
CITY OF BALTIMORE

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May 4, 2026

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

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 26-0164 for form and legal sufficiency. The bill—entitled a resolution—would amend the City’s Charter to designate the Inspector General as “custodian of agency records” and as having “constructive supervisory authority of agency records and any person who is the subject of the records, including records containing information that may be considered a personnel issue.” The Law Department is also aware of proposed amendments to the resolution that would require various City agencies to designate the Inspector General as an authorized individual to access agency records or to require custodians of records to give them unredacted to the Inspector General or to the Inspector General’s Advisory Board

A resolution of the Mayor and City Council, such as this one, is an appropriate method of initiating an amendment to the Baltimore City Charter. *See* Md. Const., Art. XI-A, § 5. However, as explained below, the Law Department cannot approve the resolution for form and legal sufficiency because it is fundamentally at odds with the State Public Information Act (“PIA”). *See* Md. Code, General Provisions Art. (“GP”), §§ 4-101 *et seq.* Moreover, any amendment to the Charter that effectively provides the Inspector General with blanket access to the records of other City agencies is similarly contrary to the PIA. In other words, it is not the current Charter that is a barrier to such access, but State law itself, and no Charter amendment can circumvent State law.

This is the express view of both Maryland’s highest Court and its Attorney General. *In Caffrey v. Dep’t of Liquor Control for Montgomery County*, the Court could not give effect to a provision of the Montgomery County Charter that was contrary to the PIA, holding that “[p]ursuant to the Maryland Constitution, Article XI-A, § 1 . . . a county charter shall be subject to the public general laws of Maryland. Thus, if a provision of a county charter, including a charter amendment, conflicts with any public general law, the charter provision may not be given effect.” 370 Md. 272, 302 (2002) (cleaned up). The Court held that “in so far as the MPIA explicitly prohibits the release of certain public records through its mandatory denials . . . we may not interpret [the County

Charter] as permitting their release.” *Id.* at 303; *accord* 71 Md. Op. Att’y Gen. 297, 299-300 (1986) (“[s]uch an interpretation would allow state agencies and local entities at their election to totally undermine the overall purposes of the PIA”) (cleaned up); 86 Md. Op. Att’y Gen. 94, 107 (2001) (“had the General Assembly intended to give this effect to a . . . local ordinance, local ordinances would have been included in the list in [GP Section 4-301]”, which requires a custodian to deny inspection if it would be contrary to State or federal statute, or Court rules).

Under the PIA, each governmental unit, including each City agency, is the custodian of its own records. *See, e.g.*, GP §§ 4-101(k)(1) (defining “public record” as “any documentary material that is made or received by a *unit* or instrumentality of . . . a political subdivision or received by the *unit* or instrumentality in connection with the transaction of public business”) (emphasis added); 4-503 (requiring each governmental unit that maintains public records to identify a PIA representative). And the access of one City agency to the records of another is governed by the PIA. *See, e.g.*, GP § 4-101(b); Office of the Attorney General, Maryland Public Information Act Manual, 2-4 (19th ed. 2024) (“PIA Manual”); *Montgomery Cnty. Maryland v. Shropshire*, 420 Md. 362 (2011) (the PIA’s mandatory denials apply to records shared between local police department and civilian review board).

The term “custodian” in the PIA refers to both the “official custodian” and any authorized individual who has physical custody and control of agency records. *See* GP § 4-101(d). The “official custodian” is the “officer or employee of the agency who has the overall legal responsibility for the care and keeping of public records.” PIA Manual, 1-10 (*citing* GP § 4-101(f)). And other individuals are “authorized” physical custodians of an agency’s records if their specific job duties entitle them to such custody and control, *e.g.*, employees of the agency itself. *See, e.g., Glass v. Anne Arundel Cnty.*, 453 Md. 201, 211 (2017) (explaining that most employees of an agency may, to one degree or another, have physical custody and control of agency records).

The Inspector General’s role within City government does not—and cannot be made to—entitle that office to become either the official custodian of records for other City agencies or to receive blanket authorization to possess or access the records of other City agencies. The Inspector General is responsible for supervising and directing the Office of Inspector General (“OIG”), which in turn is responsible for “investigating complaints of fraud, financial waste, and abuse in City government” and “promoting efficiency, accountability, and integrity in City government.” City Charter, Art. X, § 4. To state the obvious, the Inspector General does not run any other City agency, be it in the executive branch, the legislative branch, or the Comptroller’s Office. Thus, the Inspector General cannot be the official custodian of other agency records because she does not have the legal responsibility for creating, caring for, and keeping those records.

Nor could the Inspector General fulfill the responsibilities of a custodian for other agency records, whom the PIA requires “to withhold certain categories of records, decide whether privileges apply and should be asserted, and make decisions as to whether some types of records should be withheld in the public interest.” *Glass*, 453 Md. at 235. *See also, e.g.*, 110 Op. Att’y Gen Md. 60, 62 (2025) (explaining that a custodian’s “obligations include granting or denying a PIA request within certain time limitations, GP § 4-203(a), and, if a request is denied, providing certain information to explain the denial, GP § 4-203(c)”).

Similarly, the Inspector General cannot be authorized to have physical custody of or blanket access to other agency records because that would amount to an end run around the PIA, which requires records shared between City agencies to be reviewed for mandatory confidentiality protections. *See* GP §§ 4-301 through 4-356 (requiring the custodian to deny inspection of records and information covered by one of the PIA’s mandatory exemptions). As explained above, local law, including local Charter provisions, cannot override the PIA and the privacy and privilege interests it carefully protects. *See, e.g.,* 86 Md. Op. Att’y Gen. at 107 (“Most of the mandatory exemptions in the PIA appear designed to vindicate privacy or other interests deemed worthy of protection by the General Assembly. If a local ordinance by itself constituted other ‘law’ authorizing disclosure, it could thwart the sometimes delicate balance of interests struck by the Legislature. . . . [A] contrary interpretation would allow local entities at their election to undermine the PIA.”) (cleaned up); Letter from Assistant Attorney General Shaunee L. Harrison to Hon. Antonio Hayes, February 3, 2026 (“a local law or charter provision authorizing, or requiring, a local government custodian of records to disclose records to a local inspector general would be preempted by State law and unenforceable to the extent it required or authorized the custodian to disclose records covered by one of the PIA’s mandatory exceptions. This is true regardless of what form the inspector general’s request or demand for records takes.”).

In situations directly on point, Maryland courts and the Attorney General have consistently concluded that an oversight entity’s access to the records of another agency is subject to the PIA’s mandatory exemptions, notwithstanding local law that purports to grant broader access. For example, in *Shropshire*, Maryland’s highest Court held that the PIA protected police personnel files from disclosure to the county inspector general, notwithstanding broad local law requiring each county agency to give the local inspector general any documents requested, and notwithstanding the inspector general’s subpoena power. 420 Md. at 383. *See also, e.g., Police Patrol Sec. Sys., Inc. v. Prince George’s Cnt’y.*, 378 Md. 702, 712 (2003) (“In our discussion of [PIA] mandatory denials, we noted that a county charter is subordinate to the public general laws of Maryland”); *Caffrey*, 370 Md. at 302-303; 86 Md. Op. Att’y Gen. at 107 (proposed local law requiring police department to provide personnel records to civilian review board “could only be carried out to the extent that it is consistent with the PIA” because “if disclosure of a particular record is forbidden by the PIA, its disclosure would not be ‘otherwise provided by law’ simply because the [local] ordinance authorized the disclosure.”); 71 Md. Op. Att’y Gen. at 299-300.

In addition to the resolution’s attempt to provide the Inspector General with broad custodial access to the records of other City agencies, it also attempts to grant that office “constructive supervisory authority of agency records and any person who is the subject of the records”. This appears to be aimed at circumventing the PIA’s mandatory protection for personnel records of an individual. *See* GP § 4-311(a) (requiring the custodian to “deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information”). Under this PIA provision, a custodian of personnel records may, in pertinent part, only allow inspection by the person who is the subject of the record and by “an elected or appointed official who supervises the work of the individual”. GP § 4-311(b).

By design, the Inspector General is not part of the City’s executive, legislative, or Comptroller functions. As such, the Inspector General does not supervise the work of any City official or employee outside of the OIG, nor would it be practically possible for that office to do

so. *See* City Charter, Art. X, § 4. Thus, the Inspector General does not and cannot broadly qualify as “an elected or appointed official who supervises the work” of every City employee. As explained by the Attorney General,

the words “duly elected and appointed officials” as used in [Section 4-311(b) of the PIA] should be given a relatively narrow construction. For example, in 60 Opinions of the Attorney General 554 (1975), we concluded that the State’s Legislative Auditor, who had broad audit responsibilities for State agencies, could not be viewed . . . as an official who supervised the work of State agency employees. . . . In our opinion, [Section 4-311(b)] was intended to give personnel file access only to the person who is the subject of the file or to those persons *who actually supervise or are directly responsible for the supervision of the person who is the subject of the file*. We do not believe that [Section] was intended to establish access to the file for all elected or appointed officials of a public body. The word “supervise” in [Section 4-311(b)] is crucial. We thus believe that *some concrete nexus of real or potential ‘supervision’ must exist between the official and the employee before the exception* in [that Section] can be triggered.

65 Md. Op. Att’y Gen. 365, 368 (1980) (emphasis added); *see also* PIA Manual, 2-4 (“although an agency may not generally share personnel records with other agencies under what is now GP § 4-311, an agency *charged with responsibilities related to personnel administration* may implicitly have access to those records to the extent necessary to carry out its duties”) (citing 86 Md. Op. at 94) (emphasis added). Because the Inspector General does not have supervisory authority outside of the OIG and does not otherwise play any role in “personnel administration” for the City, there is no duty on which to base a grant of “constructive supervisory authority” for purposes of circumventing the PIA’s mandatory protection for personnel records.

To be clear, the OIG plays an important oversight function regarding potential fraud and financial waste and abuse, and that office’s access to records both external and internal to the City is vital. Although the OIG’s access to internal City records is governed by the PIA, the mandatory protections most often applicable—for personal medical and financial information of an individual, attorney-client privileged communications, and attorney work product—do not present substantive barriers to many (if any) OIG investigations. There are no PIA exemptions for City financial records or for most kinds of internal communications. And the OIG has subpoena power to obtain third-party records that are relevant to an investigation, such as the records of contractors and other vendors who receive City money. Indeed, the Law Department will assist the OIG in enforcing such subpoenas in any court of competent jurisdiction when requested. *See* City Charter, Art. X, § 4(d).

But, for all the reasons explained above, the Charter cannot grant the Inspector General unrestricted access to all the records of other City agencies. Such a result would violate the PIA and overreach the State legislature’s careful balancing of access with important protections for privacy and privilege. Accordingly, the Law Department cannot approve the resolution—or any amendments that seek to achieve similar results—for form and legal sufficiency.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffrey Hochstetler', with a long horizontal flourish extending to the right.

Jeffrey Hochstetler
Chief Solicitor

cc: Ebony Thompson, City Solicitor
Nina Themlis, Mayor's Office of Government Relations
Ty'lor Schnella, Mayor's Office of Government Relations
Hilary Ruley, Chief Solicitor, General Counsel Division
Ashlea Brown, Chief Solicitor
Michelle Toth, Assistant Solicitor
Desireé Luckey, Assistant Solicitor