



**BALTIMORE CITY COUNCIL
CHARTER REVIEW
SPECIAL COMMITTEE**

The Honorable Ryan Dorsey

CHAIR

PUBLIC HEARING

5/6/2026

1:00PM

CLARENCE "DU" BURNS COUNCIL CHAMBERS

26-0164

Charter Amendment

Inspector General – Custodian of Records

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CITY OF BALTIMORE

Brandon M. Scott – Mayor
Zeke Cohen – Council President



Office of Council Services

Nancy Mead – Director
100 Holliday Street, Room 415
Baltimore, MD 21202

CHARTER REVIEW SPECIAL COMMITTEE

The Honorable Ryan Dorsey
CHAIR

Bill Hearing

26-0164

Charter Amendment – Inspector General – Custodian of Records

Sponsor: Council Member Mark Conway District 4

For the purpose of designating the Inspector General as a custodian of agency records under certain circumstances; providing constructive supervisory authority to the Inspector General under certain circumstances; and submitting this amendment to the qualified voters of the City for adoption or rejection.

REPORTING AGENCIES

- Department of Law
 - Office of the Inspector General
 - Department of Legislative Reference
 - Department of Finance
 - Office of the City Administrator
-

BACKGROUND

If enacted and approved by the voters, the bill would make two clarifications to the powers and duties of the Office of the Inspector General (OIG) by inserting provisions into Article X § 4(d) which note:

*(3) FOR PURPOSES OF INVESTIGATING FRAUD, FINANCIAL WASTE, AND
ABUSE IN CITY GOVERNMENT ONLY, THE INSPECTOR GENERAL:*

(I) IS A DESIGNATED CUSTODIAN OF AGENCY RECORDS; AND

*(II) HAS CONSTRUCTIVE SUPERVISORY AUTHORITY OVER AGENCY
RECORDS AND ANY PERSON WHO IS THE SUBJECT OF THE
RECORDS, INCLUDING RECORDS CONTAINING INFORMATION
THAT MAY BE CONSIDERED A PERSONNEL ISSUE.*

Amendments to be offered by bill's sponsor would replace the entirety of the bill's existing language with provisions in Article IV § 4; Article V § 3; and, Article VII § 140 to require the Mayor, Comptroller, and City Administrator to "promptly facilitate the transmission of records to the [OIG] as an authorized individual, as described in the Maryland Public Information Act." Additionally, the amendment would require that the OIG make redactions from any reports it authors in accordance with

state and federal law and require that the advisory board appoint an individual to review reports authored by the OIG to ensure compliance with state and federal law.

The bill follows [disputes related](#) to the OIG's ability to access City documents, which the office claims are necessary to carry out the office's responsibility to investigate complaints of fraud, financial waste, and abuse, and promote efficiency, accountability, and integrity in City government. These disputes surround existing provisions in Article X § 4(d), which allow for the OIG to issue subpoenas to require appearances by witnesses and the production of documents to carry out the office's responsibilities, and those provisions' relationship to the Maryland Public Information Act.

In relevant part, the Maryland Public Information Act ([MPIA](#)) provides all persons with a general right to information about the official acts of public officials and employees, subject to certain limitations around sensitive information whose disclosure would adversely affect individuals' privacy. However, the MPIA does provide for certain exceptions to those limitations.

Earlier this year, [several bills were](#) introduced in the General Assembly which, if enacted, would have expressly required that custodians of records allow Inspectors General to inspect public records; however, those bills were not enacted.

FISCAL NOTE

This legislation would have no appreciable immediate fiscal impact as the records it would provide the OIG with access to are already kept by the City.

Analysis by: Ethan Navarre
Analysis Date: 5/4/2026

Direct Inquiries to: Ethan.Navarre@baltimorecity.gov

**CITY OF BALTIMORE
COUNCIL BILL 26-0164
(First Reader)**

Introduced by: Councilmember Conway

Introduced and read first time: April 6, 2026

Assigned to: Charter Review Special Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Finance, Office of the Inspector General, City Administrator, Department of Legislative Reference

A RESOLUTION ENTITLED

1 A RESOLUTION OF THE MAYOR AND CITY COUNCIL concerning

2 **Charter Amendment – Inspector General – Custodian of Records**

3 FOR the purpose of designating the Inspector General as a custodian of agency records under
4 certain circumstances; providing constructive supervisory authority to the Inspector General
5 under certain circumstances; and submitting this amendment to the qualified voters of the
6 City for adoption or rejection.

7 BY proposing to amend

8 Article X - Office of the Inspector General

9 Section 4

10 Baltimore City Charter

11 (1996 Edition)

12 **SECTION 1. BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE**, That the
13 City Charter is proposed to be amended to read as follows:

14 **Baltimore City Charter**

15 **Article 10. Office of the Inspector General**

16 **§ 4. Office of Inspector General: Powers and Duties.**

17 (a) *IG as head of Office.*

18 The Inspector General shall supervise and direct the Office of the Inspector General.

19 (b) *Responsibilities of Office.*

20 The Office of the Inspector General is responsible for:

21 (1) investigating complaints of fraud, financial waste, and abuse in City government;
22 and

23 (2) promoting efficiency, accountability, and integrity in City government.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

Council Bill 26-0164

1 (c) *Jurisdiction of Office.*

2 The Office of the Inspector General may investigate allegations that involve City
3 government and potential violations of laws or regulations by any:

4 (1) City elected official;

5 (2) City employee;

6 (3) member of a board or commission established or governed by the City Charter,
7 City Code, or an executive order issued by the Mayor;

8 (4) City contractor or person negotiating a contract with the City;

9 (5) person seeking certification to provide goods or services to the City; or

10 (6) external recipient of City funds, benefits, or services.

11 (d) *Issuing subpoenas.*

12 (1) To perform the duties of office, the Inspector General may issue a subpoena to
13 require:

14 (i) any person to appear under oath as a witness; or

15 (ii) the production of any information, document, report, record, account, or other
16 material.

17 (2) The Inspector General may enforce any subpoena issued pursuant to this subsection in
18 any court of competent jurisdiction.

19 (3) FOR PURPOSES OF INVESTIGATING FRAUD, FINANCIAL WASTE, AND ABUSE IN CITY
20 GOVERNMENT ONLY, THE INSPECTOR GENERAL:

21 (I) IS A DESIGNATED CUSTODIAN OF AGENCY RECORDS; AND

22 (II) HAS CONSTRUCTIVE SUPERVISORY AUTHORITY OVER AGENCY RECORDS AND
23 ANY PERSON WHO IS THE SUBJECT OF THE RECORDS, INCLUDING RECORDS
24 CONTAINING INFORMATION THAT MAY BE CONSIDERED A PERSONNEL ISSUE.

25 (e) *Annual report.*

26 (1) The Office of the Inspector General shall prepare and publish an annual report of the
27 Office's activities.

28 (2) The annual report may include recommendations regarding program weakness,
29 contracting irregularities, or other institutional problems discovered by the Office.

Council Bill 26-0164

1 (3) The annual report shall be:

2 (i) submitted to all of the members of the advisory board; and

3 (ii) after any redactions required by law, posted on the Office of the Inspector
4 General's website.

5 **SECTION 2. AND BE IT FURTHER RESOLVED,** That this proposed amendment to the City
6 Charter be submitted to the legal and qualified voters of Baltimore City, for adoption or rejection,
7 in accordance with Article XI-A, § 5 of the Maryland Constitution, in the form specified by the
8 City Solicitor.

**AMENDMENTS TO COUNCIL BILL 26-0164
(1st Reader Copy)**

By: Councilmember Conway
{To be offered to the Charter Review Special Committee}

Amendment No. 1

On page 1, in line 2, strike “**Custodian of**”; and, on that same page, in line 3, strike “a custodian of” and substitute “an authorized individual with respect to”; and, on that same page, strike beginning with “construction” in line 4 down through and including circumstances;” in line 5 and substitute “providing for the submission and review of certain reports to the Office of the Inspector General’s advisory board;”; and, on that same page, after line 6, insert:

“BY proposing to amend
Article IV - Mayor
Section 4(a)
Baltimore City Charter
(1996 Edition)

BY proposing to amend
Article V - Comptroller
Section 3
Baltimore City Charter
(1996 Edition)

BY proposing to amend
Article VII
Section 140
Baltimore City Charter
(1996 Edition)”;

and, on that same page, in line 7, strike “amend” and substitute “add”; and, on that same page, in line 9, strike “Section 4” and substitute “Sections 2(m) and 6(d)”; and, strike beginning with line 15 on page 1 down through and including line 4 on page 3 and substitute:

“Article IV. Mayor

§ 4. General powers.

(a) Conservator of peace; Financial oversight; Report on state of City.

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 MARYLAND PUBLIC INFORMATION ACT.

Article V. Comptroller

§ 3. General duties.

The Comptroller shall:

- (a) serve as a member of the Board of Estimates;
- (b) serve as a member of the Board of Finance;
- (c) have such general supervision of the Department of Audits and the activities of the City Auditor as provided for in the Charter;
- (d) be responsible for the proper conduct, management and operation of the Department of Real Estate; and

- (e) subject to the approval of the Board of Estimates, and within the limits of the appropriation therefor in the Ordinance of Estimates, obtain such insurance as may be necessary for the proper protection of the City or as may be required by applicable law, and shall, whenever it would be to the City's advantage, seek competitive bids for the insurance;
- (f) be responsible for the proper conduct, management and operation of the Department of Accounts Payable; [and]
- (g) perform such other duties, not inconsistent with the office, as prescribed by [law.]
LAW; AND
- (H) 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.

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:

- (1) administers the day-to-day operations of the City and oversees the delivery of municipal services;
- (2) exercises supervisory authority over all agencies, department directors, and municipal officers;
- (3) approves rules and regulations proposed by municipal departments and agencies;
- (4) supervises the preparation of the City's preliminary operating budget and participates in the development of the proposed Ordinance of Estimates;
- (5) advises the Mayor in the formation of policy and the implementation of plans to address demands for municipal services, enhance the quality of life, and strengthen the economic vitality of the City;
- (6) performs duties delegated by the Mayor that are not inconsistent with this Charter;
[and]

(7) performs any other duty as required by this Charter or required by ordinance of the Mayor and City [Council.] COUNCIL; AND

(8) 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.

Article X. Office of the Inspector General

§ 2. Office of Inspector General: Advisory board.

(M) REPORT REVIEW.

THE ADVISORY BOARD SHALL SELECT A QUALIFIED DESIGNEE TO REVIEW INVESTIGATION REPORTS FROM THE INSPECTOR GENERAL PRIOR TO THEIR PUBLICATION AND ENSURE NECESSARY REDACTIONS OF SENSITIVE INFORMATION HAVE BEEN MADE IN ACCORDANCE WITH STATE AND FEDERAL LAW.

§ 6. Office of Inspector General: Administration and Operation.

(D) INVESTIGATION REPORTS.

PRIOR TO THE PUBLICATION OF AN INVESTIGATION REPORT, THE INSPECTOR GENERAL SHALL:

- (1) ENSURE ANY NECESSARY REDACTION OF SENSITIVE INFORMATION HAS BEEN MADE IN ACCORDANCE WITH STATE AND FEDERAL LAW; AND
- (2) SUBMIT THE REPORT TO THE DESIGNEE OF THE OFFICE OF THE INSPECTOR GENERAL'S ADVISORY BOARD FOR REVIEW UNDER § 2(M) OF THIS ARTICLE."

BALTIMORE CITY COUNCIL



CHARTER REVIEW SPECIAL COMMITTEE

26-0164

Charter Amendment

Inspector General – Custodian of Records

Agency Reports



OFFICE OF THE INSPECTOR GENERAL
Isabel Mercedes Cumming, Inspector General
City Hall, Suite 635
100 N. Holliday Street
Baltimore, MD 21202



May 1, 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 Baltimore City Office of Inspector General (“OIG”) has reviewed City Council Bill 26-0164 (Charter Amendment) (herein, “the Bill”).¹

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 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 an 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”),² pertaining to independent access to unredacted agency records for the limited purpose of lawful OIG investigations.

A. Legislative Background

¹ Bill Report 26-0164 filed by the Ethics Board for Baltimore City on April 29, 2026, is hereby integrated by reference as if fully stated herein.

² MD CODE, GENERAL PROVISIONS, § 4-101 (formerly cited as MD CODE, SG, § 10-601; MD Code, SG, § 10-611).



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Until 2018, Baltimore City’s Office of Inspector General (“OIG”) was attached to the City’s Department of Law (“Law Dept.”).

Council Bill 18-0199, introduced and read first time March 12, 2018 (Res. 18-008, ratified Nov. 6, 2018) reflects the legislative intent behind the creation of the OIG as an independent Office. It proposed that the City Charter be amended to create an “independent Office of the Inspector General.” (*id.*, 1, ln. 3; emphasis supplied). The unambiguous intent of the Resolution for a Charter Amendment adding “Article VII – Executive Departments” (Sections 135 to 142) to be under the new subtitle [currently, Art. X] named “Office of the Inspector General” was “establishing procedures to transition the existing Office of the Inspector General in the Law Department into the newly created Office of the Inspector General”, *id.* at ln. 14-15.

According to Question I that was posed to Baltimore City Voters in the 2022 Election, “the Advisory Board that appoints and removes the Inspector General for Baltimore City ... would now be comprised of eleven City residents who are not elected officials, candidates for office or lobbyists, among other restrictions.” Section 2. (a) {Office of Inspector General: Advisory board} now vests the 11 Members of the Advisory Board with the power to appoint an Inspector General.

This provision *de facto* eliminated elected and appointed officials from supervision and oversight of the IG, as well as interference in IG investigations to ensure its independence.

B. Sources of Power

(1) Authorization by Maryland Constitution and Article II of the Baltimore City Charter

The source of the OIG’s power as an investigative agency power is rooted in the Charter and carries the weight/equivalency of law. Article X of the Charter in turn is derived from Title II and the Maryland Constitution:

Section 2 of Article 11-A of the Maryland Constitution requires the General Assembly to provide a grant of express powers by public general law to Charter counties, including Baltimore City. The City’s express powers as enacted by the General Assembly are contained in Article II of the City Charter:

“The Mayor and City Council of Baltimore shall have full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public General or Public Local Laws of the State of

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Maryland; and in particular, without limitation upon the foregoing, shall have power by ordinance, or such other method as may be provided for in its Charter, subject to the provisions of said Constitution and Public General Laws...”

The City is given broad police powers by Section (27) ("To have and exercise within the limits of Baltimore City all the power commonly known as Police Power to the same extent as the State has or could exercise that power within the limits of Baltimore City"). Section (47) gives the City broad powers to legislate the general welfare and to promote good government ("To pass any ordinance ... which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City..."). (Emphasis supplied.)

(2) Authorization by Article X of the Baltimore City Charter

Under the plain language of Article X, § 4 Office of Inspector General {Powers and Duties}, the OIG is unambiguously vested with the express authority to investigate any elected official and City employee and subpoena *any* information from *any* City employee or elected official:

The statutory authority of the City's Inspector General, including the subpoena power in Section 4 (d) of Article X of the Charter, thus is derived from State public general law as enacted in the Charter's express Article II powers described above.

The general subpoena power of the IG *for any information* extends to not merely *any* City Employee, but to any person, pursuant to Article X, § 4 (a)(2) and (d). Limitations of this expressly authorized power – such as imposed by redactions required under the relevant MPIA provisions – would be contrary to the statutory framework outlining the OIG's powers and duties to the City and its electorate.

C. OIG Powers

Art. X § 4 {Office of Inspector General: Powers and Duties}, at (b), defines the {Responsibilities of Office}:

The Office of the Inspector General is responsible for:

- (1) investigating complaints of fraud, financial waste, and abuse in City government;
and
- (2) promoting efficiency, accountability, and integrity in City government.

According to (c) {Jurisdiction of Office},

The Office of the Inspector General may investigate allegations that involve City government and potential violations of laws or regulations by any:

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- (1) City elected official;
- (2) City employee;
- (3) member of a board or commission established or governed by the City Charter, City Code, or an executive order issued by the Mayor;
- (4) City contractor or person negotiating a contract with the City;
- (5) person seeking certification to provide goods or services to the City; or
- (6) external recipient of City funds, benefits, or services.

(1) The OIG's subpoena power

The Charter Art. X § 4 also vests the OIG with extensive subpoena powers:

“(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.”

(Emphasis supplied.)

The Charter extends the subpoena power of the OIG to those in its direct jurisdiction (*see*, Art. X § 4 (c)), qua City employees, but to any person, as well as to any information, etc.,_unconditioned on superseding “other law”.

It is evident that the express intent of the Charter was to establish an OIG that was entirely independent and to vest the office with the necessary powers to perform its duties independently and without interference.

(2) OIG subpoena power: Legislative intent

The OIG's investigative and subpoena powers contemplated by the legislature in Council Bill 18-0199, were extensive:

1. “D. Section 137 (C) {Inspections, Investigations, and Evaluations}:

The Office of the Inspector General may conduct independent reviews of government operations, including inspections, investigations, and evaluations of:

- (1) Any activities, records, or individuals involved with City contracts and procurements; or

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(2) Any other official Act or Function of any Government entity under the jurisdiction of the Office.

(*id.* at 4, lns. 22-29; emphasis supplied.)

2. “E. **Section 139.** {Office of the Inspector General: Access to Persons and Records; Subpoena Power}:

(B) *Access to Records.*

As allowed by law, the Inspector General shall have access to all records of any City entity under the Jurisdiction of the Office of the Inspector General. Officers and employees of City entities shall promptly provide to the Inspector General any information, document, report, account, or other material requested by the Inspector General, and the Inspector General is not required to obtain a subpoena for any records request made to any City entity.

(C) *Subpoena Power*

(1) As part of an investigation under the jurisdiction of the Office of the Inspector General, the Inspector General may issue a subpoena independent of any further approval from the Mayor and City Council of Baltimore, requiring any person to give testimony, or produce any document, report, record, account, or other material.

(2) A subpoena issued under this subsection may be judicially enforced by the City Solicitor in any Court of competent jurisdiction.”

(*id.* at 7, lns. 1-21; emphasis supplied.)

Article X’s final all-encompassing “[t]o 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” clearly demonstrates the Mayor and City Council’s intent to give the OIG the most independent scope of investigatory power and oversight possible.

Moving the proposed assignment to litigate enforcement of such subpoenas in Circuit Court from the City Solicitor to the Inspector General in the final Article X suggests that the legislature considered potential conflicts of interest as it assigned that power to the OIG.

REPORT FRAUD, WASTE AND ABUSE

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The Law Dept. did not oppose that provision: In a letter dated June 15, 2018, the City Solicitor's Office "reserved comment until we review the amended version." No additional communication is on file.

D. The OIG as *de facto* custodian under the MPIO

By statute, the OIG is to be independent of both the executive and the legislative in City government.

However, the OIG has of late encountered obstacles to obtaining information pertinent to its lawful investigations. Specifically, the Law Dept. has established a policy that (a) records pertinent to an IG investigation must be requested and (b) all requests are to be considered requests made under and subject to the limitations of the MPIO. The City's internal guidance of May 15, 2024, "RE: City Bills-- ATTORNEY CLIENT COMMUNICATION" (herein "City's guidance") states that "[a]ny request by any City entity (agency, board, commission) to any other City [entity] is a PIA request under State law. Md. Code, Gen. Prov., §4-202.³ In *Montgomery County v. Shropshire*, 420 Md. 362, 383 (2011) Maryland's highest court held that a request from one agency in Montgomery County to another was a PIA request as defined in the PIA statute itself. Any request from a state or federal or foreign entity for records would also be a PIA request.)" (Emphasis supplied.)⁴

³ MD General Provisions Code § 4-202 (2024): "(a) Except as provided in subsection (b) of this section, a person or governmental unit that wishes to inspect a public record shall submit a written application to the custodian." It thus addresses the formal process for a general agency that is not already in *de facto* possession and control of the records.

⁴ The holding in *Shropshire* itself reflects the narrow issue that was placed before the Court:

"In sum, the internal affairs records involving alleged administrative rule violations by Sergeant Shropshire and Captain Parker-Loan are "personnel records" pursuant to Section 10-616(i) of the State Government Article, and are, therefore, mandatorily exempt from disclosure by the custodian of records."
Id., at 366. (Emphasis supplied.)

Even *Shropshire* allows for disclosures under the MPIO: Section 10-616, governing "required denials," provides, in relevant part ... "(2) A custodian shall permit inspection by: (i) the person in interest; or (ii) an elected or appointed official who supervises the work of the individual."

The *Shropshire* Court did not classify all government, municipal, or agency records as "personnel records." The *Shropshire* Court also did not mandate that the MPIO's "personnel records exemption" to be applied to all government, municipal, or agency records.

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In 2025, this policy removed the IG's prior access to all City agency records and is now applied indiscriminately to document requests by the public and to OIG subpoenas.

The misguided application of *Shropshire* to the IG's statutory oversight responsibilities ignores the fact that, under the MPIA's own definition, **the IG, was already a *de facto* custodian for purposes of the MPIA** until being denied access by the Department in 2025:

The MPIA recognizes the role of "custodian" of government records and at § 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.⁵

"Physical" custody and control of electronic/digital records is *established by full access* to unredacted agency records. **By having full, unobstructed access, the OIG (prior to the 2025**

⁵ 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 with access to all unredacted agency records.



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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.⁶

E. Scope of the MPIA

The MPIA has created a "general presumption in favor of disclosure of government or public documents." *Kirwan v. The Diamondback*, 352 Md. 74, 80 (1998). "The provisions of the Public Information Act reflect the legislative intent that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government." *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 73 (1998) (quoting *A.S. Abell Publ'g Co. v. Mezzanote*, 297 Md. 26, 32 (1983)); see also GP § 4-103(a) ("All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.").

The Act, however, "highlights that its provisions shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection" but only to the extent there is no "unwarranted invasion of the privacy of a person in interest." GP § 4-103(b). Furthermore, the Court of Appeals has explained that the act "must be liberally constructed" to ensure that the Act's "broad remedial purpose" is met. *Kirwan*, 352 Md. at 81 (quoting *Mezzanote*, 297 Md. at 32).

The MPIA attempts to balance the public's right to access government records with other policies that respect the privacy or confidentiality of certain information.

Some protections may be waived. Other records may be withheld if the agency decides that disclosure of those records would be "contrary to the public interest." Examples of records subject to discretionary disclosure include investigatory records, information related to academic, licensing, and employment examinations, and documents of a pre-decisional and deliberative

⁶ In addition to the now forced breach of the OIG's investigatory confidentiality (by being obligated to identify the investigative subject and pertinent keywords to agency custodians and the Law Dept., this policy has resulted in excessive delays that threaten the viability of IG investigations: The Law Department took 4 (four!) months to provide the OIG with records that were redacted to the degree of uselessness and absurdity. In a current investigation, it has taken the Law Department more than two weeks just to communicate the "need" for further refinement of keywords and time frames requested by OIG staff under the new policy, claiming the amount of data is too inconvenient for the Department to handle. If the Council's intent is to hamstring OIG investigations, obfuscate transparency, and shield potential misconduct by City employees from scrutiny and accountability, it seems hard to imagine a more effective way that that implemented by the Mayor and his appointee, the City Solicitor.



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nature. GP §§ 4-343 to 4-357 (Part IV).” *See*, MARYLAND PUBLIC INFORMATION ACT MANUAL (19th ed., Dec. 2024) Appendix I-2.

It would be incomprehensible that the Mayor and City Council for Baltimore City would consider the OIG’s statutory oversight responsibilities as “contrary to the public interest.”

F. MPIA Request v. OIG Subpoena

Further distinguishing OIG subpoenas from MPIA request is the fact that the OIG may enforce its subpoenas directly through the Circuit Court. However, in the case of an MPIA request, the right to invoke judicial review is predicated on the requestor’s prior appeal to and subsequent denial by the State Public Information Compliance Board.⁷

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 the custodian failed to respond to a request),
- the Appellate Court of Maryland, and
- 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 the OIG would not be 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.” (The Hon. J. Pamela White, 4/17/26.)

⁷ “Except as otherwise provided in Subtitle 1A of this title and subject to paragraph (3) of this subsection, an applicant, a complainant, or a custodian may appeal to the circuit court a decision issued by the State Public Information Act Compliance Board as provided under § 4-1A-10 of this title.” MD General Provisions Code § 4-362 (b) (2) (2024).



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G. 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 formally satisfy the element of “authorization” that

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

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))⁸

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.**”⁹ (Emphasis provided throughout.)

⁸ https://oag.maryland.gov/resources-info/Documents/pdfs/Opinions/1975/Volume60_1975.pdf

⁹ <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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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"

- “(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).

The proposed Charter Amendment does not supersede 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.

H. Involvement of the IG's Advisory Board in Investigations

The IG opposes the proposed change to the Charter calling for review and redactions of OIG investigative reports prior to submission to the Mayor and City Solicitor and, subsequently, before redacted reports are publicized.

There is not a single instance where confidential, classified or privileged information was illicitly released to the public by members of the OIG. (The same cannot be said for other agencies and/or offices who have, in recent months, disseminated such information to the public and select media for political purposes.)

The IG's Advisory Board members must retain their independence and cannot inject themselves into the viscera of investigative reports prepared by IG investigators.¹⁰ As they are not members of the OIG, they are also not members of the IG's investigative team. Pre-publication to the Board would pierce the confidentiality of OIG's investigations.

If preservation of confidentiality and compliance with the restrictive provisions of the MPIA are indeed a general concern for this Honorable Council, the Board should appoint, certify or otherwise vest a member of the OIG staff with that responsibility — an OIG Special Agent for Policy and Compliance whose qualifications must include (but are not limited to) the degree of Juris Doctor from an accredited law school and a licensure to practice law in the State of Maryland.

With the redactions outlined *supra*, the OIG fully supports the proposed Amendment with redactions as indicated below.

¹⁰ While uniquely qualified for their oversight position, members of the Board generally also have no specialized investigatory experience.



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Sincerely,

Isabel M. Cumming
Inspector General

Cc: Gayle Guilford, Chair

Members of the OIG Advisory Board

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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.**

OIG’s 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

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§ 3. General Duties

The Comptroller shall:

(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.

OIG's 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

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redact investigative reports for public release. It should be noted that thus far, there have been no known leaks of confidential materials from the OIG.

OIG's Proposed Language:

(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.**

OIG's 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 (1)(2), *supra*.

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Stephan Fogleman, Chair
John McAuley
Arnold Sampson
Vacant



Executive Director: Isabel Mercedes Cumming

Director: J. Christoph Amberger

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;

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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.

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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).

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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 MPIO 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 MPIO 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 MPIO 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 MPIO. 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 MPIO. These individual agency custodians may assign some of their duties under the MPIO 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.)

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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*.”

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 recission 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.)

- (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:

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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:

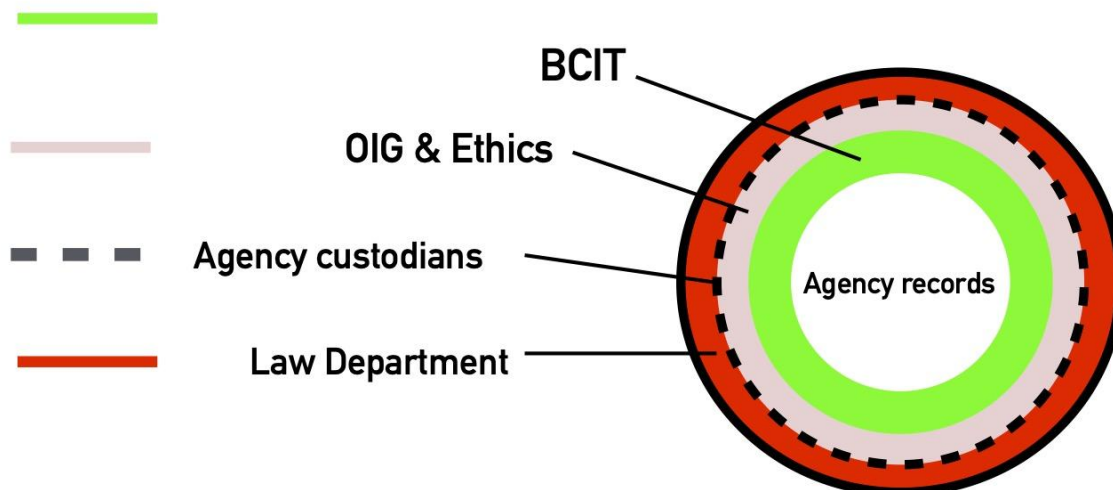
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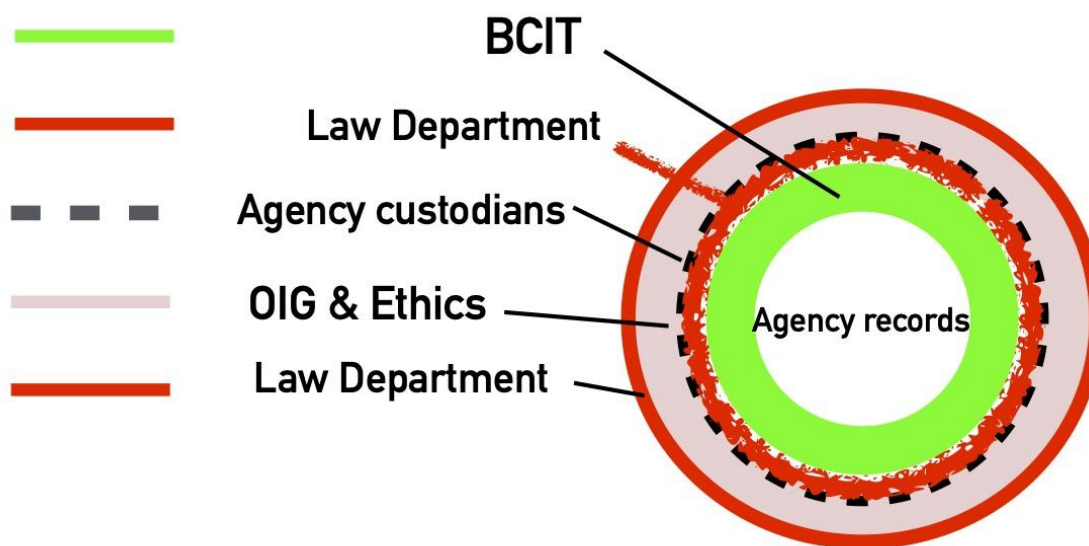
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Here, OIG/Ethics (pink) and BCIT (green), as authorized entities, have full access to and “physical” control of agency records. Agency custodians (dotted line) can, at their discretion, collaborate with the Department of Law (red) for purposes of external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

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



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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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CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW

EBONY THOMPSON
CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

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 Cnty.*, 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,



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



CITY OF BALTIMORE
MAYOR BRANDON M. SCOTT

TO	The Honorable President and Members of the Baltimore City Council
FROM	Bob Cennane, Deputy Finance Director <i>Bob Cennane</i>
DATE	May 5 th , 2026
SUBJECT	26-0164 Charter Amendment – Inspector General – Custodian of Records

The Honorable President and
Members of the City Council
City Hall, Room 400

Position: Defers to the Law Department

The Department of Finance is herein reporting on City Council Bill 26-0164 Charter Amendment – Inspector General – Custodian of Records, the purpose of which is designating the Inspector General as a custodian of agency records under certain circumstances; providing constructive supervisory authority to the Inspector General under certain circumstances; and submitting this amendment to the qualified voters of the City for adoption or rejection.

Background

This legislation would send to the voters for approval or dismissal a Charter amendment to expand the authority of Baltimore's Office of the Inspector General. Specifically, it designates the Inspector General as a custodian of agency records when investigating fraud, waste, or abuse in City government. It also grants the Inspector General supervisory authority over those records and individuals connected to them, including personnel-related information.

Fiscal Impact

The Department of Finance does not anticipate a cost for the City as a result of this legislation.

Conclusion

This legislation would expand the authority of the Office of the Inspector General by clarifying the Office's access to agency records and establishing supervisory authority in the context of investigations into fraud, waste, and abuse. The Department of Finance anticipates minimal fiscal impact from this legislation, if passed by Baltimore City voters.

For the reasons stated above, the Department of Finance defers to the Law Department on City Council Bill 26-0164.

cc: Michael Mocksten
Nina Themelis

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

BALTIMORE CITY COUNCIL



CHARTER REVIEW SPECIAL COMMITTEE

26-0164

Charter Amendment

Inspector General – Custodian of Records

Additional Materials

**IN THE
CIRCUIT COURT FOR BALTIMORE CITY**

**INSPECTOR GENERAL OF
BALTIMORE CITY ISABEL
MERCEDES CUMMING, ESQ.,**
in her official capacity,
100 N. Holliday Street
Suite 635, City Hall
Baltimore, Maryland 21202

and

CHAIRPERSON GAYLE GUILFORD,
**OFFICE OF THE INSPECTOR
GENERAL OF BALTIMORE CITY
ADVISORY BOARD,**
individually and in her official capacity,
100 N. Holliday Street
Suite 635, City Hall
Baltimore, Maryland 21202

and

JAMES GODEY, CPA, ESQ.,
**OFFICE OF THE INSPECTOR
GENERAL OF BALTIMORE CITY
ADVISORY BOARD,**
individually and in his official capacity,
100 N. Holliday Street
Suite 635, City Hall
Baltimore, Maryland 21202

Plaintiffs,

v.

**MAYOR AND CITY COUNCIL OF
BALTIMORE,**
c/o Ebony Thompson, City Solicitor
100 N. Holliday Street
Suite 101, City Hall
Baltimore, Maryland 21202

Defendant

CASE NO. _____

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT,
PRELIMINARY AND PERMANENT INJUNCTION, AND A WRIT OF MANDAMUS**

Plaintiffs Isabel Mercedes Cumming, Esq., in her official capacity as Inspector General of Baltimore City (“IG Cumming”), Gayle Guilford, individually and in her official capacity as Chairperson of the Office of the Inspector General of Baltimore City Advisory Board (“Chairperson Guilford”), and James Godey, CPA, Esq., individually and in his official capacity as Secretary of the Office of the Inspector General of Baltimore City Advisory Board (“Secretary Godey”), file this Verified Complaint for a Declaratory Judgment, Preliminary and Permanent Injunction, and a Writ of Mandamus against Defendant Mayor and City Council of Baltimore (the “City”) and allege:

INTRODUCTION

[W]e want transparency, we want honesty and we want integrity.”
Elijah Cummings, Nov. 11, 2018¹

1. This action seeks to enforce the authority, rights, and duties conferred upon the Baltimore City Office of the Inspector General (“OIG”) by the Charter of Baltimore City (“City Charter”) to fulfill the OIG’s responsibilities to the inhabitants of Baltimore City to investigate complaints of fraud, financial waste, and abuse and to promote efficiency, accountability, and integrity in City government.

2. The City Charter, by virtue of a widely supported 2018 amendment endorsed unanimously by the Baltimore City Council and adopted by an overwhelming majority of Baltimore City voters, expressly bestows upon the OIG the authority, acting solely on the basis of its own judgment as to when such action is merited, to issue subpoenas and enforce those

¹ ABC News, ‘This Week’ Transcript 11-11-18: Rep. Elijah Cummings, Rep. Jerrold Nadler and Kellynne Conway (Nov. 11, 2018), <https://abcnews.com/Politics/week-transcript-11-11-18-rep-elijah-cummings/story?id=59109619>.

subpoenas in any court of competent jurisdiction. BALT., CHARTER art. X, § 4(d). This was a major turn away from preexisting practice.

3. Despite the City Charter’s clear and unambiguous language, the City has suddenly and publicly refused to comply with subpoenas issued by the OIG, instead claiming that compliance by City departments, agencies, and officials—and the City Law Department in particular—with the OIG’s subpoenas are governed by the Maryland Public Information Act (“MPIA”).²

4. The City’s position disregards the plain language of the City Charter and the independence enshrined upon the OIG through the will of the people, denying the OIG direct access to information critical to carrying out the duties and responsibilities of the office.

5. The City’s brazen and, on information and belief, pretextual, refusal to comply with the OIG’s subpoenas will cause irreparable harm to the inhabitants of Baltimore City, i.e., those who the City, as a corporate entity, are sworn to serve, by denying the public, through the OIG, the ability to adequately investigate complaints of fraud, financial waste, and abuse in City government.

6. Moreover, the City’s efforts to shield information from the OIG has created an actual controversy between the parties and created antagonistic claims involving imminent and inevitable litigation surrounding the independence and authority of the OIG to investigate complaints and to promote efficiency, accountability, and integrity within City government.

² See, e.g., Ian Round, *Baltimore mayor cuts IG’s access to Law Department records*, The Daily Record (Jan. 26, 2026), <https://thedailyrecord.com/2026/01/26/baltimore-mayor-cuts-igs-access-to-law-department-records/>; David A. Plymer, *An alarming and baseless attack on Baltimore’s Inspector General*, Balt. Brew (Feb. 6, 2026), <https://www.baltimorebrew.com/2026/02/02/an-alarming-and-baseless-attack-on-baltimores-inspector-general/>.

7. To maintain the sanctity and independence of the OIG, and to allow it to fully represent the interests of City residents and taxpayers, Plaintiffs respectfully seek: a declaration from this Court clarifying the authority afforded to the OIG under Article X, § 4(d) of the City Charter; for a Preliminary and Permanent Injunction enjoining the City from, among other things, refusing to comply with subpoenas issued by the OIG, and preventing the City from taking any actions to impede or hinder the OIG's independence and ability to maintain confidential information within its office, including requiring the City to compensate counsel retained by the OIG to enforce subpoenas when a conflict arises between the City and the OIG; and for a Writ of Mandamus compelling the City to abide by the plain terms of the City Charter and fully produce, without redactions, all materials subject to subpoenas issued by the OIG, including all those presently outstanding and any subpoenas issued by the OIG in the future.

8. Moreover, given the critical issues of public importance present in this case, Plaintiffs request a speedy hearing of this action for declaratory judgment and request that it be advanced on the Court's calendar pursuant to Md. Code Ann., Cts. & Jud. Proc. § 3-409(e).

PARTIES

9. Plaintiff Isabel Mercedes Cumming, Esq., sues in her official capacity as the duly appointed Inspector General of Baltimore City. First appointed in 2018, she is the City's first female and first Hispanic Inspector General.

10. Plaintiff Gayle Guilford is the Chairperson of the Inspector General of Baltimore City Advisory Board, an 11-member board established under Article X of the City Charter charged with, *inter alia*, appointing the Inspector General. Chairperson Guilford sues in her official capacity as Advisory Board Chair and as a citizen of Baltimore City who has taxpayer standing to seek the aid of courts, exercising equity powers, to enjoin illegal *ultra vires* acts of public officials where those acts are reasonably likely to result in pecuniary loss to the taxpayer.

11. Plaintiff James Godey, CPA, Esq., is the Secretary of the Inspector General of Baltimore City Advisory Board. Pursuant to City Charter Article X, § 2(f)(3)(ii), Secretary Godey is a member of the Maryland Association of Certified Public Accountants. Secretary Godey sues in his official capacity as Advisory Board Secretary and as a citizen of Baltimore City who has taxpayer standing to seek the aid of courts, exercising equity powers, to enjoin illegal *ultra vires* acts of public officials where those acts are reasonably likely to result in pecuniary loss to the taxpayer.

12. Defendant Mayor and City Council of Baltimore City represent “the inhabitants of Baltimore City” and is a municipality and corporation organized and existing under the laws of the State of Maryland and the Charter of Baltimore City. BALT., CHARTER art. I.

JURISDICTION AND VENUE

13. This Court has jurisdiction to issue a declaratory judgment pursuant to Md. Code Ann., Cts. & Jud. Pro. §§ 3-401, *et seq.*

14. This Court has jurisdiction to issue injunctive relief, including a preliminary and permanent injunction, pursuant to Maryland Rules 15-501 through 15-505.

15. This Court has the jurisdiction to issue a Writ of Mandamus pursuant to Maryland Rule 15-701 and Md. Code Ann., Cts. & Jud. Proc. §§ 3-8B-01, *et seq.*

16. Venue is proper under Md. Code Ann., Cts. & Jud. Proc. § 6-201(a), because all parties maintain their principal places of business in Baltimore City and the acts and omissions complained of occurred here.

FACTS COMMON TO ALL COUNTS

17. The OIG was first created in 2005, when then-Mayor Martin O'Malley issued a Mayoral Executive Order with the "goal of increasing government accountability ... free from political influence."³

18. The OIG is charged with "investigating complaints of fraud, financial waste, and abuse" and "promoting efficiency, accountability, and integrity in City government." BALT., CHARTER art. X, § 4(b) (2022).⁴

19. Until 2018, the OIG fell under the auspices and supervision of the Baltimore City Department of Law ("City Law Department").

20. In 2018, recognizing the need for the OIG to be an autonomous entity, the Baltimore City Council proposed and adopted a resolution recommending amendments to the City Charter to create "an independent" OIG to be appointed and governed "by an independent" Advisory Board, *id.* § 2(a)(1), headed by a chair elected by the members of the Board.

21. In 2022, after there emerged powerful evidence that the original structure and function of the Advisory Board was deeply flawed, an overwhelming 86.52% of voters approved

³ Balt City Off. of the Inspector Gen., *2019 Annual Report* at 5 (2019), https://s3.amazonaws.com/baltimorecity.gov/ef-us-east-1/s3fs-public/2024-01/oig_annual_report_2019_pdf.pdf.

⁴ The OIG's investigative power is derived from Article XI-A, § 2 of the Maryland Constitution and Article II of the City Charter, which gives the City "full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public General or Public Local Laws of the State of Maryland[.]" Article II, § (27) of the City Charter further affords the City broad police powers ("To have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise that power within the limits of Baltimore City"), and Article II, § (47) confers on the City the broad powers to legislate the general welfare and to promote good government ("To pass any ordinance ... which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City...").

a further Charter Amendment, Ballot Question I, which altered the membership of the Advisory Board that appoints and removes the Inspector General in two key respects.

22. First, the approval of Ballot Question I expanded the number of Advisory Board members from 7 to 11.

23. Second, prior to the 2022 amendment, the Advisory Board was comprised of the Mayor, City Council President, City Comptroller, another City Council person (or designee), the City Solicitor (who served as Chair of the Board), and the deans of Baltimore City's respective law schools. After Ballot Question I's approval, the Advisory Board's composition changed to ensure that its 11 members, including its chairperson, would not be elected officials or direct appointees of elected officials, candidates for office, lobbyists, or anyone who otherwise might pose potential impediments to the free and fair execution of the OIG's mission or raise concerns over conflicts of interest. *Id.* § 2(c).⁵

24. The multi-year collective actions of the City Council and the Baltimore electorate leave no room for doubt: the OIG is a truly independent watchdog that provides oversight of City government and taxpayer funds, free from political interference, or the appearance of same.

25. Article X, § 4(d) of the City Charter enumerates the OIG's subpoena powers:

- (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.

⁵ Ballot Question I's approval did not impact the two sitting law school deans who retained their two respective places on the Advisory Board.

24. The aforementioned language reflects a deliberate choice by the unanimous City Council and the voters of Baltimore: the OIG is to have the autonomy to pursue its investigations and enforce subpoenas without limitation, oversight, or approval by other City entities, including the City Law Department.

25. Relevant here, then-Mayor O'Malley's 2005 Executive Order establishing the OIG originally included the following language concerning the OIG's subpoena authority:

In connection with an investigation pursuant to this Article, the [OIG] may, *with the approval of the City Solicitor, issue a subpoena* (1) to require any person to appear under oath as a witness; or (2) to require the production of any information, document, report, record, account or other material.

Ex. 1, July 27, 2005 Executive Order at § 14(a) (emphasis added).

26. The Executive Order went on to state that the OIG “may enforce any subpoena issued pursuant to subsection (a) in any court of competent jurisdiction.” *Id.* § 14(b).

27. By amending this pertinent language, the Baltimore City Council and Baltimore's voters and taxpayers expressly determined that the OIG's authority to issue and enforce subpoenas is not contingent upon the authorization and participation of the City Solicitor or the City Law Department.

28. Direct access to records is critical to promoting fair and unbiased investigations, ensures credibility and trust, protects City resources and taxpayer dollars from waste and loss through fraud or abusive practices, and allows for complete investigations of complaints and information provided by whistleblowers without interference.

29. To ensure candor in the investigatory process, the OIG also manages and monitors a server and databases that contains information provided by, among others, whistleblowers and myriad confidential sources. The server and databases are monitored by the OIG's IT Administrator to ensure that only authorized individuals have access so that confidential

information is not leaked or otherwise provided to individuals who may be subject to the OIG's investigations and to protect individuals participating in investigations from retaliation or undue influence.

30. From 2018 through mid-2025, the City's departments, agencies, and officials, including, at times, the City Law Department, worked cooperatively with the OIG, providing direct access to requested information without issue.

31. Beginning in 2025, however, the City took a stunning about face, rebuking the OIG's authority and refusing to fully comply with subpoenas issued by the OIG in its efforts to gather information pertinent to underlying investigations.

32. Specifically, in March 2025, the OIG issued a subpoena to the City as part of an ongoing investigation. The City provided all documents without redaction.

33. In June 2025, the OIG issued a second subpoena in a separate investigation, though related to the same entity subject to the March 2025 subpoena.

34. The City Law Department responded on June 27, 2025, by providing redacted documents and, for the first time ever in the history of the OIG, took the novel view, counter to the plain language in Article X, § 4 of the City Charter, that subpoenas issued by the OIG are not subpoenas, but instead requests to be assessed by the Law Department under the MPIA.⁶

35. In response, IG Cumming wrote a letter to the City Law Department detailing her position that the subpoenas were not subject to evaluation under the MPIA.

36. Recognizing that the OIG is traditionally represented by the City Law Department, and recognizing the inherent conflict arising from the OIG's and City Law Department's diametrically opposed interpretations of the City Charter, IG Cumming requested

⁶ See generally Md. Code Ann., Gen. Provisions §§ 4-101 through 4-601.

that the City Law Department permit her to retain independent counsel so that a sound legal resolution of the two offices' differing interpretations might be obtained. The City Law Department denied that request.

37. In October 2025, the OIG requested additional financial documents from the City Law Department connected to the June and March 2025 investigations.

38. Three months later, on Friday, January 16, 2026, the OIG received approximately 200 financial documents that were extensively redacted, including full pages shielded from view.

39. On January 20, 2026, the OIG issued a subpoena to the City demanding the unredacted financial records. The OIG served the subpoena on January 21, 2026, with a return date of January 22, 2026.

40. To date, the City has refused to produce to the OIG responsive, unredacted financial records, maintaining its extraordinary position that all subpoenas from the OIG are subject to the City's unilateral assessment of the need to respond, and the proper bounds of that response, if any, in light of the provisions of the MPIA.

41. On Saturday, January 24, 2026, the City issued a press release through the Baltimore City Office of Information & Technology ("BCIT") alleging that the City Law Department "discovered an unauthorized account had access to their files[.]"⁷ For the first time, the City publicly took the position that the OIG had gained "unapproved and unfettered access" to the City Law Department's "confidential work product and communications." *Id.*

42. Other than issuing the blanket press release, the City provided no further support or foundation for its assertion of attorney-client privilege or work product protections.

⁷ City of Balt., *BCIT Takes Action To Address Violation Of Attorney-Client Privilege* (Jan. 24, 2026), <https://www.baltimorecity.gov/mayor/news-media/press-releases/2026-01-24-bcit-takes-action-to-address-violation-of-attorneyclient-privilege>.

43. Neither the OIG nor the OIG Advisory Board were notified of this press release.

44. The BCIT press release directly and inexplicably contradicts the City's longstanding Technology Acceptable Use Policy, first enacted in 2016 and later updated and revised in 2023:

The City owns all rights to all content created, updated, or maintained on City IT resources unless ownership rights are reserved in writing to a third party or unless federal copyright or other laws provide for different rights. **Users have no expectation of privacy when using City IT resources. The City reserves the right to access and monitor all messages, files, logs, and content created using City IT resources. Communications or content may be subject to disclosure to BCIT, the Office of Inspector General ("OIG"), the Law Department, law enforcement, or the Department of Human Resources ("DHR"), to the fullest extent allowed by law.**^[8]

(Emphasis added).

45. Contemporaneous with the BCIT press release, the OIG IT Administrator lost his ability to manage and monitor the server and databases that contain, *inter alia*, notes of interviews and information provided in confidence by whistleblowers and City employees in connection with ongoing investigations. Specifically, the OIG IT Administrator could no longer (1) access the server and databases; and (2) monitor the server and databases to ensure that only authorized individuals were accessing the information contained within.

46. Upon learning that the OIG IT Administrator's access had been restricted, IG Cumming notified her law enforcement partners that her ability to protect the data associated with her investigations—including identities of confidential whistleblowers—had been compromised.

⁸ City of Balt., Acceptable Use Policy at 4 (Jan. 1, 2023), https://s3.amazonaws.com/baltimorecity.gov.if-us-east-1/s3fs-public/am-118-1_0.pdf.

47. IG Cumming made a second request to the City Law Department to retain independent counsel. Again, that request was denied.

48. Although the OIG IT Administrator's access was partially restored on January 29, 2026, the OIG had no way of determining who, if anyone, had accessed the server and databases between January 24 and 29, 2026.

49. To determine whether any confidential information had been breached, on January 29, 2026, IG Cumming requested from the City Law Department activity logs and access audit logs. The City Law Department denied IG's Cumming's request, citing privilege.

50. IG Cumming requested—for a third time—permission to retain independent counsel. The Law Department denied that request.

51. On February 6, 2026, in an attempt to bolster its position, the City Law Department forwarded to IG Cumming a 2 ½ page advisory letter from the Attorney General's Office discussing the MPIOA. The Attorney General himself has confirmed that the advisory letter was never meant to be an official opinion of the Office of the Attorney General and that it "could have been written by a second-year law student[.]"⁹

52. On that same day, the OIG's ability to monitor the server and databases was cut off.

53. The chilling effect of the City's efforts to deprive the OIG of its independence and ability to maintain confidential information related to its investigations cannot be understated. For example, of the 324 investigations conducted by the OIG since January 2018, 104 involved

⁹ Mark Reutter, *Maryland AG: "It could have been written by a second-year law student"*, Balt. Brew (Feb. 12, 2026), <https://www.baltimorebrew.com/2026/02/12/maryland-ag-it-could-have-been-written-by-a-second-year-law-student/>; see also *AG Brown says Baltimore City wrongly interpreted letter used to block IG access to records*, WBFF FOX 45 Balt. (Feb. 11, 2026), <https://www.youtube.com/watch?v=K2v16cGX1-8>.

cases that would have shielded information from the OIG under the MPIA.¹⁰ In those 104 cases, the OIG identified approximately \$38.9 million in fraud, waste, or abuse.¹¹

54. In addition, the City's recent interpretation has hamstrung the OIG's ability to thoroughly conduct investigations and subpoena third-party entities. For example, in the past, obtaining unredacted data from the City allowed the OIG to identify third parties (such as financial institutions) who possessed relevant information so that the OIG could then subpoena those entities. By redacting whole swaths of information, the City has deprived the OIG of its ability to identify relevant sources of information and exercise its independent subpoena authority.

55. Moreover, because the City eliminated OIG's ability to monitor the server and databases to ensure confidentiality, the protections that whistleblowers and other individuals providing information related to investigations into fraud, waste, and abuse once had have been severely undermined. To wit, any information stored by the OIG could be accessed by any number of individuals in City government who could later retaliate against or unduly influence participants complying with lawful OIG-related inquiries, silencing those who wish to come forward.

56. Because of the apparent conflict arising from the City's and OIG's positions, on February 10, 2026, IG Cumming sought and obtained approval from the Advisory Board to retain independent counsel.

¹⁰ In fact, this may be an underreporting due to data lost in the 2019 Ransomware attack on the City. See Niraj Chokshi, *Hackers Are Holding Baltimore Hostage: How They Struck and What's Next*, N.Y. Times (May 22, 2019), <https://www.nytimes.com/2019/05/22/us/baltimore-ransomware.html>.

¹¹ Accord Jeff Abell, *Advocates fear billions of tax dollars at stake as Baltimore City denies access to IG*, FOX 45 News (Feb. 13, 2026), <https://foxbaltimore.com/news/local/advocates-fear-billions-tax-dollars-stake-baltimore-city-denies-access-inspector-general>.

57. It cannot be said any plainer than this: If the Mayor's Office, through the Mayor-appointed City Solicitor, who serves at the pleasure of the Mayor, is to be the final arbiter of what information should be disclosed in investigations of potential fraud, waste, and abuse, then why did the people and taxpayers of Baltimore City establish in the City Charter an OIG in the first place?

58. Accordingly, Plaintiffs now seek this Court's intervention to preserve and protect the independence and integrity of the OIG vested upon it by the people of Baltimore City and the City Charter and to prevent the irreparable harm to the taxpayers of Baltimore City should its watchdog be put to sleep.

COUNT I

Declaratory Judgment

(Pursuant to § 3-409 of the Courts and Judicial Proceedings
Article, Maryland Uniform Declaratory Judgments Act)

59. Plaintiffs incorporate by reference paragraphs 1 through 58.

60. Pursuant to Maryland Code Ann., Cts. & Jud. Proc. § 3-409(a):

[A] court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if:

(1) An actual controversy exists between contending parties;

(2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or

(3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

61. A party has standing to bring a declaratory judgment action when the party possesses "a legal interest such as one ... founded on a statute [that] confers a privilege." *Comm. For Responsible Dev. on 25th St. v. Mayor & City Council of Balt.*, 137 Md. App. 60, 72 (2001).

62. An actual controversy exists between Plaintiffs and the City. Plaintiffs, in their official capacities, and Chairperson Guilford and Secretary Godey, as taxpayers of Baltimore City, seek to enforce the OIG's subpoena power authorized by the City Charter to identify and ameliorate misuse of taxpayer dollars in City government; the City refuses to comply.

63. Moreover, antagonistic claims are present between the parties establishing imminent and inevitable litigation. Article X, § 4(d)(2) expressly authorizes the OIG to "enforce any subpoena issued pursuant to this subsection in any court of competent jurisdiction." The Advisory Board and its Chairperson are obligated to appear before City Council at least once per year to provide the City Council with an overview of the activities of the Board and the OIG. *Id.* § 3(1). The City, through the City Law Department, has refused to comply with subpoenas, taking the position that they are not subpoenas at all, but instead merely requests pursuant to the MPIA. Given the City's position, the City Law Department has deprived the OIG of its ability to enforce the subpoenas, establishing an undeniable conflict that has required the OIG to retain independent counsel to litigate the matter.

64. Finally, Plaintiffs assert a legal relation, status, right, or privilege under the City Charter that has been challenged or denied by the City. Plaintiffs assert that the OIG is vested with the express authority to issue and enforce subpoenas, including to City government, and the Advisory Board is obligated to oversee and report the activities of the OIG to City Council, including whether the OIG is carrying out its responsibilities; the City maintains that it has a concrete interest in treating those subpoenas as MPIA requests.

65. Thus, there is an actual controversy of a practical issue between the Plaintiffs and the City within the jurisdiction of this Court involving the rights and liabilities of the parties

under the Baltimore City Charter, which controversy may be determined by a judgment of this Court.

66. Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 3-409(e), Plaintiffs request a speedy hearing of this action for declaratory judgment and request that it be advanced on the Court's calendar.

COUNT II
Injunctive Relief

(Pursuant to Maryland Rules 15-501 through 15-505)

67. Plaintiffs incorporate by reference paragraphs 1 through 66.

68. Requests for injunctions, including preliminary and permanent injunctions, are governed by Rules 15-501 through 15-505.

69. A preliminary injunction may be granted pursuant to Rule 15-505 after a court considers the following four factors:

- (A) the likelihood that the plaintiff will succeed on the merits;
- (B) the “balance of convenience” determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal;
- (C) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and
- (D) the public interest.

68. “Where two governmental parties, both presumptively acting in the public interest, are in irreconcilable conflict in the execution of their governmental responsibilities,” then “a court of equity can usually best resolve the impasse by issuing a temporary injunction where that is necessary to preserve the status quo until a decision on the merits is rendered, so long as that course does not result in greater harm to the public interest than would a refusal to

interfere.” *State Dep’t of Health & Mental Hygiene v. Baltimore Cnty.*, 281 Md. 548, 556 (1977) (internal footnote omitted).

69. Each of the factors militate in favor of issuing preliminary and permanent injunctive relief to Plaintiffs.

70. First, Plaintiffs are likely to succeed on the merits of this action. The plain, unambiguous language of the City Charter authorizes the OIG to issue and enforce subpoenas to carry out the responsibilities of the office. That has been the status quo since at least 2018.

71. Second, the balance of harms militates in favor of issuing injunctive relief. From 2018 through 2025, the City complied with all requests to it from the OIG, providing direct access and unredacted materials upon demand, demonstrating that there is no harm to the City to provide information requested by the OIG’s office. On the other hand, the City’s sudden departure from longstanding practices has effectively gutted the OIG’s authority and ability to act independently, free from political influence.

72. Third, irreparable injury will befall the OIG and the inhabitants of Baltimore if the City is permitted to shield information from the OIG connected to its investigations of fraud, waste, and abuse in City government.

73. Finally, granting such an order is in the public interest as it maintains the status quo and allows the OIG to continue to conduct investigations under its independent authority to ferret out fraud, waste, and abuse in City government. The denial of Plaintiffs’ request would cripple the OIG’s ability to directly access critical information needed to carry out its functions, and deny the people of Baltimore their right to have an independent watchdog promote the interests of efficiency, accountability, and integrity in City government.

74. By this Verified Complaint and request for a preliminary and permanent injunction, Plaintiffs ask the Court to enjoin the City now and forever from refusing to fully comply with subpoenas issued by the OIG pursuant to City Charter Article X, § 4, and from interpreting such subpoenas as requests pursuant to the MPIA.

75. In addition, Plaintiffs seek a preliminary and permanent injunction enjoining the City from taking any actions that would otherwise hinder or deny the OIG the ability to carry out her investigations and maintain the independence of her office, including, but not limited to restricting the OIG's:

- a. direct access to any City databases critical to carrying out the functions of the office;
- b. ability to maintain confidentiality of information gathered within the scope of OIG investigations;
- c. ability to monitor the server and databases to ensure the safety and protect the identity of individuals, including whistleblowers, who disclose information to the OIG and protect those individuals from undue influence; and
- d. ability to retain independent counsel when a clear conflict of interest arises between the City and the OIG with respect to subpoena enforcement.

76. Plaintiffs respectfully request that bond be waived pursuant to Rule 15-503(b).

COUNT III
Writ of Mandamus

(Pursuant to Maryland Rule 15-701; Md. Code Ann., Cts. & Jud. Proc. §§ 3-8B-01, *et seq.*)

77. Plaintiffs incorporate by reference paragraphs 1 through 76.

78. “[A] common law mandamus action is appropriate where the relief sought involves the traditional enforcement of a ministerial act (a legal duty) by recalcitrant public officials, but not where there is any vestige of discretion in the agency action or decision.” *Wash. Suburban Sanitary Comm’n v. Lafarge N. Am., Inc.*, 443 Md. 265, 282 n.17 (2015) (cleaned up).

79. “[T]he authority to issue mandamus rests within the sound discretion of the court.” That discretion “must ‘be exercised under the rules long recognized and established at common law.’” *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 708 (2000) (quoting *Hardcastle v. Md. & Del. R.R. Co.*, 32 Md. 32, 35 (1870)).

80. The City Charter confers upon the OIG the ability to issue and enforce subpoenas, which, *inter alia*, “require ... the production of any information, document, report, record, account, or other material.” BALT., CHARTER art. X, § 4(d)(1)(ii).

81. The City Charter’s clear and unambiguous language establishes that responses to subpoenas issued by the OIG are not permissive; they are mandatory.

82. Accordingly, Plaintiffs respectfully request that this Court issue a Writ of Mandamus requiring the City to treat subpoenas issued by the OIG as subpoenas—not requests pursuant to the MPIA—and to respond to those subpoenas as any other validly issued subpoena received under local, state, and federal law, including any subpoenas currently outstanding.

COUNT IV **Further Relief**

83. Plaintiffs incorporate by reference paragraphs 1 through 82.

84. Plaintiffs seek all such further relief to which they are entitled at law and in equity, including attorneys’ fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

A. Set and hold a speedy hearing of this action for declaratory judgment to be advanced on the Court’s calendar pursuant to Md. Code Ann., Cts. & Jud. Proc. § 3-409(e);

B. Determine and adjudicate the rights and liabilities of Plaintiffs and Defendant regarding Article X of the Baltimore City Charter;

C. Declare that the Baltimore City Office of the Inspector General has the legal authority to issue subpoenas without restrictions, including to the Mayor and City Council of Baltimore City;

D. Declare that all subpoenas, past, present, and future, issued by the Baltimore City Office of the Inspector General shall be given the full force and effect of any subpoena issued under local, state, and federal law;

E. Declare that the Mayor and City Council of Baltimore City must fully comply with and respond to any and all subpoenas issued by the Baltimore City Office of the Inspector General, including any subpoenas currently outstanding and all subpoenas issued in the future;

F. Issue a preliminary and permanent injunction enjoining the Mayor and City Council of Baltimore City, including through the City Law Department, from treating any subpoenas issued by the Baltimore City Office of the Inspector General as requests pursuant to the Maryland Public Information Act;

G. Issue a preliminary and permanent injunction enjoining the Mayor and City Council of Baltimore City Council, including through the City Law Department, from taking any actions that would impede, inhibit, or restrict the Baltimore City Office of the Inspector General from carrying out the duties and responsibilities of the office;

H. Issue a Writ of Mandamus requiring the Mayor and City Council of Baltimore City to receive and respond to any subpoenas issued by the Baltimore City Office of the Inspector General, including any subpoenas currently outstanding;

I. Enter an order requiring the Mayor and City Council of Baltimore to compensate independent counsel retained by the Baltimore City Office of the Inspector General to enforce

subpoenas in any court of competent jurisdiction when a conflict arises between the Mayor and City of Baltimore and the Baltimore City Office of the Inspector General; and

J. Award Plaintiffs any such other and further relief in law, justice, and equity to which they may be entitled, including, but not limited to attorneys' fees and costs.

DATED: February 24, 2026

Respectfully submitted,



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Attorneys for Plaintiffs

VERIFICATION

I SOLEMNLY AFFIRM UNDER PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THIS DOCUMENT ARE TRUE.



Isabel Mercedes Cumming, Esq.,
Inspector General for Baltimore City

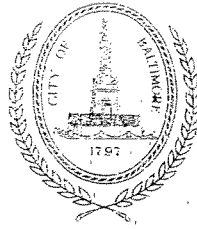
DEMAND FOR JURY TRIAL

Plaintiffs respectfully request a jury trial of any issues triable as of right by a jury.



H. Mark Stichel

Exhibit 1



MARTIN O'MALLEY
Mayor
250 City Hall
Baltimore, Maryland 21202

EXECUTIVE ORDER

WHEREAS, the citizens of Baltimore have a right to expect that City government will operate with maximum efficiency, accountability, and integrity; and

WHEREAS, the values of efficiency, accountability, and integrity are best able to thrive in government when there are mechanisms in place specifically addressed to promoting these values; and

WHEREAS, persons charged with preventing fraud, waste, and abuse of office in government must be able to investigate vigorously and speak candidly without fear of retribution; and

WHEREAS, persons charged with promoting efficiency, accountability, and integrity in government must themselves exemplify these values;

NOW THEREFORE, I, MARTIN O'MALLEY, Mayor of the City of Baltimore, by virtue of the authority vested in me, do hereby issue the following Executive Order:

BE IT ORDERED that the Office of the Inspector General is established and will function as follows:

Establishment of the Office of the Inspector General

1. There shall be within the Department of Law an Inspector General of the City of Baltimore.

Responsibilities of the Inspector General

2. The Inspector General shall be responsible for
 - (a) the promotion of efficiency, accountability, and integrity in City government; and
 - (b) the investigation of complaints of fraud, waste, and abuse of Office in City government.

Duties of the Inspector General

3. The Inspector General shall
 - (a) record and consider all complaints of fraud, waste, or abuse of office involving
 - (1) any municipal officer, including all heads of City departments, agencies, bureaus, and authorities and all persons exercising comparable authority;
 - (2) any member of a City board or commission;
 - (3) any City employee;
 - (4) any individual, organization, or business receiving City-granted funds or other benefits, including, but not limited to, loans, grants, tax credits, below market rate property transfers, Tax Increment Financing, Payments in Lieu of Taxes, or other City subsidies of any kind;
 - (5) any individual, organization, or business providing goods or services to the City pursuant to a contract; or
 - (6) any individual, organization, or business seeking certification of eligibility to provide goods or services to the City pursuant to a contract.
 - (b) establish procedures for receiving such complaints; and
 - (c) take appropriate steps to build public awareness of the Office of the Inspector General and of all procedures established by the Inspector General for receiving complaints pursuant to subsection (b).
4. The Inspector General shall provide information to City employees about the identification and prevention of fraud, waste, and abuse of office in City government.
5. The Inspector General shall, on any matter of policy or practice, make recommendations to the Mayor or to the head of any City department or agency, if the Inspector General believes that the implementation of such recommendation would assist in the promotion of efficiency, accountability, and integrity in City government.

Duties of City Employees and Persons Doing Business with the City

6. Any municipal officer, member of a City board or commission, City employee, individual providing goods or services to the City, or employee of an organization or business providing goods or services to the City who receives a complaint within the scope of matters described in section 3(a) shall immediately refer such complaint to the Inspector General.

7. Any municipal officer, member of a City board or commission, City employee, individual providing goods or services to the City, or employee of an organization or business providing goods or services to the City who has knowledge of an incident of fraud, waste, or abuse of office shall report all relevant information to the Inspector General.

Complaint and Investigation

8.
 - (a) Upon receipt of a complaint within the scope of matters described in section 3(a), the Inspector General shall determine whether the complaint is suitable for informal resolution.
 - (b) A complaint is not suitable for informal resolution if it
 - (1) involves allegations of criminal wrongdoing; or
 - (2) involves the conduct of a municipal officer.
 - (c) The Inspector General may refer any complaint suitable for informal resolution to the head of the appropriate department, agency, bureau, or authority.
 - (d) When the Inspector General refers a complaint for informal resolution pursuant to subsection (c), the person to whom the complaint is referred shall, within 40 days, report in writing the result of the informal resolution to the Inspector General.
 - (e) Upon receipt of a report described in subsection (d), the Inspector General may request that the head of the department, agency, bureau or authority making the report take any further action that the Inspector General deems appropriate.
 - (f) The Inspector General may, at any time, discontinue informal resolution of a complaint and initiate a formal investigation pursuant to section 10.
9.
 - (a) The Inspector General shall refer to the Board of Ethics any complaint that alleges a violation of Article 8 of the Baltimore City Code.
 - (b) The Inspector General shall investigate a complaint referred to the Board of Ethics pursuant to subsection (a) only to the extent that
 - (1) the Board of Ethics requests that the Inspector General conduct an investigation of the complaint; or
 - (2) the complaint contains matters not within the jurisdiction of the Board of Ethics.
10. The Inspector General shall undertake a formal investigation of all complaints within the scope of matters described in section 3(a), except to the extent that the complaint is
 - (a) under referral for informal resolution pursuant to section 8; or
 - (b) under referral for resolution by the Board of Ethics pursuant to section 9.

11. The Inspector General may undertake a formal investigation of any matter if it appears to the Inspector General that such matter falls within the scope of responsibilities described in section 2. The City Solicitor shall have no authority to limit the scope of the Inspector General's investigations.

12. (a) The Inspector General may, with the approval of the City Solicitor, hire employees of the Office of the Inspector General who shall be compensated as provided in the Ordinance of Estimates.

(b) When the Inspector General undertakes a formal investigation pursuant to section 10 or section 11, he or she may request that the City Solicitor appoint members of the staff of the Department of Law to assist in the investigation.

13. All municipal officers and City employees shall promptly provide to the Inspector General any information, document, report, record, account, or other material requested by the Inspector General in connection with any formal investigation pursuant to section 10 or section 11, provided, however, that the Inspector General shall not become a custodian of such material for purposes of the Maryland Public Information Act, Md. Code Ann., State Gov't § 10-611 *et seq.*

14. (a) In connection with an investigation pursuant to this Article, the Inspector General may, with the approval of the City Solicitor, issue a subpoena

(1) to require any person to appear under oath as a witness;
or

(2) to require the production of any information, document, report, record, account, or other material.

(b) The Inspector General may enforce any subpoena issued pursuant to subsection (a) in any court of competent jurisdiction.

Reporting and Referral

15. (a) A complainant who provides his or her name, address, and phone number to the Inspector General may request that the Inspector General inform him or her of any action taken in response to the complaint.

(b) If a request is made pursuant to subsection (a), the Inspector General shall notify the complainant, to the extent permitted by law, of any action taken in response to the complaint.

(c) The Inspector General shall not, however, disclose to any person any confidential personnel information pertaining to any municipal officer or City employee.

16. Except as provided in section 20, the Inspector General shall provide a report of the findings of any formal investigation pursuant to section 10 or section 11 to the Mayor and to the City Solicitor.

17. If, after formal investigation, the Inspector General determines that there is reason to believe that a criminal act occurred, the Inspector General shall refer such complaint to the appropriate prosecutorial authority.

18. If, after formal investigation, the Inspector General determines that the complaint may involve conduct by a City employee subject to disciplinary sanction, the Inspector General shall

(a) in the case of an at-will employee, refer the matter to the head of the department, agency, bureau, or authority in which the employee works; or

(b) in the case of a civil service employee, refer the matter to the Civil Service Commission.

19. (a) Any record generated by the Inspector General or a person acting under the authority of the Inspector General pursuant to an investigation of the conduct of a municipal officer, member of a City board or commission, or City employee shall be deemed a personnel record for purposes of the Maryland Public Information Act, Md. Code Ann., State Gov't § 10-611 *et seq.*

(b) The following shall be deemed records of an investigation of a city attorney for purposes of the Maryland Public Information Act:

(1) any record of any complaint received by the Inspector General;

(2) any record generated by the Inspector General or a person acting under the authority of the Inspector General in response to a complaint received by the Inspector General;

(3) any report to the Inspector General prepared pursuant to section 8(d);

(4) any record generated by the Inspector General or a person acting under the authority of the Inspector General in connection with a formal investigation pursuant to section 10 or section 11.

(c) Any person who makes a complaint to the Inspector General shall be deemed a confidential source for an investigation of a city attorney for purposes of the Maryland Public Information Act.

20. The Inspector General shall not disclose to any person the identity of any complainant without the consent of that complainant, except when required by law.

Retaliation Prohibited

21. No person shall retaliate or threaten to retaliate against any person for complaining to, submitting information to, or cooperating in any way with the Inspector General.

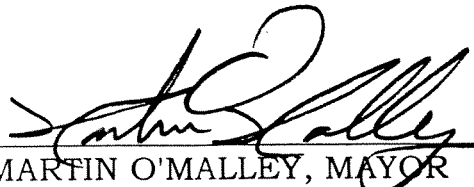
Annual Report

22. (a) No later than September 1 of each year, the Inspector General shall provide a formal report to the citizens of Baltimore of all of the activities of the Office of the Inspector General during the preceding twelve months.

(b) All reports prepared pursuant to subsection (a) shall include the number of complaints received, the number referred for informal resolution, the number referred to the Board of Ethics, the number for which a formal investigation was undertaken, and the number of those formally investigated in which the Inspector General found that fraud, waste, or abuse of office had occurred.

(c) A report prepared pursuant to subsection (a) shall not disclose any information that, if contained in a public record, would be exempt from disclosure pursuant to the Maryland Public Information Act, Md. Code Ann., State Gov't § 10-611 *et seq.*

IN WITNESS WHEREOF, I HAVE
HEREUNTO PLACED MY HAND
THIS 27th DAY OF JULY, 2005.



MARTIN O'MALLEY, MAYOR
CITY OF BALTIMORE

**IN THE
CIRCUIT COURT FOR BALTIMORE CITY**

**INSPECTOR GENERAL OF
BALTIMORE CITY ISABEL
MERCEDES CUMMING, ESQ., *et al.*,**

Plaintiffs,

v.

**MAYOR AND CITY COUNCIL OF
BALTIMORE,**

Defendant

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Case No. _____

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Inspector General of Baltimore City Isabel Mercedes Cumming, Esq., (“IG Cumming”), Gayle Guilford, Chairperson of the Office of the Inspector General of Baltimore City (“OIG”) Advisory Board, and Advisory Board Secretary James Godey, CPA, Esq., move for a Preliminary Injunction pursuant to Maryland Rule 15-505. In support thereof, Plaintiffs state:

1. Plaintiffs incorporate by reference the allegations set forth in their Verified Complaint for Declaratory Judgment, Preliminary and Permanent Injunction, A Writ of Mandamus. The facts relevant to this motion and verified by Plaintiffs in the Complaint are described below.

2. The OIG is charged with “investigating complaints of fraud, financial waste, and abuse” and “promoting efficiency, accountability, and integrity in City government.” BALT., CHARTER art. X, § 4(b) (2022).¹

¹ The OIG’s investigative power is derived from Article XI-A, § 2 of the Maryland Constitution and Article II of the City Charter, which gives the City “full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public

3. Plaintiffs are the duly appointed Inspector General of Baltimore City and the Chairperson and Secretary of the OIG Advisory Board,² an 11-member entity established under the Charter for Baltimore City (“City Charter”) for the purpose of, *inter alia*, appointing the Inspector General and providing an annual overview of the OIG’s activities to the Baltimore City Council.

4. As set forth in their Verified Complaint, this lawsuit arises from Defendant the Mayor and City Council of Baltimore City’s (the “City”) stark and brazen departure from its longstanding treatment of subpoenas issued by the OIG pursuant to Article X, § 4 of the City Charter.

5. Until 2018, the OIG fell under the auspices and supervision of the Baltimore City Department of Law (“City Law Department”).

6. In 2018, recognizing the need for the OIG to be an autonomous entity, the Baltimore City Council proposed and adopted a resolution recommending amendments to the City Charter to create “an independent” OIG to be appointed and governed “by an independent” Advisory Board, *id.* § 2(a)(1), headed by a chair elected by the members of the Board.

General or Public Local Laws of the State of Maryland[.]” Article II, § (27) of the City Charter further affords the City broad police powers (“To have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise that power within the limits of Baltimore City”), and Article II, § (47) confers on the City the broad powers to legislate the general welfare and to promote good government (“To pass any ordinance ... which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City....”).

² In addition to suing in their official capacities, Chairperson Guilford and Secretary Godey sue individually as citizens of Baltimore City who have taxpayer standing to “seek the aid of courts, exercising equity powers, to enjoin illegal *ultra vires* acts of public officials where those acts are reasonably likely to result in pecuniary loss to the taxpayer.” *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 538 (2014).

7. In 2022, an overwhelming 86.52% of voters approved a further Charter Amendment, Ballot Question I, which altered the Advisory Board’s membership composition by A) expanding the number of Advisory Board members from 7 to 11; and B) changing the Advisory Board’s composition to ensure that its 11 members, including its chairperson, would not be elected officials or direct appointees of elected officials, candidates for office, lobbyists, or anyone who otherwise might pose potential impediments to the free and fair execution of the OIG’s mission or raise concerns over conflicts of interest. *Id.* § 2(c).

8. Taken together, these changes establish that the OIG is a truly independent watchdog that provides oversight of City government and taxpayer funds, free from political interference, or the appearance of same.

9. To carry out the OIG’s responsibilities, Article X, § 4(d) of the City Charter provides:

- (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.

10. The aforementioned language reflects a deliberate choice by the unanimous City Council and the voters of Baltimore to establish an autonomous OIG to pursue its investigations and enforce subpoenas without limitation, oversight, or approval by other City entities, including the City Law Department.

11. Indeed, the OIG was first created in 2005, when then-Mayor Martin O’Malley issued a Mayoral Executive Order with the “goal of increasing government accountability ...

free from political influence.” Balt City Off. of the Inspector Gen., *2019 Annual Report* at 5 (2019), https://s3.amazonaws.com/baltimorecity.gov/ig-us-east-1/s3fs-public/2024-01/oig_annual_report_2019_pdf.pdf. The 2005 Executive Order initially contemplated that “[i]n connection with an investigation pursuant to this Article, the [OIG] may, *with the approval of the City Solicitor, issue a subpoena...*” Ex. 1, July 27, 2005 Executive Order at § 14(a) (emphasis added).

12. By amending this pertinent language, the Baltimore City Council and Baltimore’s voters and taxpayers expressly determined that the OIG’s authority to issue and enforce subpoenas is *not* contingent upon the authorization and participation of the City Solicitor or the City Law Department.

13. From 2018 through mid-2025, the City’s departments, agencies, and officials, including, at times, the City Law Department, worked cooperatively with the OIG, providing direct access to requested information without issue.

14. In a stunning about-face, beginning in June 2025, and as described more fully in Plaintiffs’ Verified Complaint, the City Law Department, began refusing to comply with the OIG’s subpoenas. For the first time ever in the history of the OIG, the City took the novel position that subpoenas issued by the OIG are not subpoenas, but instead requests to be assessed by the Law Department under the Maryland Public Information Act (“MPIA”).³ Based on this fundamentally flawed interpretation, the City provided hundreds of redacted documents—including entire pages of information—to the OIG, denying the OIG direct access to information critical to carrying out the duties and responsibilities of the office.

³ See generally Md. Code Ann., Gen. Provisions §§ 4-101 through 4-601.

15. Recognizing that the OIG is traditionally represented by the City Law Department, and recognizing the inherent conflict arising from the OIG's and City Law Department's diametrically opposed interpretations of the City Charter, IG Cumming has requested on several occasions that the City Law Department permit her to retain independent counsel so that a sound legal resolution of the two offices' differing interpretations might be obtained. The City Law Department has denied IG Cumming's request at every turn.

16. Moreover, the City has engaged in a public campaign to undermine the OIG's independence and prevent her from carrying out her duties.

17. For example, on Saturday, January 24, 2026, the City issued a press release through the Baltimore City Office of Information & Technology ("BCIT") alleging that the City Law Department "discovered an unauthorized account had access to their files[.]" For the first time, the City publicly took the position that the OIG had gained "unapproved and unfettered access" to the City Law Department's "confidential work product and communications." *Id.* Other than issuing the blanket press release, the City provided no further support or foundation for its assertion of attorney-client privilege or work product protections.

18. The BCIT press release directly and inexplicably contradicts the City's longstanding Technology Acceptable Use Policy:

The City owns all rights to all content created, updated, or maintained on City IT resources unless ownership rights are reserved in writing to a third party or unless federal copyright or other laws provide for different rights. **Users have no expectation of privacy when using City IT resources. The City reserves the right to access and monitor all messages, files, logs, and content created using City IT resources. Communications or content may be subject to disclosure to BCIT, the Office of Inspector General ("OIG"), the Law Department, law**

enforcement, or the Department of Human Resources (“DHR”), **to the fullest extent allowed by law.**^[4]

City of Balt., Acceptable Use Policy at 4 (Jan. 1, 2023), https://s3.amazonaws.com/baltimorecity.gov.if-us-east-1/s3fs-public/am-118-1_0.pdf. (emphasis added).

19. Contemporaneously, the City has further weakened the independence and confidentiality of the OIG’s investigations by depriving the OIG IT Administrator of his ability to (1) access the City’s server and databases; and (2) monitor the server and databases to ensure that only authorized individuals were accessing the information contained within.

20. The City’s efforts to undermine protections for whistleblowers and other individuals providing information related to investigations into fraud, waste, and abuse are chilling. Now, information stored by the OIG on the City’s server and databases can be accessed by any number of individuals in City government who could retaliate against or unduly influence participants complying with lawful OIG-related inquiries, silencing those who wish to come forward.

21. Moreover, the City’s unprecedented position of treating OIG subpoenas as MPIO requests will not only hamstring the OIG’s ability to perform its duties, but it will directly result in harm to the taxpayers. For example, of the 324 investigations conducted by the OIG since January 2018, 104 involved cases that, had the City invoked its current position, would have shielded information from the OIG that ultimately resulted in the discovery of \$38.9 million in fraud, waste, or abuse by City government.

⁴ City of Balt., Acceptable Use Policy at 4 (Jan. 1, 2023), https://s3.amazonaws.com/baltimorecity.gov.if-us-east-1/s3fs-public/am-118-1_0.pdf.

22. In addition, receiving unredacted data allows the OIG to identify third parties (such as financial institutions) who possess information so that the OIG can then subpoena those entities. By redacting whole swaths of information, the City has deprived the OIG of its ability to identify relevant sources of information and exercise its independent subpoena authority.

23. The City's specious position, taken for the first time since the OIG's inception in 2005, begs the question: If the Mayor's Office, through the Mayor-appointed City Solicitor, who serves at the pleasure of the Mayor, is to be the final arbiter of what information should be disclosed in investigations of potential fraud, waste, and abuse, then why did the people and taxpayers of Baltimore City establish in the City Charter an OIG in the first place?

24. Without an Order from this Court enjoining the City's conduct and requiring it to abide by the City Charter's plain language, Plaintiffs and the residents and taxpayers of Baltimore City have and will continue to suffer immediate and irreparable harm, as they no longer have the full weight and authority of Baltimore's independent watchdog to sniff out instances of fraud, financial waste, and abuse by City government.

25. A preliminary injunction may be granted pursuant to Rule 15-505 after a court considers the following four factors:

- (A) the likelihood that the plaintiff will succeed on the merits;
- (B) the "balance of convenience" determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal;
- (C) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and
- (D) the public interest.

Ademiluyi v. Egbuonu, 466 Md. 80, 114 (2019) (citations omitted).

26. “Where two governmental parties, both presumptively acting in the public interest, are in irreconcilable conflict in the execution of their governmental responsibilities,” then “a court of equity can usually best resolve the impasse by issuing a temporary injunction where that is necessary to preserve the status quo until a decision on the merits is rendered, so long as that course does not result in greater harm to the public interest than would a refusal to interfere.” *State Dep’t of Health & Mental Hygiene v. Baltimore Cnty.*, 281 Md. 548, 556 (1977) (internal footnote omitted).

27. Each of the factors militate in favor of issuing a preliminary injunction.

28. First, Plaintiffs are likely to succeed on the merits of this action. The plain, unambiguous language of the City Charter authorizes the OIG to issue and enforce subpoenas to carry out the responsibilities of the office. That has been the status quo since at least 2018.

29. Second, from 2018 through 2025, the City complied with all requests to it from the OIG, providing direct access and unredacted materials upon demand. Accordingly, there is no harm to the City to provide information requested by the OIG’s office. On the other hand, the City’s sudden departure from longstanding practices has significantly gutted the OIG’s authority to investigate complaints of fraud, financial waste, and abuse, free from political influence.

30. Third, irreparable injury has befallen, and will continue to befall, the OIG and the residents and taxpayers of Baltimore if the City is permitted to shield information from the OIG connected to its investigations. Indeed, the City stands to lose its ability to monitor millions of dollars of government spending and to ensure that taxpayer dollars are not being squandered by City officials.

31. Finally, granting such an order is in the public interest as it maintains the status quo and allows the OIG to continue to conduct investigations under its independent authority to

ferret out fraud, waste, and abuse in City government. The denial of Plaintiffs' request would cripple the OIG's ability to directly access critical information needed to carry out its functions, and deny the people of Baltimore their right to have an independent watchdog promote the interests of efficiency, accountability, and integrity in City government. Moreover, ensuring that identifies of, and information provided by, whistleblowers and participants in OIG investigations promotes candor in the process protects those participating individuals from retaliation and eliminates the potential for undue influence.

32. Plaintiffs ask the Court to enjoin the City from refusing to fully comply with subpoenas issued by the OIG pursuant to City Charter Article X, § 4, and from interpreting such subpoenas as requests pursuant to the MPIA.

33. In addition, Plaintiffs seek a preliminary injunction enjoining the City from taking any actions that would otherwise hinder or deny the OIG the ability to carry out its investigations and maintain the independence of the office, including, but not limited, to restricting the OIG's ability to:

- a. directly access City databases critical to carrying out the functions of the office;
- b. maintain confidentiality of information gathered within the scope of OIG investigations; and
- c. monitor the server and databases to ensure the safety and protect the identity of individuals, including whistleblowers, who disclose information to the OIG and protect those individuals from undue influence.

34. Plaintiffs respectfully request that bond be waived pursuant to Rule 15-503(b).

WHEREFORE, Plaintiffs respectfully request that the Court enter a preliminary injunction enjoining Defendant from treating subpoenas issued by the OIG as MPIA requests and, instead, requiring Defendant to respond to those subpoenas as any other validly issued subpoena received under local, state, and federal law, including any subpoenas currently

outstanding, and from taking any actions that would otherwise hinder or deny the OIG the ability to carry out its investigations and waive the bond requirement pursuant to Maryland Rule 15-503(b).

DATED: February 24, 2026

Respectfully submitted,

/s/ Mark Stichel

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2800 Quarry Lake Drive, Suite 160

Baltimore, MD 21209

T: (410) 554-3600

F: (410) 554-3601

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of February, 2026, a copy of the foregoing Plaintiffs' Motion for Preliminary Injunction and proposed order will be with the Summons and Complaint via private process upon:

Ebony Thompson, Atty #1312190231
City Solicitor
The Baltimore City Department of Law
100 N. Holliday Street, Suite 101
Baltimore, Maryland 21202
ebony.thompson@baltimorecity.gov

Also a courtesy copy of the foregoing has been sent via email to:

Ebony Thompson, Atty #1312190231
City Solicitor
The Baltimore City Department of Law
100 N. Holliday Street, Suite 101
Baltimore, Maryland 21202
ebony.thompson@baltimorecity.gov

/s/ H. Mark Stichel
H. Mark Stichel

**IN THE
CIRCUIT COURT FOR BALTIMORE CITY**

**INSPECTOR GENERAL OF
BALTIMORE CITY ISABEL
MERCEDES CUMMING, ESQ., *et al.*,**

Plaintiffs,

v.

**MAYOR AND CITY COUNCIL OF
BALTIMORE,**

Defendant

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Case No. _____

[PROPOSED] ORDER

HAVING NOTIFIED ALL PARTIES AND PROVIDED AN OPPORTUNITY FOR A FULL ADVERSARY HEARING, and having heard all testimony and arguments at said hearing and having reviewed the submissions and evidence of Plaintiffs in support of their Motion for Preliminary Injunction, it is this the _____ day of _____, 2026, by the Circuit Court for Baltimore City hereby ORDERED that:

1. Plaintiffs’ Motion for Preliminary Injunction be and the same hereby is, GRANTED.
2. This Court finds on the evidence presented that:
 - a. Pursuant to the Charter of Baltimore City (“City Charter”), the Office of the Inspector General of Baltimore City (“OIG”) is responsible for investigating complaints of fraud, financial waste, and abuse and to promote efficiency, accountability, and integrity in City government.
 - b. The OIG is overseen by an 11-member Advisory Board established by the City Charter for the purpose of, *inter alia*, appointing the Inspector General and providing an annual overview of the OIG’s activities to the Baltimore City Council.

c. The OIG has the authority pursuant to City Charter Article X, § 4(d)(1) of the City Charter to “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.”

d. The OIG has the authority pursuant to City Charter Article X, § 4(d)(2) to “enforce any subpoena issued ... in any court of competent jurisdiction.”

e. Defendant is required to respond to subpoenas issued by the OIG.

f. Since 2018, the status quo has been that the City’s departments, agencies, and officials, including, at times, the City Law Department, provided the OIG direct access to requested information without limitation.

g. Beginning in June 2025, Defendants began refusing to provide full information, including unredacted documents, to the OIG in response to its subpoenas, asserting that the subpoenas were to be treated as requests under the Maryland Public Information Act.

h. Beginning in January 2026, the City took action to deprive the OIG of its ability to manage and monitor the City server and databases used to maintain confidentiality of whistleblowers and participants in OIG investigations.

i. Defendant’s actions contravene the plain language of the City Charter;

j. Defendant’s refusal to provide complete, unredacted documents has deprived the OIG of its ability to serve the residents and taxpayers of Baltimore City and to fully carry out the responsibilities of the office;

k. Defendant’s actions have further impacted the OIG’s ability to maintain confidentiality in its investigations.

1. Defendant's actions have harmed the interests of the public, of taxpayers, of voters, and in particular for the OIG and its Advisory Board.

3. The Court finds that Plaintiffs have shown a likelihood of success on the merits.

4. The Court finds that the balance of hardships favors Plaintiffs.

5. The Court finds that the public interest favors Plaintiffs.

6. The Court finds that bond shall be waived pursuant to Maryland Rule 15-503(b).

Accordingly, Defendant the Mayor and City Council of Baltimore City is hereby

ENJOINED from:

1. Refusing to comply with and respond to all outstanding subpoenas issued by the Baltimore City Office of the Inspector General;

2. Treating all outstanding subpoenas issued by the Baltimore City Office of the Inspector General as requests under the Maryland Public Information Act; and

3. Taking any actions that would impede, inhibit, or restrict the Baltimore City Office of the Inspector General from carrying out the duties and responsibilities of the office, including placing any limitations or restrictions on the OIG IT Administrator's ability to manage and monitor any and all servers and databases that contain information provided by, among others, whistleblowers and myriad confidential sources.

Judge
Circuit Court for Baltimore City