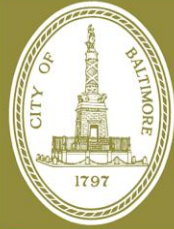


CITY OF BALTIMORE

BRANDON M. SCOTT, MAYOR



DEPARTMENT OF LEGISLATIVE REFERENCE

City Hall
100 N. Holliday Street, Suite 626
Baltimore, MD 21202

Council Bill 26-0164

May 6, 2026

TO: President and Members of the City Council

FROM: Benjamin Guthorn, Department of Legislative Reference

RE: 26-0164 – Charter Amendment – Inspector General – Custodian of Records

POSITION: DOES NOT SUPPORT

Please be advised that the Department of Legislative Reference (“DLR”) does not support City Council Bill 26-0164.

DEPARTMENT BACKGROUND

The Department of Legislative Reference (“DLR”), in addition to its role in drafting and codifying the City’s laws and regulations, is responsible for administering the City’s records management and archives programs.

- The mission of the City Records Management Program is to organize and supervise the overall management of City government records, including determining their appropriate retention, storage, and disposition.
 - The mission of the Baltimore City Archives is to collect and preserve the administrative records of Baltimore City government that have enduring historical value and make them accessible to the public.
-

DEFINITION OF “AUTHORIZED INDIVIDUAL”

As used in the Maryland Public Information Act (“MPIA”), the term “authorized individual” occurs once. Here, the term is used to mean “authorized to possess the records”, be it officially or de facto. *Cf. Glass v. Anne Arundel Cnty.*, 453 Md. 201, 211 (2017) (observing that “most employees” are, to some extent, custodians).

“Custodian” means:

- (1) the official custodian [— an officer or employee of the State or of a political subdivision who is responsible for keeping a public record, whether or not the officer or employee has physical custody and control of the public record]; or
- (2) any other **authorized individual** who has physical custody and control of a public record.

Md. Code, Gen. Provis. § 4-101(d) and (f).

VAGUE; OVERLY BROAD; AND CONFLICTING

Amendments offered to Council Bill 26-0164 insert the following language within the powers and duties of each principal within the executive branch of City government:

“THE [MAYOR/COMPTROLLER/CITY ADMINISTRATOR] SHALL PROMPTLY FACILITATE THE TRANSMISSION OF RECORDS TO THE OFFICE OF THE INSPECTOR GENERAL AS AN AUTHORIZED INDIVIDUAL, AS DESCRIBED IN THE MARYLAND PUBLIC INFORMATION ACT.”

As drafted, this directive is vague, overly broad, and in conflict with other provisions of the Charter.

Vague; Overly Broad.

Questions of interpretation on enactment and ultimate approval by the voters.

- Which records shall be transmitted and why?
- All records?
- Is transmission required as a constant? Or is it transmission upon request?

Misuse of term.

As an “Office”, the Office of the Inspector General (“OIG”) is not an individual either under the MPIA or the City Charter. “Authorized individual” is not defined in the MPIA. As used in the definition of the term “custodian”, the word “authorized” modifies “individual”. There is no confusion whether “authorized individual” is a term that means “office” or another body of individuals or entity. In comparison:

- “Person” is defined in State General Provisions Article, § 1-114 to mean “an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, corporation, partnership, business trust, statutory trust, limited liability company, firm, association, or other nongovernmental entity.”
- “Person” is defined in Article 1, § 2(d) of the Charter to mean “any individual, firm partnership, corporation, company, association, or body politic except the City; and includes any personal representative, agent, trustee, receiver, assignee or other similar representative thereof.”

Conflict.

Article VII, § 93 of the Charter assigns the following duties to the Director of the Department of Legislative Reference:

[K]eep all the books, documents, archives, records, official plats, papers and proceedings of the City except those in current use or whose custody the Board of Estimates shall by resolution otherwise direct or authorize; . . . receive and keep all other documents pertaining to the City which the Director may deem of historic value or be instructed so to do by ordinance or by resolution of the Board of Estimates; . . . [and,] provide for the retention of such books, documents, papers, plats or archives in the Department, and provide for their inspection and reproduction by the public under such reasonable regulations and supervision as the Director may prescribe

If the Mayor, Comptroller, and City Administrator are obligated to transmit records to the Office of the Inspector General, as proposed in the amendments, what is the relationship between each municipal agency and the Office of the Inspector General? Is the OIG now charged with the keeping of all records? What is the relationship between DLR and the OIG?

Where transmission of records to the Office of the Inspector General is required, when is the power of subpoena exercised? Article X, § 4(d) of the City Charter:

- (1) To perform the duties of office, the Inspector General may issue a subpoena to require:
 - (i) any person to appear under oath as a witness; or
 - (ii) the production of any information, document, report, record, account, or other material.
- (2) The Inspector General may enforce any subpoena issued pursuant to this subsection in any court of competent jurisdiction.

The Honorable President and Members
of the Baltimore City Council
26-0164 – DLR Bill Report
May 6, 2026
Page 4 of 4

Where subpoena power exists, the Charter does not need to impose onto the executive branch of the City a broad duty to transmit an unspecified number and variety of documents under undefined circumstances.

For these reasons, DLR does not support Council Bill 26-0164.

cc: Nina Themelis, Mayor's Office of Government Relations
Ty'lor Schnella, Mayor's Office of Government Relations
Hilary Ruley, Chief Solicitor, General Counsel Division
Jeffrey Hochstetler, Chief Solicitor, General Counsel Division