

Stephan Fogleman, Chair
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Executive Director: Isabel Mercedes Cumming

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BALTIMORE CITY BOARD OF ETHICS

April 29, 2026

Via Electronic Mail

The Honorable President and
Members of the City Council
Room 409, City Hall
100 N. Holliday St.
Baltimore, MD 21202

Re: City Council Bill 26-0164

Dear President and Members of the City Council for Baltimore City:

The duties and responsibilities assigned to Ethics Board staff by the OFFICE Of INSPECTOR GENERAL POLICY MANUAL, 19.9. {Ethics Legislation, Regulations, and Policies} include:

[Ethics] Board staff are responsible for monitoring and reviewing proposed changes to State and local legislation and policies that could impact the Ethics Law or its administration.

OIG POLICY MANUAL, 96. (Emphasis supplied.)

The Baltimore City Ethics Board and its staff have reviewed City Council Bill 26-0164 (Charter Amendment)(herein, “the Bill”). The Bill proposes to amend the City Charter, Title X by assigning the Inspector General (herein, ”IG”) a statutory designation as “authorized individual” responsive to MD CODE, GENERAL PROVISIONS, § 4-101. The Amendment, with Ethics’ proposed redactions, is appended to this report as Appendix 1. It aims to:

- (a) clarify the role and function of the OIG as an independent oversight entity established by the City as integral part of a unified, single political unit, and
- (b) vest the IG with the required authorization for purposes of the Maryland Public Information Act (“MPIA”),¹ pertaining to independent access to unredacted agency records for the limited purpose of lawful OIG investigations.

¹ MD CODE, GENERAL PROVISIONS, § 4-101 (formerly cited as MD CODE, SG, § 10-601; MD Code, SG, § 10-611).

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Statutory Background

From time to time, the Ethics Board is called upon to investigate alleged violations of Art. 8's provisions. The Ethics Law provides that when a complaint made under § 5-1. {Commencement of action.} is received, "[t]he Executive Director must promptly investigate the complaint." *See* § 5 -3. (a){Preliminary investigation}. To that end, Art. 8 vests the Board with the power to issue subpoenas and to judicially enforce those subpoenas:

To facilitate an Ethics Board investigation, § 3-22. {Oaths and subpoenas}, provides in pertinent part that:

(a) In general.

The Ethics Board and Executive Director each may:

- (1) administer oaths; and
- (2) issue subpoenas for the attendance of witnesses to testify or to produce other evidence.

(b) Judicial enforcement.

A subpoena issued under this section may be judicially enforced.

(Emphasis supplied.)

The Board's powers to issue and judicially enforce subpoenas closely mirrors those assigned to the IG by the City Charter, Title X, § 4 (d) {Issuing subpoenas.}:

- (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.

When investigating a complaint, the Ethics Board and its Executive Director may be required to review agency records as necessitated by the investigatory circumstances, including records related to or reflective of the conduct of public employees, as well as financial matters.

Current Events

In June of 2025, the Department of Law (herein also, "Department") *sua sponte* implemented a policy that:

- (a) eliminated the IG's direct access to agency records, which had been in place for more than 8 years;

Baltimore City Board of Ethics

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- (b) considers any subpoena issued by the OIG to the custodian of a City agency the equivalent of a “public information request” under the MPIA, and
- (c) applies the mandatory redactions assigned to a custodian by the MPIA to the records so “requested”.

Furthermore, the Department has denied the IG’s statutory responsibility under Title X, § 4 (d) (2) to independently “enforce any subpoena issued pursuant to this subsection in any court of competent jurisdiction”, under the “monopoly” on legal representation assigned to the Department of Law by the City Charter § 24. {Department of Law: Powers and duties.} (a) and (b).²

Mission, statutory framework, and investigative methods of the Ethics Board and the OIG are similar. The effect of limited, redacted or even foreclosed access to City records on the Ethics Board’s and its Executive Director’s ability to perform their statutory oversight responsibilities therefore can reasonably be expected to be similar to its effect on the OIG’s investigative ability:

Any permanent implementation of policies designating inter-agency (but intra-City) record “requests” as MPIA requests, and withholding access to records, will likely have a chilling effect on the Board’s ability to conduct investigations.

Compromised Confidentiality

Pursuant to Art. 8 § 5-9. {Confidentiality of proceedings}, investigations into alleged violations of the Ethics Law are statutorily confidential.³

(a) In general.

Notwithstanding any other law and except as otherwise provided in this section, after a complaint is filed:

- (1) the proceedings, meetings, and activities of the Ethics Board and its staff relating to the complaint are confidential; and
- (2) neither the **Ethics Board nor its staff may disclose any information relating to the complaint, including the identity of the complainant or the respondent.**

The Ethics Law’s confidentiality provisions apply to all members of the Ethics Board and its investigative team. For purposes of an Ethics investigation, the Department of Law is a third party that is not part of that investigative team. Detailed requests (or subpoenas devalued as mere

² That conflict of interest is in litigation in the Circuit Court for Baltimore City under *Inspector General of Baltimore City Isabel M. Cumming et al. v. Mayor and City Council of Baltimore City* (C-24-CV-26-001410).

³ As per the OIG POLICY MANUAL, OIG investigations and standard practice are also confidential.

Baltimore City Board of Ethics

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“information requests”) for pertinent records now must be submitted to individual agency custodians, to be forwarded and redacted by the Department: A “request” for specific records during an Ethics investigation now requires the naming and identification of the investigation’s respondent, as well as a selection of keywords pertaining to the investigation that must be transmitted to both the agency custodian and the Department.

Neither the agency custodian nor the Department is bound by Art. 8’s confidentiality provisions.

The application of the MPIA forces the Ethics Board and its Executive Director to breach statutory confidentiality and thus compromise investigatory integrity.

This is not reconcilable with the provisions of Art. 8.⁴

Foreclosed Appellate Process

The MPIA governs the disclosure of government records to the public upon request. The Appellate Court of Maryland recently restated in *Mayor and City Council of Ocean City v. The Washington Post* (No. 774, Sept. Term, 2024):

[T]he policy of the Public Information Act is to allow access to public records. Generally, **the statute should be interpreted to favor disclosure**.⁵

To arbitrate disagreements between parties as to what records are disclosable, the MPIA provides an approved statutory pathway for the public to contest denials of information by a custodian:

- The Public Access Ombudsman (who mediates disputes between requesters and records custodians that can't be resolved directly and functions as a fully independent entity from the Attorney General's Office),
- the PIA Compliance Board (which can review complaints that a custodian wrongfully denied inspection of public records or that custodian failed to respond to a request),
- the Appellate Court of Maryland, and

⁴ As a proximate result of the IG’s loss of access to agency records, both the OIG and Ethics have lost the ability to monitor who has accessed its formerly secure servers.

⁵ The Court cites to its holding in *Blythe v. State*, stating that “[e]ven where the personnel records exemption applies, we have clarified that “the exemption may not be blanketly invoked to shield an entire file if the shielding of only a part of the file would suffice to serve the purpose of the exemption.” *Blythe v. State*, 161 Md. App. 492, 519 (2005).

Baltimore City Board of Ethics

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- the Supreme Court of Maryland.

The Department’s position that it alone is authorized to undertake legal action on behalf of the City or a City entity means that neither the OIG nor the Ethics Board are able to pursue appellate review and relief that is otherwise available to every citizen and non-City entity:

The Department now acts as the *de facto* custodian of all government records and, relying on its legal services monopoly, has “foreclosed, cut off, shut down any enforcement or enforceability option on the part of the inspector general to pursue its subpoenas and to advance its investigatory responsibilities.”⁶

What Is a “Custodian”?

The MPIA recognizes the role of “custodian” of government records: § 4-101 provides the following definitions:

(f) “Official custodian” means 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.

(d) “Custodian” means:

(1) the official custodian; or

(2) any other authorized individual who has physical custody and control of a public record.

(Emphasis supplied.)

The MPIA does not establish a process or licensure for the nomination, assignation, or authorization of a municipal “custodian”. This is left to the municipal administration to determine, either expressly or implicitly by “physical custody and control of the public record”: § 4-101 (d) (2) only calls for “authorization”—not by the State or by the MPIA but by an agency or municipality. (Emphasis supplied.)

This corresponds to established City practice: The Charter does not designate any individual department or agency as “custodian of records” for purposes of the MPIA. Each “officer or employee . . . 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 access to unredacted agency records is a custodian by default for purposes of the MPIA. These individual agency custodians may assign some of their duties under the MPIA to the Department of Law – which is not a custodian by statute – for the sake of convenience and efficiency.

⁶ The Court in *OIG v. Mayor & City Council*: “The City Solicitor’s Office has made decisions . . . that have foreclosed, cut off, shut down any enforcement or enforceability option on the part of the inspector general to pursue its subpoenas and to advance its investigatory responsibilities.” (Court hearing, 4/17/26 before the Hon. Pamela J. White, Judge for the Circuit Court for Baltimore City.)

Baltimore City Board of Ethics

100 N. Holliday St., Suite 635 / Baltimore, MD 21202

Baltimore City Information Technology (“BCIT”), also without special designation, fulfills the requirements of “actual possession and control” of the City’s electronic information, thus also is a *de facto* custodian.

“Physical” custody and control of electronic records thus is *established by full access* to those records. **By having full access to unredacted electronic agency records, the OIG (prior to the 2025 change in the Department’s policy) was in actual and constructive custody and control of the public record and thus already in compliance with the MPIA definition of “custodian”.**

Bill 26-0164 aims to re-establish a status quo that was uncontested before the unilateral change in policy.

Effect of Bill 26-0164

Bill 26-0164 formally recognizes the IG as a *de facto* custodian of agency records by establishing the INSPECTOR GENERAL AS AN **AUTHORIZED INDIVIDUAL AS DESCRIBED IN THE STATE PUBLIC INFORMATION ACT LAW**, for the limited purpose of lawful investigations.

The proposed Amendment would fully satisfy the element of “authorization” that

- (a) grants/re-establishes the IG’s (and thus, Ethics’) access to unredacted City and agency records *via* authorized individual status; and
- (b) obligates the IG (and thus, Ethics) to apply the restrictions and redactions as required by the MPIA for any potential requests that may be received from the public.

Multi-Layer Custodianship Has Legal Precedent

Maryland courts have repeatedly held that even classified disciplinary records maintained by law enforcement agencies (as *personnel records* under the MPIA) and expressly precluded from release by statute until the rescission of Law Enforcement Officers Bill of Rights (LEOBOR) in 2021, were and still are “in constructive possession” of the prosecution⁷ because both police and prosecutor are considered part of the same prosecution team.⁸ Records kept by *all* law enforcement

⁷ *Robinson v. State*, 354 Md. 287 (1999) (State has constructive possession and a duty to disclose even if they don’t have actual possession).

⁸ *State v. Williams*, 392 Md. 194, 218-219 (2006): “We do ... agree ... with defendant's argument that the police detective must be viewed as a part of the prosecution for purposes of applying the *Brady* rule.”. . . “[P]olice, when involved in the investigation and preparation of the criminal case being prosecuted” are part of the prosecution team, for purposes of *Brady*.”

Baltimore City Board of Ethics

100 N. Holliday St., Suite 635 / Baltimore, MD 21202

agencies whose officers are called to testify in criminal are imputed to be within the knowledge of the individual prosecutor.⁹

In Baltimore City, the State’s Attorney’s Office, a quasi-agency, is considered *in constructive possession of all of BPD’s records*. Indeed, it was former City Solicitor Andre Davis who, in 2018, devised a policy that anticipated the rescission of LEOBOR and provided access to classified police records to Defendants in cooperation with the SAO *via* SAO staff and offices.

MPIA exemptions are not absolute and not determinative in aspects where access through City agencies that are statutorily tasked with supervising and investigating employee conduct is concerned. This was recognized by the Attorney General’s Office:

In **86 Op. Att’y Gen, 94 (2001)**, 108-109, the Attorney General opined that

“any exception to the general prohibition against public access to personnel records must be supported by a clear legal basis ... **as when ‘the requesting agency has statutory duties which demonstrably cannot be effectively executed without access.’**”

(*citing* 60 Op. Att’y Gen 556, 559 (1975): “If the requesting agency has statutory duties which demonstrably cannot be effectively executed without access to personnel files, the inspection of records which you would otherwise have an obligation to deny, is authorized within the meaning and intent of Article 76A Section 3 (c)”, *id.* at 565))¹⁰

The Attorney General (in 86 Op Att’y Gen., 109) stated: “**It is implicit in the personnel records exemption that a City agency charged under a municipal ordinance with responsibilities related to personnel administration have access to those records necessary to carry out its duties.**”¹¹ (Emphasis provided throughout.)

The Department’s absolute control of the IG’s access to agency records for specific use in lawful investigations under Title X of the City Charter is demonstrably denying the OIG’s ability to effectively execute its statutory mandate to

⁹ *United States v. Payne*, 63 F.3d 1200, 1208 (2d Cir. 1995) (“The individual prosecutor is presumed to have knowledge of all information gathered in connection with the government’s investigation.”). **This may extend beyond law enforcement information to information held by other government agencies, in some circumstances.** The Ninth Circuit, in the context of a federal criminal prosecution, has held that “[t]he prosecutor will be deemed to have knowledge of and access to anything in the possession, custody or control of any federal agency participating in the same investigation of the defendant.” ... *quoting United States v. Bryan*, 868 F.2d 1032, 1033 (9th Cir. 1989)). (Emphasis provided throughout.)

¹⁰ https://oag.maryland.gov/resources-info/Documents/pdfs/Opinions/1975/Volume60_1975.pdf

¹¹ <https://oag.maryland.gov/resources-info/Documents/pdfs/Opinions/2001/86OAG94.pdf> Both opinions are still cited in the AG’s MPIA MANUAL (19th Ed.) (December 2024.)

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- (1) investigat[e] complaints of fraud, financial waste, and abuse in City government; and
 (2) promot[e] efficiency, accountability, and integrity in City government.
 Charter Title X, § 4 (b).

It is likely to have the same effect on the Ethics Board's ability to pursue its investigative responsibilities under Art.8.

Working within the Parameters of State Law

The proposed Charter Amendment does not aim at superseding State law, but—by expressly integrating the IG's standing as an authorized individual/custodian of agency records for the limited purpose of carrying out its oversight mandate—is narrowly tailored within the framework of the MPIA.

If the OIG (and, by extension, the Ethics Board and its Executive Director) is indeed part of one unified municipal government, it is by definition not part of "the public". The express designation as a custodian or authorized entity within the MPIA framework therefore merely acknowledges that the IG is an authorized individual for purposes of the MPIA.

The proposed Amendment, which fully applies to Ethics' abilities to execute its statutory responsibilities, is a touchstone for the Mayor and City Council's commitment to actual transparency and accountability in government.

Sincerely,



J. Christoph Amberger
 Director, Ethics Board

Stephan Fogleman, Ethics Board Chair
 John McCaulay, Co-Chair
 Arnold Sampson

Cc: Isabel M. Cumming, Executive Director
 The Hon. Zeke Cohen, Council President
 The Hon. Mark Conway, Councilman District 4

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Appendix 1:

Proposed Charter Amendments:

Article IV Mayor

§ 4. General Powers

1. The Mayor, by virtue of the office, shall have all the powers of a conservator of the peace...

The Mayor may call upon any officer of the City entrusted with the receipt or expenditure of public money, for a statement of account as often as the Mayor thinks necessary, and may at any time by expert accountants and bookkeepers, examine the books and accounts of any department, commission, board, officer, assistant, clerk, subordinate or employee.

The Mayor shall report to the City Council as soon as practicable after the end of each fiscal year, the general state of the City, with an accurate account of the money received and expended, to be published for the information of the citizens.

THE MAYOR SHALL PROMPTLY FACILITATE THE TRANSMISSION OF RECORDS TO THE OFFICE OF THE INSPECTOR GENERAL AS AN AUTHORIZED INDIVIDUAL AS DESCRIBED IN THE STATE PUBLIC INFORMATION ACT LAW.

- **“Facilitation” by the Mayor will necessarily involve identification of respondent and investigative details, thus breaching confidentiality of proceedings. Assignment of “authorized individual” permits the IG or a designee to procure records without breach of confidentiality.**

Ethics’ Proposed Language:

THE MAYOR SHALL DESIGNATE THE INSPECTOR GENERAL AS AN AUTHORIZED INDIVIDUAL WITH ACCESS TO ALL AGENCY RECORDS IN COMPLIANCE WITH MD CODE, GENERAL PROVISIONS, § 4-101.

Article V Comptroller

§ 3. General Duties

The Comptroller shall:

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(h) PROMPTLY FACILITATE THE TRANSMISSION OF RECORDS TO THE OFFICE OF THE INSPECTOR GENERAL AS AN AUTHORIZED INDIVIDUAL AS DESCRIBED IN THE STATE PUBLIC INFORMATION ACT LAW.

Article VII Executive Departments

§ 140. City Administrator: Powers and duties.

Except as otherwise provided in this Charter and under the direct authority and supervision of the Mayor, the City Administrator:

(8) **SHALL PROMPTLY FACILITATE THE TRANSMISSION OF RECORDS TO THE OFFICE OF THE INSPECTOR GENERAL AS AN AUTHORIZED INDIVIDUAL AS DESCRIBED IN THE STATE PUBLIC INFORMATION ACT LAW.**

Ethics' Proposed Language:

(8) SHALL DESIGNATE THE INSPECTOR GENERAL AS AN AUTHORIZED INDIVIDUAL WITH ACCESS TO ALL AGENCY RECORDS IN COMPLIANCE WITH MD CODE, GENERAL PROVISIONS, § 4-101.

Moot if modification to Article IV § 4. (*supra*) is applied.

Article X Office of the Inspector General

§2. Office of the Inspector General: Advisory Board

(1) **MEETINGS** Annual Overview

(1) The advisory board shall appear before the City Council at least once a year...

(2) **THE ADVISORY BOARD SHALL MEET PERIODICALLY AS IT DEEMS NECESSARY TO REVIEW INVESTIGATION REPORTS FROM THE INSPECTOR GENERAL PRIOR TO THEIR PUBLICATION. THE ADVISORY BOARD SHALL CONSULT REVIEW REPORTS FOR NECESSARY REDACTIONS IN ACCORDANCE WITH STATE AND FEDERAL LAW.**

- The Advisory Board is not the custodian of OIG records. The IG and the Deputy IG are the proper custodians who may designate an OIG member (ideally one with a JD) to redact investigative reports for public release. It should be noted that thus far, there are no known leaks of confidential materials from the OIG.

Ethics' Proposed Language:

Baltimore City Board of Ethics

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(2) THE ADVISORY BOARD SHALL MEET PERIODICALLY AS IT DEEMS NECESSARY TO REVIEW INVESTIGATIVE REPORTS FROM THE INSPECTOR GENERAL. THE IG SHALL DESIGNATE A QUALIFIED MEMBER OF THE OIG'S STAFF TO CERTIFY NECESSARY REDACTIONS IN ACCORDANCE WITH STATE AND FEDERAL LAW.

§ 4. Office of the Inspector General: Powers and Duties

(b) Responsibilities of Office

The Office of the Inspector General is responsible for:

(3) **SUBMITTING REPORTS ON INVESTIGATIONS TO THE OFFICE OF INSPECTOR GENERAL ADVISORY BOARD PRIOR TO ANY PUBLICATION OF THOSE REPORTS.**

Ethics' Proposed Language:

~~(2) THE ADVISORY BOARD SHALL MEET PERIODICALLY AS IT DEEMS NECESSARY TO REVIEW INVESTIGATION REPORTS FROM THE INSPECTOR GENERAL. THE ADVISORY BOARD DESIGNATE A QUALIFIED MEMBER OF THE OIG'S STAFF TO CERTIFY NECESSARY REDACTIONS IN ACCORDANCE WITH STATE AND FEDERAL LAW.~~

Moot upon Amendment of Article X, §2 (I)(2), *supra*.

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Appendix 2

Appearance of “Improper Influence”

The purpose of the Ethics Law, contained in Art. 8 of the City Code, at § 1-1 is:

(a) Trust in government essential.

The Mayor and City Council of Baltimore recognizes that our system of representative government largely depends on the people’s trust in their public servants.

(b) Need for impartiality.

The citizens of Baltimore City rely on their public servants to preserve their safety, health, and welfare through fair and impartial enforcement of laws, imposition of taxes, and expenditure of public funds.

(c) Citizens’ right of reliance.

Each citizen of Baltimore City has a right to be assured of the fair, impartial, and independent judgment of all public servants.

As per Art. 8, § 1-2. {Goals; purpose.}, the Ethics Law is “to guard against improper influence or even the appearance of improper influence, and to ensure public trust in the government.”

The creation of an intermediate layer between agency records and the capability of the Board to investigate violations of Art. 8 by the injection of the Department as the ultimate gatekeeper creates an Appearance of Improper Influence: It places the OIG (and, by extension, the Ethics Board) outside of their statutory independence and under the direct control of an appointee of the Mayor (the City Solicitor).

It changes the systemic dynamics as depicted in the following illustrations:

1. OIG/Ethics as independent investigators:

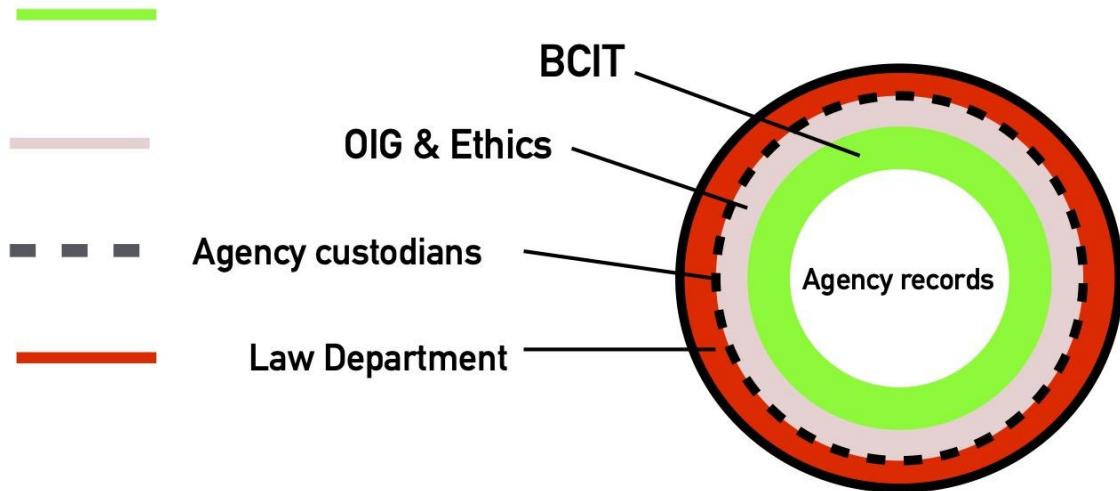
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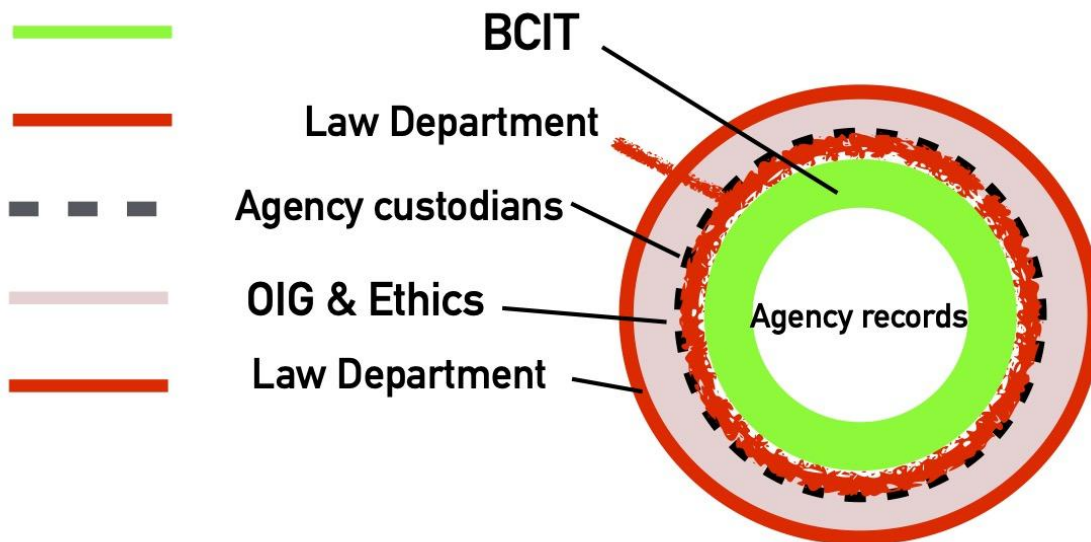
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Here, OIG/Ethics (pink) and BCIT (green), as authorized entities, have full access to and “physical” control of agency records. Agency custodians (dotted line) can, at their discretion, collaborate with the Department of Law (red) for purposes of external MPIA requests.

2. Injecting the Department of Law into the informational flow changes systemic dynamics and control:



Baltimore City Board of Ethics

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In this structure, the access to unredacted, unedited agency records by the OIG and Ethics is foreclosed by the Department of Law. OIG and Ethics investigations are now completely dependent on the Department approving requests and granting limited access to necessary records.

The inter-agency representation of adversarial parties has created an unwaivable conflict of interest under the Professional Rules of Conduct that was recognized by the Circuit Court for Baltimore City on 4/17/26.

Concurrent representation of adversarial agencies or departments, the breach of confidentiality associated with “requesting” records from the self-appointed gatekeeper, the foreclosure of independent judicial review **create the appearance of improper influence** by the Mayor, via his appointee, the City Solicitor, as well as a perceived “end-run” around the statutory independence of the OIG.

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