

**Testimony of**  
**J.H. Snider**  
**President, iSolon.org**  
**On House Bill 37**  
**Access to Public Records; Electronic Documents**  
**Before the Committee on Health and Government Operations**  
**Maryland House of Delegates**  
**February 1, 2011**

I want to applaud you for attempting to update Maryland's archaic Public Information Act and holding this hearing today. I'd guess we are all in agreement on the goal of making public records more accessible in an electronic format.

Last April I wrote an op-ed in the Washington Post entitled [Maryland's Fake Open Government](#), which I am submitting along with my written testimony today. The core problem addressed in that op-ed is the lack of credible enforcement of Maryland's existing Public Information Act. It's one thing to have laws mandating open government; it's a very different thing for those laws to be enforced when it's not in the self-interest of public officials to comply with the law.

The current law works reasonably well for powerful special interests who can afford to litigate and enforce the law. It also works reasonably well for the press, which can use the court of public opinion rather than the court of law to enforce the law. But for average citizens seeking to hold their government accountable, the law is often little more than a cruel joke.

Let us put aside the proposed law's many exemptions and vague language, which are likely to be abused by those seeking to avoid democratic accountability. Others have touched on those loopholes in their testimony.

So let's assume that the law is crystal clear about what is and is not legal. For the average citizen, the law would still amount to little more than empty parchment promises. To add credibility to open government laws, some states allow citizens to be reimbursed for their costs, including the cost of litigation, when seeking to enforce the law. Some even provide for sanctions when the government willfully violates the law. I would encourage you to add such reimbursement and sanction provisions to your legislation.

To add credibility to the law, it would also be desirable to add some privacy provisions to protect citizens from harassment when they try to enforce the law. The *New York Times* recently ran a front page story about an Indian peasant who was murdered by government officials who didn't want him seeking certain public records. This, to my knowledge, hasn't happened in Maryland. But other types of harassment are common and widely feared by average citizens seeking to use the Public Information Act. One easy solution

would be to require that public information officers who process the Public Information Act requests share those requests only on a need-to-know basis and don't disclose the name of the requester along with the request.

But the gold standard in public records law enforcement today is to put public records online so that the public need not file a Public Information Act request. By eliminating the need for a request, agencies can avoid penalties for non-compliance and citizens need not fear harassment because the information can be accessed anonymously.

I would suggest that the focus of this committee on modernizing the Public Information Act should be on putting records online—and to do so in a way that preserves both the data and metadata in the original public records.

For example, all new government computer database systems that cost more than \$100,000 should be required to be web accessible, with automatic redaction built into the design. With such a system, citizens would not have to file a Public Information Act request to access public information; they could simply access it online.

I would also suggest that preventing Maryland's government agencies from using computer technology to reduce openness should be a high priority, perhaps the highest priority of this committee. For example, recently purchased computer systems in Maryland have often been a disaster for public records access because instead of generating printed reports subject to the Public Information Act, agencies have simply been viewing the reports online, thus putting them beyond the reach of the public. Similarly, something as simple as authoritative time stamps on online documents—something we all take for granted on printed documents—are essential if public records are to have the same level of democratic accountability that they had in the print world.

I don't have time here to describe all the ways governments in Maryland are using new computer technology to avoid complying with both the spirit and letter of Maryland's Public Information Act. But I would suggest that this committee keep in mind the maxim: first, do no harm.

I think HB37 is a slight improvement on the status quo and therefore endorse it. But I'd also suggest that what you're doing is trying to fix a horse and buggy contraption (information-by-request) when the car (the Internet) has long since been invented. The horse and buggy owners are more than happy to distract you with such a public policy agenda. But I think it's sad that in the year 2011 we're having a debate we could have had decades ago and are so clearly missing the opportunities obvious for the grasping.

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