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CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG  
Mayor



DEPARTMENT OF LAW  
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February 20, 2020

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: Mayor and City Council Resolution 20-0491 – Charter Amendment – City Auditor – Powers and Duties

Dear President and City Council Members:

The Law Department has reviewed Mayor and City Council Resolution 20-0491 for form and legal sufficiency. Under Article XI-A, Section 5 of the Maryland Constitution, a resolution, such as City Council Resolution 20-0491, is an appropriate method of initiating an amendment to the Baltimore City Charter. If passed by the Mayor and City Council, the Resolution would be placed on the ballot and would take effect thirty days after being approved by the voters. Md. Const., Art. XI-A, § 5.

This resolution would require the City Auditor to give copies of agency audits to the agencies that were audited. It would also allow the City Auditor, in the furtherance of his or her duties, to issue subpoenas “to any municipal officer, municipal employee, or any other person receiving City funds” to produce documents. While this language would not be effective to obtain documents in the custody of the Mayor and City Council (internal City documents), a subpoena could be enforced to request documents not in the custody of the Mayor and City Council. Md. Code, Gen. Prov., §4-311; 78 Op. Att’y Gen. 291 (1993); *Montgomery County v. Shropshire*, 420 Md. 362, 383 (2011) (holding that the Maryland Public Information Act applies between record custodians in the same government).

No change in the City Charter would be able to overcome the state law that governs the release of government records. See, e.g., *Kimball-Tyler Co. v. Baltimore*, 214 Md. 86, 94 (1957) (explaining that the City’s Charter is local law except for Article II); 87 Op. Att’y Gen. Md. 187, 191, n. 8 (2002). No local law can authorize access to a document for which state law prevents access. *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) (“As we have previously explained, a contrary interpretation ‘would allow...local entities at their election to undermine the [PIA]. ... [H]ad the General Assembly intended to give this effect to a ... local ordinance, [local ordinances] would have been included in the list in SG § 10-615 [now codified in Md. Code, Gen. Prov., § 4-301].’ Office of the Attorney General, Public Information Act Manual 15 (8<sup>th</sup> ed. 2000); see also 71 Opinions of the Attorney General 297, 299-300 (1986).”).

The City Solicitor has opined consistently in the past that even “generally accepted accounting practices could have the effect of creating an exception to the Public Information Act which makes personnel files confidential except to the person in interest and his supervisors. If such an exception is to be created, it must be done by way of an amendment to the Public Information Act.” 74 Op. City Sol. 49, 54 (1982). In practice, however, documents that a city employee needs to see to accomplish a job can always be redacted as necessary to conform with the confidentiality requirements of state law prior to being disclosed.

As written, the language providing for subpoenas for internal city records is misleading as it would not grant the City Auditor any additional powers with respect to documents in the possession of the Mayor and City Council of Baltimore that he or she does not already have by virtue of state law. To avoid this confusion, the resolution should be amended to remove “any municipal officer, municipal employee, or any” from line 14 on page 2. Subject to this amendment, the Law Department can approve the Resolution for form and legal sufficiency as it is proper Charter material. *See, e.g., Atkinson v. Anne Arundel County*, 236 Md. App. 139, 177 (2018).

Very truly yours,



Hilary Rulex  
Chief Solicitor

cc: Andre M. Davis, City Solicitor  
Dana P. Moore, Deputy City Solicitor  
Matthew Stegman, Mayor’s Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Victor Tervalá, Chief Solicitor  
Ashlea Brown, Assistant Solicitor