

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

April 1, 2013

The Honorable President and Members  
of the Baltimore City Council  
Attn: Karen Randle, Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

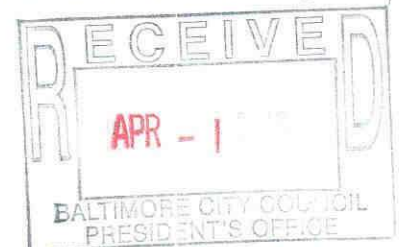
Re: City Council Bill 12-0174 – Agency Audits Online

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 12-0174 for form and legal sufficiency. This bill would create a new subtitle 9, “Agency Audits Online” in Article 5 – Finance, Property and Procurement of the Baltimore City Code. The law defines “agency” and “audit.” It would require that the Comptroller create a database of certain agency audits, containing a timeline of agencies to be audited (either by the Comptroller or via an Independent Certified Public Accountant), the scope of those audits and a final copy of the audit report once the audit is completed. The bill mandates that this information be placed on-line.

An argument could be made that this bill’s disclosure requirement is preempted by the Maryland Public Information Act, codified in sections 10-611, *et seq.* of the State Government Article of the Maryland Code (hereinafter “MPIA”). *See, e.g.*, 86 Md. Op. Ag. 94, 107 (2001)(municipalities cannot create laws that determine what information is available to the public because, “a contrary interpretation ‘would allow...local entities at their election to undermine the [PIA]. ... [H]ad the General Assembly intended to give this effect to a ... local ordinance, [local ordinances] would have been included in the list in SG §10-615...’”)(citing Office of the Attorney General, Public Information Act Manual 15 (8 ed. 2000); 71 Opinions of the Attorney General 297, 299-300 (1986)). However, there is no preemption in this instance because the information sought to be placed on-line is not prohibited from disclosure by state law and because it is covered under the Mayor’s Executive Order on OpenBaltimore.

However, it should be noted that the definitions of “audit” and “agency” can describe the types of information to be reported, but cannot operate to modify the types of audits conducted as that would conflict with the City Charter’s placement of that function in the City Auditor, the Comptroller and the Board of Estimates. *See* City Charter, Art. III, §4.5; Art. V, §10(b); *see also* City Charter, Art. III, §11 (The City Council may not by legislation modify the power created by Charter).



The Law Department approves this bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Assistant Solicitor

cc: George Nilson, City Solicitor  
Angela C. Gibson, Mayor's Legislative Liaison  
Elena DiPietro, Chief Solicitor  
Victor Tervalá, Assistant Solicitor