honorable President and Members  
of the Baltimore City Council  
Attn: Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: City Council Bill 22-0260 – Ethics Board Financial Disclosures – Public  
Inspection – Identifying Information

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 22-0260 for form and legal sufficiency. The bill would eliminate the requirement that a person register with the Ethics Board by providing certain identifying information before inspecting a public servant’s financial disclosure statement. The bill would also prohibit the Ethics Board from providing public access to a portion of a financial disclosure statement that expressly identifies the address of a filer’s family member. These two changes are addressed in turn below.

**Eliminating the Registration Requirement for Financial Disclosure Viewers**

In pertinent part, the City’s Ethics Law, contained in Article 8 of the City Code, requires the Ethics Board to allow a person to inspect a public servant’s financial disclosure statement. City Code, Article 8, § 7-4(a). This requirement is derived from the State Ethics Law. *See* Md. Code Ann., General Provisions Article (“GP”), § 5-606. However, currently, a would-be viewer must “identify” themselves by providing their name, address, telephone number, and organization represented, if applicable. City Code, Art. 8, § 7-4(b). The Ethics Board’s Executive Director must record this information, as well as the name of the public servant whose statement was inspected. *Id.*

Practically, this registration process happens through the Ethics Board’s online filing and viewing system. Before a would-be viewer can inspect a statement that has been filed online, they must register for an online account, provide their relevant identifying information, and confirm their email address. Then, the system tracks which statements they view.

The City Ethics Law’s viewer registration requirement is similar to that for State financial disclosure statements. *See* GP § 5-606(b) (“The [State] Ethics Commission . . . shall maintain a record of the name and home address of each individual who examines or copies a” financial disclosure statement of a State filer, as well as the name of the filer whose statement was viewed).

The Maryland Public Information Act, GP Sections 4-101 *et seq.* (“PIA”), forbids requiring a requestor of public records to identify themselves before they are granted access, “except as required by other law or regulation.” GP § 4-204(a). The State Ethics Law, from which the local law is derived, requires such registration, and the PIA defers to that State law. *See* GP §§ 4-204; 4-301.

The purpose of the viewer registration requirement generally is to prevent anonymous viewing of financial disclosure statements, which contain details about the business and financial affairs of public servants, as well as certain information about their family members. An opinion of the Maryland Attorney General explains the genesis of the registration requirement as follows:

The requirement that financial disclosure forms of public officials be available to the public was part of the ethics law when it was originally enacted, as was the requirement that a person examining or copying a form provide his or her name and home address. Chapter 3, § 2, Special Session, Laws of Maryland 1973, then codified at former Article 33, § 29-4(c)-(d). When the law was revised in 1979 to create the State Ethics Commission, those provisions were retained, along with the further direction to send the identity and home address to the individual who had filed the financial disclosure statement, on request of the filer. Chapter 513, Laws of Maryland 1979. . . . *In a sense, the Public Ethics Law balances one form of public disclosure with another. In return for bearing the burden of disclosing personal financial affairs to the public, an official or candidate for office is entitled to know basic information about members of the public who access that information. Conversely, one who wants to know about the financial affairs of a State official or candidate must be willing to disclose a minimum amount of his or her own personal information.*

88 Md. Op. Att’y Gen. 115 (2003) (emphasis added).

Eliminating the viewer registration requirement would disrupt the balance described above and would enable individuals to anonymously view financial disclosure statements, though arguably would increase public access to such statements by eliminating the registration obstacle. This is a policy question for the Council, and does not appear to raise any legal impediments. Although the State Ethics Law requires local ethics laws to contain conflict of interest and financial disclosure provisions that are similar to the State’s provisions, *see* GP Sections 5-807 through 5-809, the Law Department understands from the State Ethics Commission’s General Counsel that the viewer registration requirement is not the kind of substantive State ethics provision that requires local conformity. Accordingly, the Council is free to eliminate the viewer registration requirement if it so desires.

### **Preventing Disclosure of the Address of a Filer’s Family Member**

As a threshold matter, it is unclear whether the bill intends to forbid disclosure of the home address and/or business address of a filer’s family member. The proposed language simply refers to the “address” of a family member.

If the intent is to prohibit the disclosure of the *home* address of a filer's family member, then the amendment is unnecessary because the Ethics Law already provides that protection. Section 7-4 of Article 8 forbids the Ethics Board from "provid[ing] public access to a portion of a statement . . . that expressly identifies *an individual's home address*." City Code, Art. 8, § 7-4(a)(2) (emphasis added). This restriction is derived from the State Ethics Law's similar restriction. See GP § 5-606(a)(3)(iii).

If the intent is to prohibit disclosure of the family member's *business* address, the amendment is likely preempted by the PIA because a local ordinance alone cannot make confidential a record that would otherwise be publicly available. See, e.g., *Lamson v. Montgomery County*, 460 Md. 349, 364 (2018); *Police Patrol Security Systems v. Prince George's County*, 378 Md. 702, 710, 713-15 (2003); see also 86 Op. Att'y Gen. 94, 106-07 (2001) ("a local ordinance does not constitute 'other law' for purposes of [the PIA] and cannot by itself be the basis of an exemption from disclosure under the PIA. As we have previously explained, a contrary interpretation "would allow . . . local entities at their election to undermine the [PIA]"). Unlike the broad prohibition on disclosing *home* addresses in Article 8, Section 7-4, which is derived from similar State law, there is no such State law authorizing a prohibition on publishing family members' *business* addresses.<sup>1</sup>

Accordingly, this portion of the bill should be amended by deleting lines 1 through 3 on page 2. Subject to that amendment, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,



Jeffrey Hochstetler  
Chief Solicitor

cc: James L. Shea, City Solicitor  
Nina Themelis, Mayor's Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Hilary Ruley, Chief Solicitor  
Ashlea Brown, Chief Solicitor  
D'Ereka Bolden, Assistant Solicitor  
Michelle Toth, Special Solicitor

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<sup>1</sup> The business address of a filer's family member might be on a statement, for instance, because a statement must contain "a schedule that lists, for the public servant and for each of the public servant's spouse and children: (1) each place of compensated employment at any time during the reporting period; and (2) each business entity: (i) of which the public servant, spouse, or child was a sole or partial owner; and (ii) from which, at any time during the reporting period, he or she received earned income." City Code, Art. 8, § 7-27(a). For each source of income, the schedule must contain "the name *and address* of the place of salaried employment or business entity" and, for each family member, "that individual's name and relationship to the public servant." City Code, Art. 8, § 7-27(b) (emphasis added).