



February 14, 2020

## **PUBLIC INFORMATION ACT (PIA) BILLS ON FULL DISPLAY IN HOUSE COMMITTEE**

On Tuesday the House Health and Government Operations Committee deliberated several bills concerning Maryland's public information act. The University System of Maryland (USM) testified in opposition to several bills.

**House Bill 42** would shorten time limits under Maryland's PIA from 30 to 7 days; reduces the timeframe to provide requested information from 30 to 7 days; and reduces notification of time delay from 10 to 5 days and notification of denial from 10 to 5 days. The USM argued that the reduced PIA response time in House Bill 42 is extreme and fails to address the scope and breadth sought by an individual requester. The USM, and the constituent campuses, currently lack adequate staff to turn requests around this quickly.

Many requests are broad and require communication with the requester to narrow the scope, which takes time. Requesters seek copies of email correspondence, requiring the development of search queries with the assistance of information technology staff, frequently resulting in a large volume of emails (typically in the upper 100s to 1000s of pages) that must be reviewed for responsiveness. After searches are conducted, and documents are reviewed for responsiveness, attorneys and/or paralegals must review and redact information that is protected from disclosure under the PIA; this can take hours, depending on the volume of responsive documents. The work cannot be done in an automated fashion.

**House Bill 502** would expand the jurisdiction of the PIA Compliance Board to include additional types of disputes; institutes an integrated PIA complaint resolution process that includes the Public Access Ombudsman; and requires a custodian to adopt a proactive disclosure policy. Implementing these changes will require the USM to devote significantly more resources to this task. In attempting to meet this broad array of mandates, given the consistently high volume and complexity of PIA requests received, information technology and legal services would need significant investments in resources.

The expanded jurisdiction of the PIA Compliance Board would include disputes over fee charges over \$200, disputes over withheld documents, and disputes over missed deadlines will increase the workload of institutions that will have to respond to complaints filed with the Board. The Board's

authority to waive a will likely result in reduced recovery of the value of time spent in fulfilling requests, as fee payments will go down. House Bill 502 gives the Board the authority to review and resolve complaints of agencies regarding requesters whose “request or pattern of requests is frivolous, vexatious, or in bad faith.”

While this is a potentially positive development, USM institutions still receive multiple and/or repetitive requests over extended periods of time from specific individuals. However, there are less intrusive and burdensome methods to address this narrow problem.

**House Bill 717** would define “distribution list” to mean a list of recipients who have affirmatively opted to receive information or alerts and narrows an existing requirement pertaining to the denial of inspection of distribution lists. In addition, the bill requires a custodian of a public record to deny inspection of only the part of a specified distribution list – and a request to be added to a distribution list – that identifies a physical address, an email address, or a telephone number of an individual. Under current law, a custodian must deny inspection of the full list, as specified.

In addition, the bill excludes distribution lists used for the sole purpose of sending informational notices from the bill’s requirements. As a practical matter, this means that USM institutions must disclose such mailing lists upon request unless the people on the list have affirmatively opted to receive the mailings. Even if they can withhold the addresses and telephone numbers, they must disclose the names on the list. The provisions are extremely broad and vague. There are potentially many lists at a university that would fall within this statute.

Presumably, many departments/functions on campus would have a mailing list of people to whom they send official information/announcements. For example, police, residence, student affairs, alumni, admissions, may send information and/or alerts. Additionally, the disclosure requirement could raise privacy concerns where names and addresses had to be disclosed. For example, a mailing list of prospective donors (who had not opted in) would reveal their home addresses or e-mail addresses.

**House Bill 372** would prohibit a definition of “sociological information” adopted under rules or regulations by an official custodian of a public record from including an individual’s personal address. The current statute provides that sociological information must be withheld from disclosure. However, it also provides that agencies may designate information that they consider to be “sociological information.

USM institutions will not be able to rely upon the “sociological information” exception to withhold personal addresses even though some institutions may include personal addresses within their definitions of sociological information. Under House Bill 372, USM institutions would no longer be able to withhold personal addresses on this basis. The PIA currently has a provision which permits state agencies to define "sociological information (SI).

Here are several scenarios if House Bill 372 becomes law: Personal addresses of our donors? No protection. Student personal addresses? Protection is limited. Currently, institutions can only protect a student's personal address if it is being requested for a commercial purpose. Personal addresses of

our vendors? No protection. Personal addresses of the hundreds K-12 students who attend camps at USM institutions? No protection. Personal addresses of those who purchase tickets to athletic events? No protection. Personal addresses of admitted students who did not matriculate to system institution (and those who applied to but were not admitted)? No protection. As the law stands, USM **can** protect personal addresses which are not currently/sufficiently protected.

## **FREE DIGITAL TEXTBOOK MATERIALS TOPIC OF HOUSE HEARING**

On Tuesday in House Appropriations the committee heard testimony regarding **House Bill 318**. The bill requires each USM institution to develop a method to “clearly and conspicuously” show free online course digital materials – including open educational resources (OER).

The USM has always supported decreased textbook costs for students and increased transparency around instructional materials costs for students. House Bill 318, which requires USM institutions to designate zero-cost and low-cost instructional materials classes in the online course catalog is not the appropriate place to ensure this transparency for students. The bill duplicates existing policy and practice creating unnecessary administrative overhead that can be put to better use toward scaling and sustaining open educational resource (OER) adoptions.

The USM remains a national leader in the OER movement. In collaboration with colleagues in Maryland’s community college and private, non-profit, sector, the USM’s Kirwan Center for Academic Innovation has been leading the statewide Maryland Open Source Textbook (M.O.S.T.) initiative since 2013 to increase access, affordability, and achievement for our students. Since then, M.O.S.T. has supported the adoption of OER in 159 courses across 24 Maryland 2-year and 4-year higher education institutions, saving over 65,000 students more \$10.4M cumulatively on textbook costs. At the same time, the USM’s University of Maryland Global Campus (UMGC) has moved entirely to zero-cost instructional materials, saving their students over \$20M annually. As a result of these efforts, faculty across Maryland are increasingly aware of and supportive of OER and are, more importantly, now attuned to the need to keep instructional materials costs as low as possible for students.

As written, House Bill 318 would be an impediment to that transparency. The course catalog is not the appropriate place to create this transparency for students. An institution’s course catalog provides students a general listing of **ALL** the institution’s MHEC-approved courses. This listing includes the course number, title, brief description, number of credits, and whether there are any pre- or co-requisites.

Specific details about when courses are offered, faculty of record, required texts, and the like are intentionally left out to avoid introducing inaccuracies because these aspects of a course regularly change due to a variety of circumstances --including the availability of high-quality instructional materials. **Decisions about instructional materials are for USM faculty alone to decide. Whether the instruction emanates from the lectern, a hard book, or the Internet.**

House Bill 318 is duplicative of policies and laws the state has in place. Board of Regents policy, state law, and the federal Higher Education Opportunity Act already requires USM institutions to post textbook information prior to course registration. Students can link to an institution’s online

bookstore from the schedule to see that costs of the books associated with courses, by section, for which they are registering.

House Bill 318 also carries serious unfunded costs. The additional administrative overhead alone could be better directed in other ways to support the USM's OER adoption efforts. There would be costs associated with creating the infrastructure, through the Office of the Registrar, to post the materials and/or links to them for every course as well as monitoring compliance. Moreover, House Bill 318 does not define "free" or "low cost" and is ambivalent on the need for these materials to be fully accessible for students with disabilities, as required by federal law.

### **LEGISLATION SEEKS TO DESIGNATE A PREVENTION COORDINATOR**

On Tuesday in House Appropriations Committee, House Bill 325 would repeal the requirement the USM designate Title IX coordinators responsible for sexual harassment prevention training. The USM supports this flexibility. On some campuses (in some cases) the Title IX Coordinator is not the most appropriate staff to handle this prevention training. This bill would inadvertently remove the reference to a "unit" within the University System of Maryland, and USM requested the following amendment. The USM was supportive with some minor amendments.

### **UNPAID FEE COLLECTION ON CAMPUS GETS SCRUTINY**

On Tuesday in House Appropriations, House Bill 419 would require public, private, and for-profit institutions of higher education to collect specified data on unpaid fees and services owed by current students and graduates, including the number of academic transcripts, grade reports, diplomas, and any other information related to coursework or educational degrees withheld by an institution due to a student's unpaid fees and services.

This legislation would have a significant financial impact on institutions of higher education. The bill would require functional and technical resources to assess the determinations of the bill. Our institution's student billing systems are not currently formatted to collect most of the information that would be required to be retrieved from other third-party systems and testing of the data to ensure accuracy would need to be completed. Staffing resources for point of contact and data management will be necessary in order to identify, extract, transfer, and load the data. One institution estimates 80-100 hours of initial research by current staff in the Bursar's office to determine the feasibility of the required data collection.

Currently, USM institutions are required to transfer all delinquent student accounts to the Central Collection Unit of the State of Maryland (CCU). Typically, the delinquent accounts may include tuition, mandatory fees, room, meal plans, parking permits and parking fines. While we understand that the suspension of transcripts and other official documents can be impactful to our students, we work diligently to provide flexible repayment options. The USM urged an Unfavorable Report.

### **BILL SEEKS TO CREATE ATHLETIC OVERSIGHT COMMITTEE**

On Wednesday in the Senate Education, Health and Environmental Affairs Committee heard testimony regarding [Senate Bill 518](#). The USM Board of Regents places the highest priority on the

health and well-being of all its students – including those who participate in intercollegiate athletics. Over the past year the Board has worked with leadership at USM institutions to identify issues and areas for improvement, and institutions have responded with enhancements to programs related to the care and training of student-athletes.

This Board of Regents (BoR) established a workgroup that has a scope and focus including many of the matters proposed for the Council in Senate Bill 518. Moreover, has an established and direct route for proposing policy, collecting essential information in a manner that protects student privacy concerns, communicating with institution presidents and athletic directors to initiate needed change outside of Board of Regents policy, and has a proven track record of overseeing improvement both in oversight as well as program management, such as the mechanisms in place to monitor, in near real-time, academic progress of student-athletes. The Regents also oversee other areas covered in the proposed bill through its Education Policy Committee.

Establishing a state-wide review and advisory group proposed in the bill, distinct and outside of the USM, such as the Council, would create a conflict between the role of the proposed Council and the responsibilities and authorities of USM Regents, Chancellor, and institution Presidents. The Board of Regents Workgroup on Intercollegiate Athletics has been effective in the review of athletics programs and student-athlete academic information, and in assessing operational activities such as student-athlete academic support and, more recently, medical support services available to student-athletes. Simply, Senate Bill 518 would undermine and diminish the work and effectiveness of USM governance mechanisms put in place to date.

The requirement that the USM provide staffing for the proposed Council will require the addition of specialized staff, both at the USM Office, as well as within athletics departments. This will add considerable cost to the USM Office budget, but more importantly, to the staffs of institutions' athletic departments. This is an important concern, as USM institutions, like most athletics programs at colleges and universities across the country, are expected, by policy, to be self-supporting.

Any additional cost imposed on the athletic department must be covered by additional revenue, and the only plausible source is increased student athletics or activities fees, which increase the cost of attendance for all students at that institution. None of the USM institutions have any significant amount of reserves or surplus operating revenues to fund the additional costs expected to be incurred as a result of the proposed legislation. The USM believes that any legislative initiative is best handled at a federal, rather than state, level so that there is a clear and consistent set of standards devoid of conflicts between differing legislative initiatives in different legislative bodies.

Lastly, issues like the impact of compensation received by student-athletes for the use of NLI may have implications for federal financial aid processes and calculations, and potentially accreditation matters that are better addressed through federal legislative processes.

## UPCOMING BILL HEARINGS

HB 526

**Higher Education - Differential Tuition - Notification and Income Tax Subtraction Modification**

Delegate Miller

In the House - Hearing 2/18 at 1:00 p.m.

Appropriations

[HB 533](#) (SB 518)

**Higher Education – Council on the Fair Treatment of Student Athletes (Jordan McNair Safe and Fair Play Act)**

Delegate Lierman

In the House - Hearing 2/18 at 1:00 p.m.

Appropriations

HB 1066 (SB 761)

**Income Tax - 529 College Investment Plans - Elementary and Secondary Education Expenses**

Delegate Ebersole

In the House - Hearing 2/21 at 1:00 p.m.

Ways and Means

HB 719

**Higher Education - Transfer Students - Courses Counting Toward Chosen Degree**

Delegate Hornberger

In the House - Hearing 2/25 at 1:00 p.m.

Appropriations

HB 1122 (SB 588)

**State Government - Protection of Personally Identifiable Information - University System of Maryland**

Delegate Pena-Melnyk

In the House - Hearing 2/25 at 1:00 p.m.

Health and Government Operations

HB 1174

**Financial Aid - Guaranteed Access Grants - Verification and Administration by Institutions of Higher Education**

Delegate Solomon

In the House - Hearing 3/05 at 1:00 p.m.

Appropriations

HB 1427

**Higher Education - Tuition Exemption - Spouses and Dependents of Disabled Veterans**

Delegate Cain

In the House - Hearing 3/05 at 1:00 p.m.

Appropriations

HB 1428

**Environment - Higher Education Facilities - Mold Hazards and Mold or Moisture Problems**

Delegate Solomon

In the House - Hearing 3/05 at 1:00 p.m.

Appropriations

HB 1504 (SB 1015)

**Task Force to Study Access to Mental Health Care in Higher Education**

Delegate Valentino-Smith

In the House - Hearing 3/05 at 1:00 p.m.

Appropriations

HB 796

**Higher Education - Freedom of Speech on Campus - Protection (Forming Open and Robust University Minds (FORUM) Act)**

Delegate Grammer

In the House - Hearing 3/10 at 1:00 p.m.

Appropriations

HB 814

**Higher Education - Transfer of Credits**

Washington County Delegation

In the House - Hearing 3/10 at 1:00 p.m.

Appropriations

HB 1052

**University System of Maryland - Contaminants in Campus Buildings - Review, Monitoring, and Remediation**

Delegate Lehman

In the House - Hearing 3/05 at 1:00 p.m.

Appropriations

HB 1082

**Higher Education – Denial of Transfer Credit – Notice and Report (Transfer with Success Act)**

Delegate Solomon

In the House - Hearing 3/05 at 1:00 p.m.

Appropriations

HB 1113

**State Finance and Procurement - Procurement Improvement Council - Required Use of eMaryland Marketplace**

Delegate Charles

In the House - Hearing 3/10 at 1:00 p.m.

Health and Government Operations

**BUDGET BRIEFING SCHEDULE**

Thursday, February 20, 2020

**Coppin State University**

Senate Budget and Taxation Committee; Subcommittee on Education, Business and Administration

1 p.m.

West Miller Senate Building, Room 3

Thursday, February 20, 2020

**University of Baltimore**

House Appropriations Committee; Education and Economic Development Subcommittee

1 p.m.

Room 150 Lowe House Office Building

Friday, February 21, 2020

**University of Baltimore**

**University of Maryland, Baltimore County**

Senate Budget and Taxation Committee; Subcommittee on Education, Business and Administration

11:30 a.m.

West Miller Senate Building, Room 3

Wednesday, February 26, 2020

**Coppin State University**

**University of Maryland, Baltimore County**

House Appropriations Committee; Education and Economic Development Subcommittee

1 p.m.

Room 150 Lowe House Office Building