



**Report of the  
Office of Attorney General  
on the Public Security Exception  
of the Public Information Act**

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**REPORT OF THE OFFICE OF ATTORNEY GENERAL  
ON THE PUBLIC SECURITY EXCEPTION  
OF THE PUBLIC INFORMATION ACT**

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**Executive Summary**

In 2002, the General Assembly enacted a new exception to the Public Information Act that limited public access to certain records related to public security. At that time, the General Assembly also directed the Office of the Attorney General to report to the Governor and General Assembly in 2007 concerning “the continued necessity” of this exception and “any recommendations for changing or modifying” it.

The Office of the Attorney General submits this report in response to the direction of the General Assembly. As set forth in greater detail in the following pages, we make the these findings and recommendations:

- ◆ During the past five years, the public security exception has rarely been invoked to deny access to public records.
- ◆ There have been no reported court decisions applying the new exception.
- ◆ The exception should continue to be part of the Public Information Act.
- ◆ The exception should not be modified or amended at this time.

**I**

**Introduction**

The Maryland Public Information Act (“PIA”) provides the public with a broad right of access to records of State and local government, subject to various enumerated exceptions. In 2002, in the wake of the events of September 11, 2001, the General Assembly added an exception for certain records related to public security. Chapter 3, Laws of Maryland 2002, *codified at* Annotated Code of Maryland, State Government Article (“SG”), §10-618(j). That law required that the Office of the Attorney General provide a report in 2007 to the Governor and General Assembly on “the continued necessity” for the exception and any recommended changes to the provision.<sup>1</sup>

This report first summarizes the PIA and describes the legislation establishing the public security exception. It next reviews the application of the exception over the past five years, based upon the experience of the Office of the Attorney General and information obtained from other agencies, organizations, and individuals. Finally, it evaluates the need to retain or modify the exception.

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<sup>1</sup> The law required:

That, on or before December 1, 2007, the Office of the Attorney General shall review the changes made to §10-618 of the State Government Article by this Act and shall submit a report to the Governor and to the General Assembly, in accordance with §2-1246 of the State Government Article, on the continued necessity of this Act and any recommendations for changing or modifying this Act.

## **II**

### **Public Information Act**

#### ***A. Overview***

The PIA requires that, “except as otherwise provided by law,” a custodian of public records is to permit a member of the public “to inspect any public record at any reasonable time.” SG §10-613(a). However, as the introductory clause suggests, not all “public records” are available for inspection under the PIA.

The exceptions to the PIA’s general rule that public records are accessible by the public can be grouped into several categories. First, the PIA defers to various types of law – common law privileges, federal and State statutes, federal regulations, court rules, court orders – that may preclude disclosure of a record. SG §10-615.

Second, the PIA itself requires that certain records and specified categories of information be withheld from public inspection. SG §§10-616 and 10-617. These exceptions are sometimes referred to as “mandatory” exceptions or mandatory denials.

Third, with respect to certain types of records, the PIA gives the custodian of the record discretion to deny access to the record, or severable portions of the record, if the custodian “believes that inspection ... by the applicant would be contrary to the public interest.” SG §10-618. The exceptions in this category are sometimes referred to as “discretionary” exceptions.

Finally, the PIA includes a mechanism that, in appropriate circumstances, protects records from inspection even if no exception actually covers those records. If no provision of law or the PIA bars disclosure of a record, but the custodian believes that public inspection of the record would cause “substantial injury to the public interest,” the custodian may initially deny inspection and then seek a special court order to continue to deny inspection. SG §10-619.

***B. Public Security Exception***

The public security exception is one of the discretionary exceptions set forth in SG §10-618. Subject to the general conditions in SG §10-618(a), the exception is defined in SG §10-618(j). It reads as follows:

(a) Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

\* \* \*

(j) (1) Subject to paragraphs (2), (3), and (4) of this subsection, a custodian may deny inspection of:

(i) response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures;

(ii) 1. building plans, blueprints, schematic drawings, diagrams, operational manuals, or other records of airports and other mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are stored, arenas, stadiums, waste and water systems, and any other building, structure, or facility, the disclosure of which would reveal the building's, structure's or facility's internal layout, specific location, life, safety, and support systems, structural elements, surveillance techniques, alarm or security systems or technologies, operational and transportation plans or protocols, or personnel deployments; or

2. records of any other building, structure, or facility, the disclosure of which would reveal the

building's, structure's, or facility's life, safety, and support systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or personnel deployments; or

(iii) records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories.

(2) The custodian may deny inspection of a part of a public record under paragraph (1) of this subsection only to the extent that the inspection would:

(i) jeopardize the security of any building, structure, or facility;

(ii) facilitate the planning of a terrorist attack; or

(iii) endanger the life or physical safety of an individual.

(3) (i) Subject to subparagraph (ii) of this paragraph, a custodian may not deny inspection of a public record under paragraph (1) or (2) of this subsection that relates to a building, structure, or facility that has been subjected to a catastrophic event, including a fire, explosion, or natural disaster.

(ii) This paragraph does not apply to the records of any building, structure, or facility owned or operated by the State or any of its political subdivisions.

(4) (i) Subject to paragraphs (1) and (2) of this subsection and subparagraph (ii) of this paragraph, a custodian

may not deny inspection of a public record that relates to an inspection of or issuance of a citation concerning a building, structure, or facility by an agency of the State or any political subdivision.

(ii) This paragraph does not apply to the records of any building, structure, or facility owned or operated by the State or any of its political subdivisions.

The exception was enacted as emergency legislation effective April 9, 2002. Chapter 3, §3, Laws of Maryland 2002. As originally enacted, the public security exception focused on records related to public buildings and facilities. In 2003, it was amended to encompass public records related to a broader class of buildings and facilities, including privately owned ones. Chapter 110, Laws of Maryland 2003. Copies of the 2002 and 2003 legislation appear in Appendix A to this Report.

Many other states also added public security exceptions to their public records statutes in the wake of the events of September 11, 2001. *See* Appendix B.

### **III**

#### **Experience under the Public Security Exception**

##### ***A. Case Law***

There have been no published court decisions applying SG §10-618(j).<sup>2</sup> Nor are we aware of any unreported decisions construing the exception.

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<sup>2</sup> In *Police Patrol Security Systems, Inc. v. Prince George's County*, 378 Md. 702, 838 A.2d 1191 (2003), the Court of Appeals held that SG §10-618(j) would apply to a PIA request that was pending at the time of its enactment. However, the Court did not decide whether the exception would bar disclosure of the records at issue in that case.

***B. Agency Application of the Exception***

**1. Survey and Request for Information and Comment**

To assess the experience under this exception over the past five years, we solicited information from State and local government agencies and the public. During the spring of 2007, a questionnaire was distributed to Assistant Attorneys General and public information officers in State agencies, to various local government organizations, such as the Maryland Association of Counties, the Maryland Municipal League, and the Maryland Association of Boards of Education, for distribution to their membership, to the Maryland-Delaware-District of Columbia Press Association, and to other interested parties. The questionnaire was also published in the Maryland Register, 34:16 Md. Reg. 1427 (August 3, 2007), and posted on the website of the Office of the Attorney General for several months. A copy of the questionnaire, entitled Request for Information and Comment, appears in Appendix C. A sampling of the written responses that we received is included in Appendix D.

**2. Responses**

The vast majority of the government agencies surveyed reported either orally or in writing that they had never used the exception. In our own experience in the Attorney General's Office as counsel to State agencies, the exception has seldom been invoked to deny access to State records. Local governments and political subdivisions likewise reported few instances in which the exception was asserted to shield records from public disclosure. In total, no more than a dozen instances involving the exception were described in the responses.

At least two agencies have decided not to invoke the public security exception and allowed access to records covered by the exception when the requester agreed to certain conditions. First, one agency reported that it had considered asserting the exception to deny access to such records, but had instead allowed inspection of those records when the requester agreed to forego requesting a copy. A second agency indicated that, in some circumstances in which it would otherwise assert the exception, it did not do so when the requester agreed to undergo a background check. In particular, the Washington Suburban Sanitary Commission stated that it

has invoked this exception to deny a request for detailed records relating to plans and specifications of water and wastewater systems. However, given that engineers and applicants for new service need the information to design new connections to the system, it has permitted access after the requester undergoes a background check. *See* Appendix D.

It might be argued that these approaches are at odds with the PIA. The PIA generally does not allow agencies to condition access to records on disclosure of the identity, affiliation, or purpose of the requester. *See* SG §10-614(c).<sup>3</sup> Also, the general rule under the PIA is that the right to inspect a public record also includes the right to a copy of that record. *See* SG §10-613(a)(2) (“Inspection or copying of a public record may be denied only to the extent provided under [the PIA]”); §10-620 (“an applicant who is authorized to inspect a public record may have ...a copy, printout, or photograph of the public record”).

However, the practical compromises devised by these agencies may allow greater access to records than might otherwise occur – *i.e.*, the custodian might otherwise deny access to the records altogether under SG §10-618(j) without some assurances as to the identity and background of the individual requesting the record or with the possibility of copies of the entire record circulating outside the agency.

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<sup>3</sup> The statute provides:

(1) Except to the extent that the grant of an application is related to the status of the applicant as a person in interest and except as required by other law or regulation, the custodian may not condition the grant of any application on:

- (i) the identity of the applicant;
- (ii) any organizational or other affiliation of the applicant; or
- (iii) a disclosure by the applicant of the purpose for an application.

SG §10-614(c).

The statutory language accommodates these approaches. SG §10-618(j) authorizes a custodian to deny inspection of specified types of records related to public security “only to the extent” that inspection threatens public security in certain specified ways – jeopardizes building or facility security, facilitates the planning of terrorist attack, or endangers life. Among the exceptions in the PIA, this exception is unusual in that it requires the custodian to assess, in light of the particular circumstances, the “extent” to which an adverse outcome will result from inspection.<sup>4</sup> The custodian’s judgment inevitably depends on both the nature of the record and on other information available to the custodian. Although a custodian cannot require a requester to provide any information or assurances beyond the requirements of the PIA, the custodian may reasonably take into account any information that the requester voluntarily provides that could affect that judgment.

For example, there may be records that fall within SG §10-618(j) and that the custodian reasonably believes should not be generally available for public inspection in full because they would facilitate a terrorist attack. Under the PIA, a requester is not required to undergo a background check and a custodian of records cannot insist on one. However, if the requester voluntarily undergoes such a background check, the custodian may have additional information from which he or she may reasonably conclude that the inspection of those records is not likely to be used for that purpose. In this respect, the public security exception is unlike other exceptions in the PIA, which generally do not require the custodian to assess “the extent” to which inspection will result in an adverse outcome and thus generally do not allow for different decisions on access depending on information independent of the record itself that is available to the custodian.<sup>5</sup>

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<sup>4</sup> The other exceptions in the PIA that employ the phrase “only to the extent” are SG §10-617(j) (records relating to notary publics) and SG §10-618(f) (investigatory records). In both of those instances a custodian may deny a “person in interest” access to the specified records “only to the extent” that certain enumerated harms could occur – *e.g.* disclosure of a confidential source.

<sup>5</sup> Massachusetts has adopted a similar approach in construing a public security exception recently added to its public records law. *See* Massachusetts Supervisor of Public Records, Bulletin No. 04-03 (April 1, 2003) (although a custodian ordinarily may not inquire as to the identity and motive of a requester, a custodian who would otherwise deny access under the public security exception may solicit information from the requester and, (continued...))

The most extensive response received was from the Maryland-Delaware-District of Columbia Press Association (“MDDC”). MDDC reported that it had surveyed its members and had discovered one instance in which it believed that the exception was improperly asserted to deny access to records that are open to public inspection under federal law. *See* MDDC Response in Appendix D. That instance related to requests made by various reporters earlier this year as part of a project to test the availability of comprehensive emergency response plans under public records laws. *See* The Sunshine Week 2007 National Information Audit: Comprehensive Emergency Response Plans (2007). The sponsors of the project, which was nationwide in scope, took the position that the records requested were available under federal law – in particular, the Emergency Planning and Community Right-to-Know Act of 1986, 43 U.S.C. §11044. As part of that project, various volunteers, including reporters in Maryland, requested access to such plans from government agencies under the PIA. Subsequent newspaper reports indicated that some jurisdictions had declined to provide access to the plans. *See, e.g.,* Lee, *Audit Reveals Rampant Secrecy*, Carroll County Times (March 11, 2007); Childers, *AA, QA counties deny access to hazmat plans*, The Capital (March 10, 2007).

Without assessing the merits of the instance cited by MDDC, we note that, like the other sections setting forth exceptions to the PIA’s general rule of public access, SG §10-618 begins with the phrase “unless otherwise provided by law.” The PIA generally defers to other law. Thus, if federal law – or another State law – were to provide for public access to a particular type of record, that law would trump the public security exception in the PIA. Conversely, if another federal or State law makes a particular record confidential, that law would trump the PIA’s general rule of public access. *See, e.g.,* 6 U.S.C. §133(a)(1)(E).<sup>6</sup>

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<sup>5</sup> (...continued)  
if the requester voluntarily provides that information, grant access).

<sup>6</sup> This federal statute, which was enacted in 2002 in connection with the creation of the Department of Homeland Security, provides that “critical infrastructure information” that is voluntarily submitted to a federal agency with an express statement invoking the confidentiality provision of that law:

Shall not, if provided to a State or local government or  
(continued...)

**IV**

**Continuation or Modification of the Exception**

***A. Views Expressed in Response to Survey***

All agency respondents to our survey who have had experience with the public security exception endorsed the retention of the provision in the PIA. The agency respondents who had not previously relied on this exception to deny access – a majority of agencies – either expressed no opinion concerning the public security exception or recommended its retention in its current form. Individual respondents also favored retention of the exception. No respondent suggested that it be repealed.

MDDC did not object to retention of the exception, but specifically opposed any effort to broaden it, asserting that SG §10-618(j) “strikes an appropriate balance between the interests in access to public records and the threat posed by terrorism.” However, MDDC recommended further review of the exception five years from now

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<sup>6</sup> (...continued)

government agency –

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act...

6 U.S.C. §133(a)(1)(E). One commentator has suggested that this statute may exceed the constitutional authority of Congress in displacing state authority. O’Reilly, *Federal Information Disclosure* (3d ed. 2000), June 2007 Supp. at p. 216. It is not clear whether this concern would pertain to Maryland, as the PIA itself generally defers to other federal and State laws and thus generally prohibits disclosure of records made confidential under federal law. Moreover, the statute apparently does not apply to information obtained by a State by means other than from a federal agency. 6 U.S.C. §133(c). There are no court decisions to date on this issue.

and continued training of State and local employees to ensure consistent and proper handling of PIA requests generally, and specifically of requests for records covered by SG §10-618(j).

Several respondents either explicitly or implicitly suggested possible amendment of the exception. One journalist expressed the view that the exception, as it currently reads, is “too broadly written” and also suggested that custodians “should have to demonstrate the potential consequences of a disclosed document.”

Another respondent suggested that the public security exception could be converted from a “discretionary” exception – *i.e.*, the custodian exercises a judgment whether it is against the public interest to disclose the particular record – to a “mandatory” exception – the custodian is forbidden by statute from disclosing the record. Such an amendment would essentially require moving the provision to either SG §10-616 (mandatory exceptions with respect to certain types of records) or SG §10-617 (mandatory exceptions with respect to certain types of information).

### ***B. Recommendation***

Prior to enactment of SG §10-618(j), the PIA contained no exception that clearly permitted a custodian of records to withhold access to sensitive records concerning the vulnerability of buildings and facilities that might be the target of a terrorist attack.<sup>7</sup> By contrast, the Open Meetings Act had long allowed for a meeting to be closed for discussions related to public security. *See* SG §10-508(a)(10) (meeting may be closed to “discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security ...”). The federal Freedom of Information Act (“FOIA”) likewise includes provisions addressed to public security concerns. *See* 5 U.S.C. §552(b)(1), (3); *see also* U.S. Department of Justice, *Freedom of Information Act Guide and Privacy Act Overview*

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<sup>7</sup> Prior to the enactment of SG §10-618(j), the statute permitted a custodian to withhold records related to the security procedures of law enforcement agencies (SG §10-618(f)) and of computer information systems (SG §10-617(g)). These exceptions remain in place. There was also, as there is today, the option for an agency to seek a court order to withhold records when no particular exception applies, if inspection would cause “substantial injury to the public interest.” SG §10-619.

at 142-91 (May 2004). In our view, the addition of SG §10-618(j) filled a gap in the PIA. Such an exception should remain part of the PIA.

We do not recommend modification of SG §10-618(j) at this time. The limited use of the exception – and the little litigation concerning it – suggests that agencies are employing the exception judiciously. Although the language of the exception may appear broadly worded in some respects and excruciatingly detailed in others, the few disputes that have arisen to date under the exception have not involved questions about interpretation of its language. Based on the comments and information we have received, we do not perceive a need to modify the exception at this time.

As noted above, it has also been suggested that the public security exception might be converted from a discretionary exception into a mandatory exception that eliminates the discretion on the part of the custodian. We do not recommend that the exception be amended in that manner. Custodians should, of course, withhold records concerning building plans of airports and transportation facilities, building security systems, emergency medical facilities, etc., if they find pursuant to SG §10-618(j) that disclosure would be against the public interest because it would jeopardize the security of a building, facilitate a terrorist attack, or endanger human life or safety. In our experience, agency custodians are appropriately concerned about those dangers. However, the assessment of those factors requires the exercise of judgment by the custodian. Classifying the exception as a “mandatory” one will not eliminate the need for the exercise of reasonable judgment, but may just confuse the nature of the determination being made by the custodian.<sup>8</sup>

We agree with the suggestion that continued training of State and local employees is needed to ensure that PIA requests are handled appropriately. The Office of the Attorney General will continue to provide such training. We will supplement our training materials to address specifically the public security exception and, as we have done in the past, will invite local government officials,

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<sup>8</sup> It is notable that the Maryland PIA is unusual in having “mandatory” denials. In the federal FOIA and the vast majority of state public records laws, the exceptions simply “exempt” particular records of information from an otherwise automatic right of public access.

the media, and other interested parties to contribute to the content of those materials. As issues involving SG §10-618(j) may arise, we will include them in our training materials.

We do not recommend that the General Assembly formally require a review by the Attorney General's Office five years hence. However, this Office stands ready to respond to the Legislature or Governor about our experience with the public security exception, even in the absence of legislation requiring such a formal report.

**V**

**Conclusion**

The public security exception in SG §10-618(j) has now been part of the PIA for more than five years. It filled a pre-existing gap in the PIA and permits agencies to control access to specific records that may be most useful to those seeking to commit terrorist acts or to cause harm to the public. As best we have been able to determine, it has seldom been invoked to deny access to public records. We recommend the continuation of the exception. Like virtually all respondents to our survey, we do not believe that it is necessary to amend the provision.

Douglas F. Gansler  
Attorney General

# Appendix A

# Chapter 3, Laws of Maryland 2002

## CHAPTER 3

(Senate Bill 240)

AN ACT concerning

### State Government - Access to Public Records - Public Security Documents

FOR the purpose of establishing the circumstances under which a custodian may deny inspection of certain records relating to public security; requiring the Office of the Attorney General to report to the Governor and the General Assembly on or before a certain date; making this Act an emergency measure; and generally relating to the inspection of public records.

BY repealing and reenacting, without amendments,

Article - State Government

Section 10-618(a), 10-622, and 10-623

Annotated Code of Maryland

(1999 Replacement Volume and 2001 Supplement)

BY adding to

Article - State Government

Section 10-618(j)

Annotated Code of Maryland

(1999 Replacement Volume and 2001 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

### Article - State Government

10-618.

(a) Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

~~(J) A CUSTODIAN MAY DENY INSPECTION OF A PUBLIC RECORD THAT CONTAINS INFORMATION DISCLOSING OR RELATING TO PUBLIC SECURITY IF THE CUSTODIAN DETERMINES THAT INSPECTION OF THE INFORMATION WOULD CONSTITUTE A RISK TO THE PUBLIC OR TO PUBLIC SECURITY~~

(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A CUSTODIAN MAY DENY INSPECTION OF:

(I) RESPONSE PROCEDURES OR PLANS PREPARED TO PREVENT OR RESPOND TO EMERGENCY SITUATIONS, THE DISCLOSURE OF WHICH WOULD REVEAL VULNERABILITY ASSESSMENTS, SPECIFIC TACTICS, SPECIFIC EMERGENCY PROCEDURES, OR SPECIFIC SECURITY PROCEDURES;

## Chapter 3, Laws of Maryland 2002

(II) 1. BUILDING PLANS, BLUEPRINTS, SCHEMATIC DRAWINGS, DIAGRAMS, OPERATIONAL MANUALS, OR OTHER RECORDS OF AIRPORTS AND OTHER MASS TRANSIT FACILITIES, BRIDGES, TUNNELS, EMERGENCY RESPONSE FACILITIES OR STRUCTURES, BUILDINGS WHERE HAZARDOUS MATERIALS ARE STORED, ARENAS, STADIUMS, AND WASTE AND WATER SYSTEMS, THE DISCLOSURE OF WHICH WOULD REVEAL THE BUILDING'S OR STRUCTURE'S INTERNAL LAYOUT, SPECIFIC LOCATION, LIFE, SAFETY, AND SUPPORT SYSTEMS, STRUCTURAL ELEMENTS, SURVEILLANCE TECHNIQUES, ALARM OR SECURITY SYSTEMS OR TECHNOLOGIES, OPERATIONAL AND TRANSPORTATION PLANS OR PROTOCOLS, OR PERSONNEL DEPLOYMENTS; OR

2. RECORDS OF ANY OTHER BUILDING OR STRUCTURE OWNED OR OPERATED BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS, THE DISCLOSURE OF WHICH WOULD REVEAL THE BUILDING'S OR STRUCTURE'S LIFE, SAFETY, AND SUPPORT SYSTEMS, SURVEILLANCE TECHNIQUES, ALARM OR SECURITY SYSTEMS OR TECHNOLOGIES, OPERATIONAL AND EVACUATION PLANS OR PROTOCOLS, OR PERSONNEL DEPLOYMENTS; OR

(III) RECORDS PREPARED TO PREVENT OR RESPOND TO EMERGENCY SITUATIONS IDENTIFYING OR DESCRIBING THE NAME, LOCATION, PHARMACEUTICAL CACHE, CONTENTS, CAPACITY, EQUIPMENT, PHYSICAL FEATURES, OR CAPABILITIES OF INDIVIDUAL MEDICAL FACILITIES, STORAGE FACILITIES, OR LABORATORIES ESTABLISHED, MAINTAINED, OR REGULATED BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

(2) THE CUSTODIAN MAY DENY INSPECTION OF A PART OF A PUBLIC RECORD UNDER PARAGRAPH (1) OF THIS SUBSECTION ONLY TO THE EXTENT THAT THE INSPECTION WOULD:

(I) JEOPARDIZE THE SECURITY OF ANY STRUCTURE OWNED OR OPERATED BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS;

(II) FACILITATE THE PLANNING OF A TERRORIST ATTACK; OR

(III) ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL.

10-622.

(a) This section does not apply when the official custodian temporarily denies inspection under § 10-619 of this subtitle.

(b) If a unit is subject to Subtitle 2 of this title, a person or governmental unit may seek administrative review in accordance with that subtitle of a decision of the unit, under this Part III of this subtitle, to deny inspection of any part of a public record.

(c) A person or governmental unit need not exhaust the remedy under this section before filing suit.

10-623.

(a) Whenever a person or governmental unit is denied inspection of a public record, the person or governmental unit may file a complaint with the circuit court for the county where:

(1) the complainant resides or has a principal place of business; or

(2) the public record is located.

(b) (1) Unless, for good cause shown, the court otherwise directs and notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to the complaint within 30 days after service of the complaint.

## Chapter 3, Laws of Maryland 2002

(2) The defendant:

(i) has the burden of sustaining a decision to deny inspection of a public record; and

(ii) in support of the decision, may submit a memorandum to the court.

(c) (1) Except for cases that the court considers of greater importance, a proceeding under this section, including an appeal, shall:

(i) take precedence on the docket;

(ii) be heard at the earliest practicable date; and

(iii) be expedited in every way.

(2) The court may examine the public record in camera to determine whether any part of it may be withheld under this Part III of this subtitle.

(3) The court may:

(i) enjoin the State, a political subdivision, or a unit, official, or employee of the State or of a political subdivision from withholding the public record;

(ii) pass an order for the production of the public record that was withheld from the complainant; and

(iii) for noncompliance with the order, punish the responsible employee for contempt.

(d) (1) A defendant governmental unit is liable to the complainant for actual damages and any punitive damages that the court considers appropriate if the court finds that any defendant knowingly and willfully failed to disclose or fully to disclose a public record that the complainant was entitled to inspect under this Part III of this subtitle.

(2) An official custodian is liable for actual damages and any punitive damages that the court considers appropriate if the court finds that, after temporarily denying inspection of a public record, the official custodian failed to petition a court for an order to continue the denial.

(e) (1) Whenever the court orders the production of a public record that was withheld from the applicant and, in addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record, the court shall send a certified copy of its finding to the appointing authority of the custodian.

(2) On receipt of the statement of the court and after an appropriate investigation, the appointing authority shall take the disciplinary action that the circumstances warrant.

(f) If the court determines that the complainant has substantially prevailed, the court may assess against a defendant governmental unit reasonable counsel fees and other litigation costs that the complainant reasonably incurred.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1, 2007, the Office of the Attorney General shall review the changes made to § 10-618 of the State Government Article by this Act and shall submit a report to the Governor and to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the continued necessity of this Act and any recommendations for changing or modifying this Act.

SECTION 2-3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

# Chapter 110, Laws of Maryland 2003

## CHAPTER 110

(Senate Bill 733)

AN ACT concerning

### Homeland Security - Protection of Building Records

FOR the purpose of expanding the circumstances under which a custodian of public records relating to public security may deny inspection to include records of certain facilities and privately owned or operated buildings, structures, or facilities; providing that a custodian may not deny inspection of certain records relating to certain buildings, building inspections, and citations; making this Act an emergency measure; and generally relating to inspection of public records.

BY repealing and reenacting, without amendments,

Article - State Government

Section 10-618(a)

Annotated Code of Maryland

(1999 Replacement Volume and 2002 Supplement)

BY repealing and reenacting, with amendments,

Article - State Government

Section 10-618(j)

Annotated Code of Maryland

(1999 Replacement Volume and 2002 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### Article - State Government

10-618.

(a) Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

(j) (1) Subject to ~~paragraph (2)~~ PARAGRAPHS (2), (3), AND (4) of this subsection, a custodian may deny inspection of:

(i) response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures;

(ii) 1. building plans, blueprints, schematic drawings, diagrams, operational manuals, or other records of airports and other mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are stored, arenas, stadiums, and waste and water systems, AND ANY OTHER BUILDING, STRUCTURE, OR FACILITY, the disclosure of which would reveal the building's [or], structure's OR FACILITY'S internal layout, specific location, life, safety, and support systems, structural elements, surveillance techniques, alarm or security systems or technologies, operational and transportation plans or protocols, or personnel deployments; or

## Chapter 110, Laws of Maryland 2003

2. records of any other building [or], structure, OR FACILITY [owned or operated by the State or any of its political subdivisions], the disclosure of which would reveal the building's [or], structure's, OR FACILITY'S life, safety, and support systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or personnel deployments; or

(iii) records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories [established, maintained, or regulated by the State or any of its political subdivisions].

(2) The custodian may deny inspection of a part of a public record under paragraph (1) of this subsection only to the extent that the inspection would:

(i) jeopardize the security of any BUILDING, structure, OR FACILITY [owned or operated by the State or any of its political subdivisions];

(ii) facilitate the planning of a terrorist attack; or

(iii) endanger the life or physical safety of an individual.

(3) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A CUSTODIAN MAY NOT DENY INSPECTION OF A PUBLIC RECORD UNDER PARAGRAPH (1) OR (2) OF THIS SUBSECTION THAT RELATES TO A BUILDING, STRUCTURE, OR FACILITY THAT HAS BEEN SUBJECTED TO A CATASTROPHIC EVENT, INCLUDING TO A FIRE, EXPLOSION, OR NATURAL DISASTER.

(II) THIS PARAGRAPH DOES NOT APPLY TO THE RECORDS OF ANY BUILDING, STRUCTURE, OR FACILITY OWNED OR OPERATED BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

(4) (I) SUBJECT TO PARAGRAPHS (1) AND (2) OF THIS SUBSECTION AND SUBPARAGRAPH (II) OF THIS PARAGRAPH, A CUSTODIAN MAY NOT DENY INSPECTION OF A PUBLIC RECORD THAT RELATES TO AN INSPECTION OF OR ISSUANCE OF A CITATION CONCERNING A BUILDING, STRUCTURE, OR FACILITY BY AN AGENCY OF THE STATE OR ANY POLITICAL SUBDIVISION.

(II) THIS PARAGRAPH DOES NOT APPLY TO THE RECORDS OF ANY BUILDING, STRUCTURE, OR FACILITY OWNED OR OPERATED BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved April 22, 2003.

## Appendix B

## Appendix B

### Selected Statutory Provisions in Other States

While the precise language and structure of public records laws vary among the states, most such laws include a public security exception. Many of those provisions have been added to state law during the past five years. Those provisions typically exclude from the definition of public record, or exempt from the right of public access, records and information related to “critical infrastructure”, vulnerability assessments, emergency response plans, building and facility plans, records relating to public water systems, and similar records. Some statutes condition the exception on the custodian’s determination that disclosure would cause harm to the public safety or welfare or could reasonably be expected to cause some similar harm. Below is a list of those statutes:

*Alabama:* Ala. Code, §36-12-40.

*Arkansas:* Ark. Code Ann. §25-19-105(16).

*California:* Ca. Govt Code §6254 (aa), (bb).

*Delaware:* 29 Del. C. §10002(g)(16).

*District of Columbia:* D.C. Code Ann. §2-534(a)(7).

*Florida:* F.S.A. §119.071(3)(a)(1)-(6).

*Georgia:* O.C.G.A. §50-1872(a)(15)(A).

*Illinois:* 5 ILCS 140/7(k), (ll), (mm).

*Indiana:* Ind. Code §5-14-3-4(b).

*Iowa:* Iowa Code §22.7(47).

*Kansas:* K.S.A. §45-221(a)(45).

*Kentucky:* KRS §61.878(1)(m).

*Louisiana:* La. Rev. Stat. Ann. §§44:3.1, 44:4.1(15.1), 44:4.1(19).

*Maine:* 1 M.R.S.A. §614(1)(A),(G).

*Massachusetts:* Mass. G.L. c.4, §7, cl.26(n).

*Michigan:* MCLA §15.243(1)(y).

*Missouri:* Mo.Rev.Stat. §610.021(18).

*Nebraska:* Neb. Rev. Stat. §84-712.05(8).

*Nevada:* NRS §239C.210, 220.

*New Hampshire:* NH RSA §91-A:5, IV and VI.

*New Jersey:* N.J.S.A. §47:1A.

*New Mexico:* NMSA §14-2-1(A)(8).

*New York:* N.Y. Pub. Off. §87(2)(f), (i).

*North Carolina:* N.C.G.S. §132.1.7.

*North Dakota:* N.D.C.C. §44-04-25.

*Ohio:* Ohio Rev. Code §§149.433.

*Oklahoma:* Okla. Stat. §24A.28.

*Oregon:* ORS §192.502(31), (32).

*South Carolina:* S.C. Code Ann. §30-4-45.

*Tennessee:* T.C.A. §10-7-504(a)(21).

*Texas:* Tex. Gov't Code Ann. §§418.176 through 418.182.

*Utah:* Utah Code Ann. §63-2-106.

*Virginia:* Va. Code §2.2-3705.2.

*Washington:* RCW §42.56.420.

*West Virginia:* W.Va. Code §29B-1-4(9)-(16).

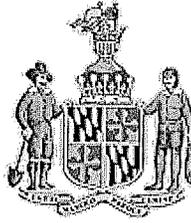
*Wisconsin:* Wis. Stat. §19.36(9).

*Wyoming:* Wyo. Stat. §16-4-203(b)(vi).

*See also* Open Government Guide (5<sup>th</sup> ed. 2006) (describing, among other things, the “homeland security” exceptions in public records law of each state).

## Appendix C

DOUGLAS F. GANSLER  
Attorney General



KATHERINE WINFREE  
Chief Deputy Attorney General

JOHN B. HOWARD, JR.  
Deputy Attorney General

STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

TELECOPIER NO.

WRITER'S DIRECT DIAL NO.

## Request for Information and Comment

The Maryland Public Information Act provides a general right of access to public records in the custody of the State and local governments. There are a number of exceptions to this general rule set forth in the statute. In 2002, in the wake of the terrorist attacks the previous year, the Maryland General Assembly added an exception for records related to public security. Chapter 3, Laws of Maryland 2002. The new exception is codified at Annotated Code of Maryland, State Government Article ("SG"), §10-618(j). A copy of the text of that exception is attached.

The 2002 law also required that "on or before December 1, 2007, the Office of the Attorney General shall review the changes ... and shall submit a report to the Governor and to the General Assembly ... on the continued necessity of this Act and any recommendations for changing or modifying this Act." In order to prepare the required report, this Office seeks information and the views of interested parties concerning this exception.

### *State and local government agencies:*

Have you invoked SG §10-618(j) in connection with a denial of access to public records? If so, please describe the nature of the request and the circumstances of the denial of access.

### *Members of the public:*

Has a government agency cited SG §10-618(j) to justify a refusal to allow you to inspect or copy public records? If so, please describe the nature of the request and the circumstances of the denial of access.

---

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Health Advocacy Unit Toll Free (877) 261-8807 ♦ Homebuilders Division Toll Free (877) 259-4525 ♦ Telephone for Deaf: (410) 576-6372

[www.oag.state.md.us](http://www.oag.state.md.us)

*All interested parties:*

What views, if any, do you have as to the merits of retaining SG §10-618(j) as part of the Public Information Act? Please explain your view.

Do you believe that SG §10-618(j) should be changed or modified in any way? Please explain in detail.

*Please provide your response in writing on or before September 1, 2007, to:*

*Kathleen M. Izdebski  
Opinions and Advice Division  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, Maryland 21202*

*or e-mail your response to: [PIA@oag.state.md.us](mailto:PIA@oag.state.md.us)*

*Annotated Code of Maryland, State Government Article, §10-618(a), (j):*

(a) Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

\* \* \* \* \*

(j) (1) Subject to paragraphs (2), (3), and (4) of this subsection, a custodian may deny inspection of:

(i) response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures;

(ii) 1. building plans, blueprints, schematic drawings, diagrams, operational manuals, or other records of airports and other mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are stored, arenas, stadiums, waste and water systems, and any other building, structure, or facility, the disclosure of which would reveal the building's, structure's or facility's internal layout, specific location, life, safety, and support systems, structural elements, surveillance techniques, alarm or security systems or technologies, operational and transportation plans or protocols, or personnel deployments; or

2. records of any other building, structure, or facility, the disclosure of which would reveal the building's structure's, or facility's life, safety, and support systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or personnel deployments; or

(iii) records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories.

(2) The custodian may deny inspection of a part of a public record under paragraph (1) of this subsection only to the extent that the inspection would:

(i) jeopardize the security of any building, structure, or facility;

(ii) facilitate the planning of a terrorist attack; or

(iii) endanger the life or physical safety of an individual.

(3) (i) Subject to subparagraph (ii) of this paragraph, a custodian may not deny inspection of a public record under paragraph (1) or (2) of this subsection that relates to a building, structure, or facility that has been subjected to a catastrophic event, including a fire, explosion, or natural disaster.

(ii) This paragraph does not apply to the records of any building, structure, or facility owned or operated by the State or any of its political subdivisions.

(4) (i) Subject to paragraphs (1) and (2) of this subsection and subparagraph (ii) of this paragraph, a custodian may not deny inspection of a public record that relates to an inspection of or issuance of a citation concerning a building, structure, or facility by an agency of the State or any political subdivision.

(ii) This paragraph does not apply to the records of any building, structure, or facility owned or operated by the State or any of its political subdivisions.

If the proposed constitutional amendment is not ratified in 2008, we recommend that the Legislature revisit EL §9-304 in light of Capozzi.

### III

#### Conclusion

For the reasons stated above, the absentee ballot oath should track the language of Article I, §3 — that is, the voter should be required to swear or affirm that he or she will be absent or will be unable to vote in person on election day. If an amendment of Article I, §3 passed by the General Assembly at its 2007 session is ratified by the voters, the absentee ballot forms should be amended to track the amended provision or any legislation governing absentee ballots consistent with that provision.

Douglas F. Gansler, Attorney General  
Mark J. Davis, Assistant Attorney General  
Robert N. McDonald, Chief Counsel, Opinions and Advice

[07-16-23]

#### REQUEST FOR INFORMATION AND COMMENT

The Maryland Public Information Act provides a general right of access to public records in the custody of the State and local governments. There are a number of exceptions to this general rule set forth in the statute. In 2002, in the wake of the terrorist attacks the previous year, the Maryland General Assembly added an exception for records related to public security. Chapter 3, Laws of Maryland 2002. The new exception is codified at Annotated Code of Maryland, State Government Article ("SG"), §10-618(j). A copy of the text of that exception is attached.

The 2002 law also required that "on or before December 1, 2007, the Office of the Attorney General shall review the changes . . . and shall submit a report to the Governor and to the General Assembly . . . on the continued necessity of this Act and any recommendations for changing or modifying this Act." In order to prepare the required report, this Office seeks information and the views of interested parties concerning this exception.

##### **State and local government agencies:**

Have you invoked SG §10-618(j) in connection with a denial of access to public records? If so, please describe the nature of the request and the circumstances of the denial of access.

##### **Members of the public:**

Has a government agency cited SG §10-618(j) to justify a refusal to allow you to inspect or copy public records? If so, please describe the nature of the request and the circumstances of the denial of access.

##### **All interested parties:**

What views, if any, do you have as to the merits of retaining SG §10-618(j) as part of the Public Information Act? Please explain your view.

Do you believe that SG §10-618(j) should be changed or modified in any way? Please explain in detail.

Please provide your response in writing on or before September 1, 2007, to:

Kathleen M. Izdebski  
Opinions and Advice Division  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, Maryland 21202

or e-mail your response to: PIA@oag.state.md.us

#### **Annotated Code of Maryland, State Government Article, §10-618(a), (j):**

(a) Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

\* \* \* \* \*

(j) (1) Subject to paragraphs (2), (3), and (4) of this subsection, a custodian may deny inspection of:

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[07-16-33]

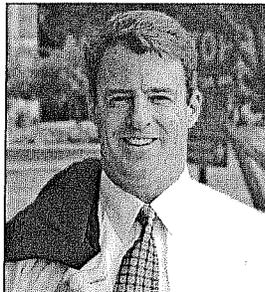


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Demonstrating his commitment to cleaning up the Chesapeake Bay, Maryland Attorney General Douglas F. Gansler kicked off his first annual "Clean Up Day for the Bay" at Middle Branch Park on Saturday, June 2, 2007. More than 200 employees of the Office of the Attorney General and their families and friends worked with the Jones Falls Watershed Association and the Baltimore Harbor Waterkeeper to clean up the shoreline of the Middle Branch of the Patapsco River in Baltimore City, removing invasive plants and trash from the shoreline and park.

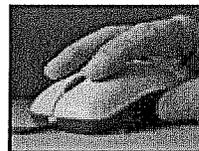
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## Appendix D

**COMMENTS OF THE MARYLAND-DELAWARE-DISTRICT OF COLUMBIA  
PRESS ASSOCIATION ON THE PUBLIC INFORMATION ACT EXCEPTION  
FOR RECORDS RELATED TO PUBLIC SECURITY**

October 3, 2007

The Maryland-Delaware-District of Columbia Press Association ("MDDC") respectfully submits the following information and comment on the Public Information Act exception for records related to public security ("Section 10-618(j)"). We understand that these comments will be used in connection with the Attorney General's required review and report to the Governor and the General Assembly on the continued necessity of the exception and recommendations for changes or modifications (if any).

MDDC is a nonprofit membership corporation whose approximately 165 newspaper members include The Baltimore Sun, The Washington Post, all of the dailies and virtually all of the non-daily newspapers published in Maryland, Delaware and the District of Columbia. MDDC and its members are vitally interested in the Maryland Public Information Act ("PIA"), MD State Gov't Code §10-611 *et seq.*, which we use on a regular basis to report on matters of public interest, including the workings of public bodies in Maryland.

MDDC does not object to retaining Section 10-618(j) in its current form, but we do not believe that the exception should be expanded further. We also recommend that the Attorney General review Section 10-618(j) again in five years, and that State and local employees receive adequate training to ensure effective implementation.

Below are MDDC's responses to the specific questions asked in the Attorney General's Request for Information and Comment:

**1. Has a government agency cited SG § 10-618(j) to justify a refusal to allow you to inspect or copy public records? If so, please describe the nature of the request and the circumstances of the denial of access.**

Yes. We surveyed our membership to find out whether a government agency had cited Section 10-618(j) as a basis for denying a PIA request to inspect records. We discovered at least one instance where it was asserted as the basis for denying inspection of records.

In the Spring of 2007, MDDC participated in a statewide Sunshine Week 2007 national audit. As part of the audit, the Capital-Gazette Newspapers sent someone to the Anne Arundel Local Emergency Planning Committee ("LEPC") to inspect its Comprehensive Emergency Response Plan ("CERP"), a document that is public under the federal Emergency Planning and Community Right-to-Know Act of 1986. The CERP contains information local officials will need if there is a chemical spill or other event involving hazardous materials.

The request was referred to the Anne Arundel County Attorney's Office, which subsequently responded in a letter that the newspaper was required to resubmit its request to the Maryland Department of the Environment. The County Attorney further denied the request "to the extent that any information you request is not covered by other federal or State law, in accordance with § 10-618(j) of the Act." A copy of the letter is attached hereto, as well as an article by Jim Lee of the Carroll County Times summarizing the statewide audit results.

**2. What views, if any, do you have as to the merits of retaining SG §10-618(j) as part of the Public Information Act? Please explain your view.**

MDDC does not oppose retaining Section 10-618(j) as part of the Public Information Act.

We believe that Section 10-618(j) strikes an appropriate balance between the interests in access to public records and the threat posed by terrorism. MDDC supported the exception after it was amended to ensure that inspection of covered records would be denied only to the extent it would jeopardize the security of any building, structure, or facility, endanger the life or physical safety of an individual, or facilitate the planning of a terrorist attack. Our support was also based on the fact that the exception did not extend to inspection records of State or local governments, or citations issued by State or local governments, of private-sector buildings, structures, or facilities that have experienced a catastrophic event, and that the Attorney General would review implementation after five years.

MDDC would oppose efforts to broaden the current exception. The importance of public access to the sorts of records covered by this exception was highlighted after an interstate bridge in Minneapolis collapsed into the Mississippi River on August 1, killing 13 people. Following the bridge collapse, reporters across the country reviewed public bridge inspection records and published important stories that answered questions about the soundness of other bridges, the frequency of bridge inspections, and the adequacy of funding to make repairs. Here are some examples of these stories (full copies of which are attached hereto):

- The Washington Post reported that "[b]ridge inspection reports maintained by Washington area governments show that several major bridges are deteriorating and need repairs, with defects that range from missing chunks of concrete on an abutment of the Key Bridge to heavy structural deterioration on the 11<sup>th</sup> Street Bridge over the Anacostia River." The article further explained that "[d]espite significant flaws in some of the spans, engineers and transportation officials emphasize that the region's bridges are safe and that some deficiencies are largely cosmetic, not structural."
- The Baltimore Sun reported on the decaying state of bridges owned by CSX in the Baltimore area and the debate between the company and the city over whose job it is to maintain them.

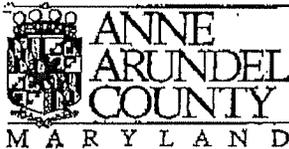
- USA TODAY analyzed federal inspection records and found that “at least 96 interstate highway bridges rated ‘structurally deficient’ by government inspectors in 1982 had the same rating last year, suggesting they weren’t fixed or had lapsed and again require repair.”
- The Courier-Journal (Louisville, Kentucky) reported that “[e]leven Louisville bridges are being re-evaluated by the state because of a Minneapolis highway collapse are riddled with deteriorating parts, including broken concrete, cracked girders and missing bolts, according to their latest inspection reports.” The article noted that state transportation officials maintained that the bridges were safe, but that they did not have the funds to make all of the needed repairs.

**3, Do you believe that SG §10-618(j) should be changed or modified in any way? Please explain in detail.**

No. However, in light of the important interests at stake here, we recommend further review of the exception five years from now. Following the mixed results of the Sunshine Week audit, we also recommend continued training of State and local employees to ensure consistent and proper handling of PIA requests in general and specifically requests for records that may be covered by Section 10-618(j).

We appreciate the opportunity to submit these comments. Please feel free to contact us if you have any questions regarding any of the above, or if you would like additional information.

Respectfully submitted,  
Eric Lieberman  
Vice President and Counsel, The Washington Post  
Chair, MDDC Government Affairs Committee



## Office of Law

Jonathan A. Hodgson, County Attorney

County Executive John R. Leopold

2660 Riva Road, 4<sup>th</sup> Floor  
P.O. Box 6675  
Annapolis, Maryland 21401  
410-222-7888

Lori L. Blair  
Senior Assistant County Attorney  
lblair@aaounty.org

June 29, 2007

Mr. Stuart A. Samuels  
Assistant Managing Editor  
Capital Gazette Newspapers  
2000 Capital Drive  
Annapolis, Maryland 21401

RE: Information Request

Dear Mr. Samuels:

Your email addressed to Rhonda Wardlaw dated June 19, 2007, has been forwarded to me. In that email, you request information under the Maryland Public Information Act, Maryland State Government Code Annotated §§10-611, *et seq.* (the "Act"). Specifically, you request "a copy of the Comprehensive Emergency Response Plan maintained by the Local Emergency Response Committee," which you contend "is considered public record under the Emergency Planning and Community Right to Know Act of 1986." This is a refinement of your previous request for "a copy of the Comprehensive Emergency Response Plan maintained by the Local Emergency Response Committee."

The Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA") provides governments and the public access to certain information related to planning for chemical incidents. Other federal and State laws and regulations also apply to the information you have requested.

Pursuant to the EPCRA and other laws and regulations, Anne Arundel County provides information to the Maryland Department of the Environment ("MDE"), which compiles the information for the County and other local governments and has an established procedure that complies with laws and regulations for providing permitted access to public information. I am advised that a request to the MDE must be made in writing. In order to provide the best possible service, MDE asks that you provide specific information concerning the records that you are interested in, that you be specific about the type of information you are seeking, and that you provide the EPCRA section number related to the information if possible. You should also include as much specific facility information as possible, such as the facility name and full address, including zip

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June 29, 2007

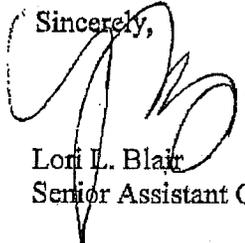
code. The request should be sent to Patricia S. Williams, Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD 21230.

To the extent that any information you request is not covered by other federal or State law, in accordance with § 10-618(j) of the Act, your request is denied. That section permits the County to deny disclosure of "response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures" if such disclosure would be contrary to the public interest and comports with other provisions of the subsection. The County has determined that disclosure would be contrary to public interest; the disclosure would jeopardize security of buildings, structures, or facilities, may facilitate the planning of a terrorist attack, or may endanger the life or physical safety of an individual; and the denial is not contrary to § 10-618(j)(3) or (4).

As your request has been partially denied, I am required to advise you that you may seek judicial review of this denial in accordance with § 10-623 of the Act.

Thank you for your attention to this matter.

Sincerely,



Lori L. Blait  
Senior Assistant County Attorney

# Carroll County Times

Print Page

## Audit reveals rampant secrecy

By Jim Lee, Times Staff Writer

In Kent County, people can find out in a matter of minutes how their officials would react in the event of an emergency.

In Wicomico County, people asking for the same documents are told releasing the information is against county policy.

Across the state, auditors asking for their community's Comprehensive Emergency Response Plan — a document that by federal law should be readily available to the public — were met with distrust, disorganization and denials.

Of 23 Maryland jurisdictions surveyed, only six auditors were able to immediately obtain the document. Eight were denied outright. The remainder encountered myriad difficulties in their attempts to get the information.

"That's disappointing," said Eric Lieberman, chairman of the Government Affairs Committee for the Maryland-Delaware-D.C. Press Association and deputy counsel and director of government affairs for The Washington Post. "It makes me wonder what kind of training public officials are getting in their responsibilities under the law."

The audit was part of a nationwide project coordinated by several news agencies to test public record access as part of Sunshine Week, an annual event designed to highlight open government and the public's right to know.

By law, states are supposed to designate Local Emergency Planning Committee districts. Among their responsibilities, the LEPCs are supposed to maintain community response plans that identify facilities using hazardous materials, describe emergency procedures, and outline evacuation plans and emergency notification procedures. The plans are supposed to be updated annually and LEPCs are supposed to notify the public each year about the plan's availability.

Debra Gersh Hernandez, Sunshine Week audit project coordinator, said the emergency response plan was chosen because it is supposed to be public, and it is something that is relevant across many communities.

"I think citizens have a right to know what hazardous materials are in their community," she said. "This is basic information that people need to know."

### A range of responses

Sue Willits, director of the Kent County Office of Emergency Services, said the county's basic plan is available on a CD and also on the county's Web site.

"I feel our plan is policy, policy is public," she said. "The step-by-step procedures to follow that are private."

Keeping details of the plan out of public view is allowable under the federal Emergency Planning and Community Right to Know Act of 1986. The two-tier access is designed to ensure that the public is informed of potential dangers in their community, but officials can keep more sensitive information private.

Many jurisdictions, however, don't make that distinction.

In Wicomico County, LEPC Management Agency Deputy Director David Shipley said Wicomico's policies are different from other communities.

Shipley originally said the plan was not public. Later, he said the plan could be viewed but could not be copied.

"Nobody was ever prohibited from viewing it," he said. "In my mind, reviewing and copying are two different things."

Bob McDonald, chief, Opinions and Advice for the state attorney general's office, said he was not aware of any such

distinction.

"As a general rule, any record that is open to public inspection is also open to copying," he said.

Lieberman of the Washington Post agreed.

"It doesn't make common sense that you can read the document but can't make a copy of it," he said.

#### Denials and delays

Officials in several jurisdictions forwarded the request to their county attorneys, many of whom denied or delayed access to the plans.

Ernest Crofoot, county attorney in Caroline County, sent a reply to the requestor indicating that he would have to review the entire document — at a cost of \$195 an hour — and that the total cost would be in the range of \$1,200 to \$1,600 plus \$114 for copying.

"To proceed with the handling of your request, the county must receive an advance against the costs in the amount of \$1,200," Crofoot wrote in a response to the requester.

Lieberman said receiving incorrect information from county attorneys is especially troubling.

"The lawyers have an obligation to research the law before they give advice to county employees about what they can and can't release," he said.

Crofoot said later that the initial request was unclear and he thought the auditor wanted the entire plan instead of just the public portion.

"We interpreted the request to be something much more significant," he said.

McDonald said the attorney general's office recommends that people requesting public documents do so in writing, even though it is not required by law.

"It's important that you make clear what you are asking for," he said. "Especially when it is something that people may not ask for every day or that could be misinterpreted."

Agencies denying access to a document must do so in writing, and they must cite specific sections under the law that allow the denial.

In many cases, however, that didn't happen, either.

In Dorchester County, officials made a vague reference to the Department of Homeland Security and said the plan was not a public document.

In Queen Anne's County, officials cited an exemption in the federal law that they say allows them to deny access.

McDonald said he was not familiar with the exemption, and would have to do further research to see if it applied.

"I did notice, however, there is a related section that says it doesn't pre-empt any state law," he said.

Auditors encountered other difficulties as well, including: reaching the person responsible for the document; not receiving a response after several attempts; not being given the document until after they identified themselves as reporters; and being told the document was unavailable because it was being updated.

#### Alarms raised

In order to avoid the possibility of being treated differently, auditors were asked to not identify themselves as reporters. Despite that, in Anne Arundel County, access to the document was denied until the reporter's credentials were verified.

Audit coordinator Hernandez said it doesn't make sense to allow reporters access but not the public.

"In essence, they are really denying the information to the public, which is the bottom line," she said.

After that initial contact, Arundel refused to release the document anyway.

In Carroll County, Office of Public Safety director William Martin said the plan wasn't available because it was being updated.

Martin has since retired. Vivian Laxton, Carroll County Public Information Office administrator, later contacted the reporter to say the plan was available.

"I know that whoever it was ultimately should have gotten a copy of the plan," she said.

Auditors were asked to conduct their surveys between Jan. 8 and Jan. 19.

As auditors fanned out, word of the multiple requests got back to the Department of Homeland Security, which sent e-mails to emergency management agencies across the nation.

"Just wanted to give you a heads up in case you haven't heard," wrote Niki Edwards, external affairs officer for the Department of Homeland Security in an e-mail sent Jan. 19 to the Maryland Emergency Management Agency.

The e-mail subject line was "Emergency Plans being sought by newspapers."

"You may want to alert your leadership and counties, as other states appear to be doing," Edwards wrote.

The same day, MEMA forwarded the e-mail to counties across the state. In his e-mail, MEMA's Jeff Welsh wrote "Our position at MEMA is that this would be treated as a public information act request and we would forward it to our assistant AG."

Since the e-mail went out, more agencies have responded to the initial requests.

Dick DeVore, director of the Allegany Office of Emergency Management, said he didn't know it was a reporter when he sat down with the auditor, explained the document and offered to make copies.

"I did not put two and two together until much later," he said.

Regardless of the audit, DeVore said, he knew the document requested was public and said his job is to help inform residents.

"Our approach here as far as emergency management services is that it is a cooperative venture between government and the citizens," he said.

Willits, in Kent County, said she didn't know it was a reporter making the request, either. But, she said, e-mails going around after the audit foretold that the results would not be good.

"The consensus was most Maryland counties did not relinquish their plan," she said.

Better training could help, she said, and the upcoming directors' conference in May would be the perfect venue.

"You could have a whole panel discussion," she said.

McDonald said the attorney general's office conducts training for municipalities through such organizations as the Maryland Association of Counties and Maryland Municipal League.

"The AG's office would be happy to send someone to participate in any training for which MEMA requested our assistance," McDonald wrote in an e-mail.

Reach Jim Lee at 410-857-7878 or e-mail [jimlee@lcnlofmd.com](mailto:jimlee@lcnlofmd.com).

#### The audit

Several media groups, including the American Society of Newspaper Editors, Coalition of Journalists for Open Government, National Freedom of Information Coalition and Society of Environmental Journalists joined to coordinate a nationwide test of access to public records as part of Sunshine Week.

Auditors were asked to visit their Local Emergency Planning Commission between Jan. 8 and Jan. 19 and ask for a copy of the Comprehensive Emergency Response Plan. Auditors were then asked to complete a series of survey questions and send the answers, along with a narrative describing their experience, to the national coordinators of the project.

#### What is Sunshine Week?

Sunshine Week is a national initiative to open a dialogue about the importance of open government and freedom of information. Participants include print, broadcast and online news media, civic groups, libraries, nonprofits, schools and others interested in the public's right to know.

The Florida Society of Newspaper Editors launched Sunshine Sunday in 2002 in response to efforts by some Florida legislators to create scores of new exemptions to the state's public records law. FSNE estimates that some 300 exemptions to open government laws were defeated in the legislative sessions that followed its three Sunshine Sundays, because of the increased public and legislative awareness that resulted from the Sunshine Sunday reports and commentary.

Several states followed Florida's lead, and in June 2003, ASNE hosted a Freedom of Information Summit in Washington where the seeds for Sunshine Week were planted.

With an inaugural grant from Knight Foundation, the ASNE FOI Committee launched Sunshine Week in March 2005. It continues to be celebrated each year in mid-March, coinciding with National FOI Day and James Madison's birthday on March 16.

**ArkType**

**Published on:** Sunday, 8/05/2007, A section,  
M2 edition, VA zone, A01

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## Inspections Note Significant Flaws, But Officials Call Area Bridges Safe

**By Michael Laris**  
**Washington Post Staff Writer**

The 14th Street Bridge has a long, craggy hole near the area that once was a drawbridge. A span over Columbia Pike in Arlington County has exposed reinforcement bars. The joints holding up Chain Bridge have aged severely.

Bridge inspection reports maintained by Washington area governments show that several major bridges are deteriorating and need repairs, with defects that range from missing chunks of concrete on an abutment of the Key Bridge to heavy structural deterioration on the 11th Street Bridge over the Anacostia River.

The inspection reports, which the federal government requires every two years, offer a striking picture of the state of area bridges and the difficult task officials face as they try to ensure safety. Despite significant flaws in some of the spans, engineers and transportation officials emphasize that the region's bridges are safe and that some deficiencies are largely cosmetic, not structural.

Any bridge would be closed immediately if inspections turned up an indication of imminent danger, officials said.

The reports show that two major Anacostia crossings -- the Frederick Douglass Bridge and the 11th Street span -- have been declared "structurally deficient," the same designation as the bridge that collapsed Wednesday in Minneapolis. The Douglass Bridge was shut down in July for an overhaul scheduled to be completed next month. The 11th Street Bridge is scheduled for major revamping in 2009.

The "structurally" deficient label has been applied to 15 bridges in the District, officials said, and more than 1,600 others in Maryland and Virginia. Nationwide, there were 73,764 such bridges last year.

It is a broad designation that covers major deterioration in a bridge's key components but is not a list of teetering bridges. If a span's deck or one of its main structural features is declared a four or lower on a 10-point scale, it goes on the list. Engineers can then step up inspections and repairs, pending far-reaching improvements or possible replacement. A four is deemed "poor condition," while a one represents "imminent failure" and zero is "failed."

The 11th Street Bridge, for example, received a rating of four after it was found to have large holes in parts of its main structure.

Bridges are critical to the District, which is split by the Anacostia, and to the Washington region, essentially cut in half by the Potomac River. Five of the region's most heavily traveled bridges carry tens of thousands of commuters over the Potomac each day. The Capital Beltway is anchored by two massive structures that connect Virginia and Maryland: the Woodrow Wilson and American Legion bridges.

The Legion Bridge was last inspected at the end of 2006, and a summary of the report showed that its major elements had no serious problems. Workers are cleaning, repairing and repainting the underside of the rusting span.

The Wilson Bridge was inspected before it opened last summer. As a precaution, Maryland transportation officials are preparing to inspect a span along the Capital Beltway in Montgomery County, near the Prince George's County border, that was built similarly to the crumbled Minneapolis bridge. State officials did not

release the most recent inspection report for the Chesapeake Bay Bridge, saying they need to review it first to make sure the findings are understandable and do not breach security.

Across the region, the reports provide what amounts to a priority list for transportation departments. An inspection that shows a bridge in dire condition leads to emergency repair work. Less severe findings could lead to patch jobs, such as temporary reinforcements, and closer scrutiny. The documents also are used to determine how bridge maintenance and reconstruction money is spent.

The reports show that in some cases, significant problems are pointed out years before new steel or cement replacements are readied.

An October 2004 letter from a District transportation consultant, for instance, recommended that all pins and hangers -- the structural joints that support the span -- on the Chain Bridge be replaced or, at a minimum, tested, refurbished and reinstalled.

"The bridge was constructed in 1937 so the pins and hangers have 67 years of weathering and fatigue," according to the letter. "The pins and hangers have not undergone regular inspection over the life of the structure so the rate of deterioration can not be determined."

Officials are in the process of choosing a contractor and said work on the bridge would begin soon, said Ardeshir Nafici, the District's acting chief transportation engineer. "Things don't happen instantly," Nafici said, adding that engineers pay special attention to bridges that are undergoing the long process of being overhauled.

The Chain Bridge is not listed as structurally deficient.

But government bridge engineers said long delays don't necessarily mean increased danger, even with structurally deficient bridges.

The Washington Boulevard bridge over Columbia Pike -- which a 2006 inspection report notes has "full height vertical cracks" on two major supports -- has been structurally deficient for 27 years, noted Nicholas J. Roper, a bridge design engineer for the Virginia Department of Transportation.

Engineers have called for its replacement, and the bridge first made it onto the state's main construction list in the early 1990s. Designs for a full replacement are being drawn up, but construction is at least two years away.

"Structural deficiency tells me to inspect more frequently, perform maintenance more frequently and, if possible, repair whatever is deficient to upgrade the condition rating and remove it from the 'bridges-to-replace list,'" Roper said. "Eventually, though, replacement may be the only option that works."

In other words, "It's like your car. You start repairing it so much, it would be cheaper to buy a new one," said Kathleen Penney, deputy chief engineer for the District's transportation department.

The inspection reports filed in three gray cabinets in the D.C. transportation department's New York Avenue office offer a vivid account of the reality of deteriorating bridges.

The covers have shiny color photos showing the arches of the Key Bridge with ducks in its foreground and Georgetown behind. Another depicts the Washington Monument behind a picture of the 14th Street Bridge. Inside, the images and descriptions are less rosy. The most serious cases come with a "Letter of Concern" or even more urgent "Critical Finding Reports."

In September 2004, a District consultant noted holes "varying in size from 2 [inches] diameter up to 15 inches long" on the 11th Street Bridge, which carries Interstate 295 over the Anacostia.

A report in January said the main bridge structure is in "poor condition" with "moderate to heavy corrosion." That bridge was given a federal rating, known as a sufficiency rating, of 23 out of 100. A rating under 50 means a bridge is eligible for replacement.

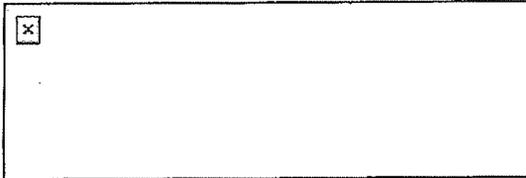
"The bridges are safe, I can tell you that. But we have some deficiencies based on the reports we get every two years, or less than two years," Nafici said. "This is an ongoing process, a daily process."

Government engineers say they are constantly fighting age and physics in maintaining the region's bridges.

"The principle is that bending paper clip," Roper said. "Metal can bend both directions, back and forth, back and forth, up and down. After time, it begins to get tired. When it gets tired, it begins to get brittle. . . . The same type of thing is happening up on bridges, or buildings, or anything that uses steel or steel supports."

But, he said, such structures are built with a buffer so that they will not fail after deterioration or unforeseen stresses. "You need extra capacity in that bridge for things that go beyond just 'Will it carry the truck?'"

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## 'Bridge Lady' says span is falling down Years of complaining brings some support but no funds to Fort Avenue

Date: Sunday, August 5, 2007

Section: TELEGRAPH

Edition: Final

Page: 1A

Source: Sun reporter

Byline: Jill Rosen

Illustration: PHOTO(S) / MAP(S)

Graph Source: 1. & 2. KIM HAIRSTON : SUN PHOTOGRAPHER

3. SUN NEWS GRAPHIC

Caption: 1. Karen Johns looks over a patch on the Fort Avenue **Bridge**, which is rated "structurally deficient."

2. The underside of the Fort Avenue **Bridge** over the **CSX** railroad tracks shows exposed metal and missing concrete. Karen Johns has been complaining about the decay to city and state officials for several years.

3. Fort Avenue **Bridge**

[http://archive.baltsun.trb/cgi-](http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Sunday&date=5&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A)

[bin/sunarchive.pl?day=Sunday&date=5&month=August&year=2007&edition=Final&local=TELEGRAPH&page=](http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Sunday&date=5&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A)

[1A](http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Sunday&date=5&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A)

[1A](http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Sunday&date=5&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A)

To get the **bridge** near her Locust Point home fixed, Karen Johns says she'll stand naked with a sign. No one wants it to come to that, but after nearly a decade of ignored letters, phone calls and so many appeals to politicians that she's lost count, it just might. "I'm just afraid the **bridge** is going to collapse one day," she says. "I've been trying to get someone to take care of this for 10 years.

"I don't care how safe they tell me it is. I'm not in another world that I can't see what's right and what's wrong. If you walked under the **bridge**, you would never go over it."

Maryland politicians and inspectors have acknowledged serious problems with the 90-year-old **bridge** in the 1200 block of Fort Ave. - essentially the only way in or out of the heart of the Locust Point peninsula - but nothing has been done.

For years, engineers and community activists have sounded the alarm about the decaying state of America's **bridges**, warning of the billions of dollars in needed repairs and upgrades. The American Society of Civil Engineers estimated in 2005 that it would cost \$9.4 billion per year over 20 years to adequately repair the more than 70,000 **bridges** nationwide that are rated "structurally deficient" - which includes the one in Locust Point.

But political, financial and bureaucratic hurdles have routinely thwarted efforts to attack the backlog in **bridge** repairs.

That all may have changed Wednesday, when an interstate highway **bridge** over the Mississippi River in Minneapolis collapsed. Because the **bridge** had been faulted in inspection reports as "structurally deficient" for at least 17 years, people across the country are now second-guessing the safety of the nation's **bridges**, including the thousands that span Maryland's roads, waterways and railroad tracks.

Though railroad conglomerate **CSX** owns the Locust Point **bridge**, which leads to Fort McHenry, the company and the city dispute whose job it is to maintain it.

"It's going to take something like Minnesota," Johns says, "for them to say, 'Oh, maybe we should have done something.'"

Johns, 66, stands in the morning sun atop the **bridge**, scuffing a flip-flop along the crumbling concrete. She points down to a crack at least an inch wide, thick enough to easily see the trash-strewn tracks below. She leans over the side of the **bridge**, pointing to spots where the concrete has worn away to expose the structure's rusty metal skeleton.

"Can you see the metal bars through the concrete?" she asks. "Before some of these other spots were patched, the holes were big enough that kids were putting their heads through to watch the trains."

When Johns peers over the side of the **bridge**, she's afraid her spectacles will slide off her nose and land on the tracks below, lost like everything else that litters the tracks - a bent bicycle, a baby carriage, scores of soda bottles. The garbage gets her riled up, but nothing like the condition of the **bridge** itself.

The widow and grandmother knits, tends flowers and harangues elected officials about her **bridge**.

In 1999 Johns walked from rowhouse to rowhouse in her South Baltimore neighborhood collecting about 90 signatures on a petition urging city leaders to invest in an inspection and a cleanup.

She's written and called Sen. Barbara A. Mikulski, former Sen. Paul S. Sarbanes, BGE, former Gov. Parris N. Glendening, Sheila Dixon when she led the City Council, former city health commissioner Peter L. Beilenson, former City Councilman John L. Cain, all of her state lawmakers, and she's pretty sure she wrote to President Bush. "The politicians," she says, "know me as The **Bridge Lady**."

"I sound like a chronic complainer, but it's my community. If you don't get off your duff and say something about it, nothing is going to be changed."

State Sen. George W. Della Jr. has heard Johns' appeal many times.

"She's at every South Baltimore Little League parade. She gets us when we're out campaigning; I know she's grabbed Martin [O'Malley]," he says. "She's relentless, and she's right."

O'Malley, when he was Baltimore's mayor, wrote Johns acknowledging that the **bridge** needed \$2 million in repairs and that "we are working to develop an improvement and funding schedule."

That was more than seven years ago.

Mikulski responded in 2002 to one of Johns' many letters, calling the **bridge** "deplorable." The senator said she contacted John Snow, CSX's chairman and CEO, and then-Transportation Secretary Norman Y. Mineta. Mikulski added: "I absolutely share your concern about this issue."

Johns saves a thick bundle of correspondence from politicians, city transportation officials and CSX engineers. She spreads the letters out in her living room like a museum display, reading bits of them aloud. In a 1999 letter, CSX's assistant chief engineer recommends that his company work with the city to replace the **bridge**, saying it could be justified "in terms of public safety, economic benefits and enhancement of the local neighborhood."

"The roadway slab, supported by the superstructure, is showing the first signs of distress," R.P. Garro wrote. "It just cannot handle the increased heavier truck traffic much longer. The time is right to progress this **bridge** replacement project."

In the most recent state inspection, the **bridge** scored a disappointing 36 out of 100 - anything less than 50 is a problem, officials say.

Despite the ranking and Garro's concerns, Gary Sease, a CSX spokesman, said last week that company inspectors found the **bridge** "structurally sound" last October.

Even so, Sease says CSX believes it "would be a good path to go down" if his company and the city could work together to apply for federal money to replace the **bridge**.

Baltimore Transportation Director Alfred H. Foxx, however, says the city's been trying to negotiate with CSX about the Fort Avenue **Bridge** for the six years he's worked there - and about 15 years in total.

"I've even offered to take over the **bridge**, if they'd contribute to the repairs. It seems like everything has dropped," he says. "Are we frustrated? Sure we are."

Foxx estimates it would cost \$5.5 million to replace the **bridge**. Though he thinks the **bridge** needs "a complete overhaul," Foxx said the structure is not on the verge of collapse. If it were, he said, he wouldn't be dicker with CSX.

"If the **bridge** poses a problem where I think it will be unsafe, I'll just take the money from the city and go ahead and fix it," he says. "We'd work it out with CSX later."

As the city and the railroad company wrangle over money and responsibility, Johns looks at the **bridge** fretfully from her front window. Her local representatives share her concern.

"Am I worried about it? Yeah, yeah," says City Councilman Edward L. Reisinger. "You got school buses going over there to get to Fort McHenry and to school, you got employees of Tide Point coming and going. I mean that **bridge** is used, a lot."

Della has all but had it with the situation, calling it "an accident just waiting to happen."

"I've asked the city to look at these things in the past and the comeback is all the time, 'There's no danger; they're structurally sound,'" he says. "But I'm telling ya, it doesn't look that way to me."  
Johns says she's about ready to give up. She's swept glass from the bridge's sidewalks herself. She's bought paint to cover the graffiti herself.  
And after a decade of complaints, she feels like she may as well be talking to herself.  
"I don't want nobody to get hurt," she says. "But I hope late one night it just falls. Just so I can say, 'I told you so.'"

## 7. New attention to 5 old CSX bridges 'Deficient' city spans are topic of meeting; who pays for repairs is issue SUN FOLLOW-UP

Date: Thursday, August 9, 2007

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Source: SUN REPORTER

Byline: Jill Rosen

Illustration: Photo(s)

Graph Source: 1 - 5. Photos by Kenneth K. Lam : Sun photographer

6 & 7. Photos by (left) Kenneth K. Lam and (right) Kim Hairston : Sun photographers

8. CHRISTINE FELLEZ : SUN CARTOGRAPHER

Caption: 1. SISSON STREET BRIDGE Bridge sufficiency rating: 44.9 out of 100

2. GREENMOUNT AVENUE BRIDGE Bridge sufficiency rating: 48.7

3. HARFORD ROAD BRIDGE Bridge sufficiency rating: 49.8

4. FORT AVENUE BRIDGE Bridge sufficiency rating: 36.4

5. WICOMICO STREET BRIDGE Bridge sufficiency rating: 32

6 & 7. Five bridges in Baltimore owned by the CSX railroad are badly deteriorated and in need of immediate repair or replacement, according to the city director of transportation. Above left, a train passes under one of them, the Harford Road bridge. Right, Karen Johns has been campaigning since 1999 to get some state or local official to order the Fort Avenue bridge repaired.

8. BALTIMORE AND LOCATION OF BRIDGES

<http://archive.baltsun.trb/cgi->

[bin/sunarchive.pl?day=Thursday&date=9&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A](http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Thursday&date=9&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A)

<http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Thursday&date=9&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A>

Mayor Sheila Dixon and city and state lawmakers demanded yesterday that railroad conglomerate CSX fix its crumbling bridges in Baltimore before it's too late.

Voicing support for a Locust Point grandmother who has been trying for nearly a decade to get a bridge near her home repaired, Dixon called the condition of the Fort Avenue bridge a "top priority," while state lawmakers appealed to the governor and Maryland's transportation secretary to throw their weight into the effort. CSX owns the Locust Point bridge that leads to Fort McHenry, as well as four other "structurally deficient" bridges in Baltimore. For more than a decade, the company and the city have argued over whose job it is to maintain the ailing spans. Deputy Mayor Andy Frank said yesterday that city officials, who will meet with CSX representatives today, expect the railroad company to produce a list by early next week of exactly what the company is prepared to repair and replace.

"It's been going on too long," Frank said. "We're prepared to force it to a conclusion."

Gary Sease, a CSX spokesman, said the company believes the bridges are safe. "We stress that the bridges are structurally sound. But certainly we want to go forward with the discussion of the potential replacement as the city recommends."

In Maryland and around the country last week, people began looking more closely at the safety of bridges after an eight-lane span in Minneapolis collapsed into the Mississippi River during rush hour.

Minnesota state engineers recommended seven years ago that the bridge be replaced or redecked, the Minneapolis Star Tribune reported yesterday. In Baltimore in 1999, officials deemed the Fort Avenue bridge, which is now 90 years old, ready for replacement.

After what happened in Minnesota, Karen Johns, who lives near the bridge in the 1200 block of Fort Ave., told The Sun that she would stand naked with a sign if that's what it took to get the structure fixed.

To no avail, she has already gone door-to-door on a petition drive and contacted just about every local, state and federal politician in Maryland.

Last night she planned to attend a neighborhood meeting and wave around a piece of the bridge.

"It's a hunk of rust," she said. "I want all these people to get off their duff and give me support."

Baltimore Transportation Director Alfred H. Foxx estimates it would cost \$5.5 million to replace the Fort Avenue bridge, which scored a disappointing 36 out of 100 on its most recent inspection.

Any bridge that scores less than 50 should be replaced or have major rehabilitation, according to federal guidelines. Four other CSX bridges also scored below 50 - spans along Sisson Street, Wicomico Street, Harford Road and Greenmount Avenue. It's unclear how much it would cost to replace and repair these structures.

"We are all concerned," Dixon said. "This one is one of our top priorities." She said transportation officials were meeting with engineers "as we speak, to focus on what needs to be done."

Yesterday state Sen. George W. Della Jr. and Del. Brian K. McHale sent a letter to Gov. Martin O'Malley and state Transportation Secretary John D. Porcari, urging them to "exercise the goodwill and strength of your offices to require the responsible party(s) to replace or repair this bridge."

"If the responsible party here doesn't come to the plate, we can't wait until a tragedy happens," Della said.

Porcari responded immediately, saying he would happily use his influence to help the city, although his office has had "limited success" dealing with CSX on other issues.

"We'll push as hard as we can to help the city in any way," he said.

O'Malley's spokesman, Rick Abbruzzese, said the governor would help, too: "He feels that if the incident in Minnesota proves anything, we can't wait to make these kind of investments in our infrastructure."

Sease, the CSX spokesman, said today's meeting will be "an important first step" to address the bridge issues - first and foremost, who must pay for the repairs.

"They are certainly a shared responsibility of the city and CSX," he said. "We want to have a thorough and frank discussion to identify the best way to address the bridge issues."

Sease said the public attention is definitely spurring the matter.

"The mayor's keen interest in this and that of the other politicians may help us and the city resolve once and for all what the responsibilities are in terms of maintenance and possible replacement," he said.

Baltimore and CSX have had something of a contentious relationship recently. For 4 1/2 years after a train derailment and fire in the Howard Street tunnel, they disagreed about who was responsible - eventually settling for CSX to make a \$2 million payment to the city to help defray costs.

City Councilwoman Mary Pat Clarke hopes CSX will tend to all five of the Baltimore bridges.

"CSX needs to take care of its property and take care of the people of our city. I'm very glad we're beginning to highlight this need. They need to get to work for us," she said. "They are on notice."

As for Johns, she's encouraged by all the political buzz that her bridge quest has attracted, particularly from Dixon, yet she won't relax until she sees a repair crew pull up on Fort Avenue.

"Talk is cheap, honey," she said. "I want to see it in black and white."

16 of 123 DOCUMENTS

USA TODAY

August 30, 2007 Thursday  
FINAL EDITION

## Scores of bridges 'deficient' since '80s; 3.8 million vehicles on the spans daily

**BYLINE:** Brad Heath**SECTION:** NEWS; Pg. 1A**LENGTH:** 418 words

Dozens of the nation's highway bridges that fell into disrepair 25 years ago still need overhauls to fix cracks, corrosion and other long-festering problems, a USA TODAY analysis of federal inspection records shows.

At least 96 interstate highway bridges rated "structurally deficient" by government inspectors in 1982 had the same rating last year, suggesting they weren't fixed or had lapsed and again require repair, according to the records. Those spans carry 3.8 million cars and trucks every day.

Such crossings face increased scrutiny after an interstate bridge in Minneapolis plummeted into the Mississippi River on Aug. 1, killing 13 people and triggering a wave of renewed safety inspections across the country. That collapse, still under investigation, also sparked calls from lawmakers to accelerate long-delayed -- and costly -- repairs.

"I think the challenge is that as these bridges continue to have their lives extended with maintenance, the states don't have the funds to go ahead with the types of replacements that some of the bridges will ultimately need," says Frank Moretti, director of policy and research for TRIP, a transportation advocacy group.

Some of the 96 bridges appear not to have undergone major overhauls since they were listed as deficient in 1982.

Many others have been fixed and since relapsed to being "structurally deficient" again. That rating means some parts of the bridge need to be scheduled for repair or replacement.

The Interstate 35W bridge that collapsed Aug. 1 was listed as deficient in 1990, though investigators did not judge it dangerous. About 2,800 interstate spans were listed as deficient last year, U.S. Transportation Department records show.

"We're confident these bridges are safe," says Charles Carrier, a spokesman for the Department of Transportation in New York, where 35 bridges made the list. "If we can't keep them safe, we close them."

Carrier and authorities in other states said some of the bridges have been patched this year, and others are scheduled for repairs. Most will need to be replaced or overhauled, says Kazem Farhoumand of the Rhode Island Transportation Department.

"You need more than just maintenance," he says. "You have to spend a lot of money and a lot of time and a lot of effort."

The National Transportation Safety Board is investigating the Minneapolis bridge collapse. Investigators are checking the bridge's de-icing system and examining the weight of construction materials and vehicles that were on it before it fell.

LOAD-DATE: August 30, 2007

LANGUAGE: ENGLISH

GRAPHIC: GRAPHIC, Color, Julie Snider, USA TODAY, Source: USA TODAY analysis of U.S. Dept. of Transportation records (Bar graph)

PUBLICATION-TYPE: NEWSPAPER

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24 of 123 DOCUMENTS

The Courier-Journal (Louisville, Kentucky)

August 23, 2007 Thursday  
METRO Edition

## Missing bolts, cracked girders on area bridges

BYLINE: Marcus Green magreen@courier-journal.com The Courier-Journal

SECTION: NEWS; Pg. 1A

LENGTH: 1467 words

State calls spans safe, but it lacks money for all repairs

By Marcus Green

magreen@courier-journal.com

{ }The Courier-Journal

Eleven Louisville bridges being re-evaluated by the state because of a Minneapolis highway collapse are riddled with deteriorating parts, including broken concrete, cracked girders and missing bolts, according to their latest inspection reports.

Although the re-evaluations won't be done before September, state transportation officials maintain that the bridges which include highway overpasses, exit ramps and other elevated roadways are safe, based on inspections done between 2005 and 2007, and they say highway crews are making some fixes.

But the officials concede they don't have the money to make all the repairs needed, and only one of the spans, a stretch of Eastern Parkway near the University of Louisville's Belknap Campus, is slated for major rehabilitation in the next five years.

Just 4 percent of the \$1.3 billion slated for Louisville transportation projects through 2012 will be used for repairing bridges.

Matt Bullock, chief district engineer for the Kentucky Transportation Cabinet's Louisville district, said the state would "have them all fixed up if we had unlimited funds." But he added: "We are confident in the safety of our bridges."

The eleven bridges are among 38 in Kentucky that Gov. Ernie Fletcher ordered reviewed by the state transportation department. All 38 are at least 500 feet long and listed as "structurally deficient" because at least one of their major elements the roadway, the superstructure that supports traffic and the substructure that includes piers and abutments was rated in "poor" condition or worse during their last state inspections.

The "structurally deficient" rating is the same given to the I-35W bridge that plunged into the Mississippi River in Minneapolis Aug. 1, killing at least 13 people.

One such span in Louisville is the Kennedy Bridge, which The Courier-Journal reported earlier this month has a missing anchor bolt that connects the bridge with a supporting pier; severe cracks on its roadway; and worn pins that help connect its trusses.

Reports on Jefferson County's 10 other bridges slated for review show similar problems. Among the dozens of findings detailed in the reports, inspectors discovered piers with broken pieces of concrete, including some with large missing chunks on a ramp to the Kennedy Bridge.

Some of those problems have already been addressed, according to the state, including the Kennedy's ramp.

"That's getting fixed as we speak," Bullock said.

Crews shored up a column on a ramp from I-264 West to I-64 West before work began this summer on a major rehabilitation of I-64 downtown.

And repairs are to be completed by November on cracked piers on an approach to the Kennedy Bridge and an exit ramp from the bridge, according to the state.

The Eastern Parkway span which has a seriously cracked roadway and has deteriorating piers, according to a March 2006 report is included in the state's six-year highway plan. The plan determines how the state and federal road money is distributed. The report gave the bridge's substructure a "poor" rating and found moderate cracking on the roadway and abutments and other crumbling areas throughout the bridge.

Those findings don't require immediate repairs, said David Steele, a Transportation Cabinet engineer.

"It's a common occurrence," Steele said. "It's just alerting us to keep an eye on it."

In 2009, the bridge, which carries an estimated 13,000 vehicles daily, is slated for a \$2.5 million rehabilitation. It will overlay the roadway to fix cracking and potholes and repair the loss of concrete under bearing rollers.

#### { }Funding an issue

During a review last September, a state inspector noted several areas where the structural steel was deteriorating on an Interstate 65 bridge over Main Street and a downtown floodwall.

The findings included cracks in the girders and "several" bolts missing or loose in various places in the superstructure the portion of the bridge that includes its beams and bearing devices that support the roadway.

Two independent engineers who reviewed the inspection reports, which The Courier-Journal obtained under the state's open records law, said the findings gave them pause.

"I'd say they are serious and should be fixed immediately," Hojjat Adali, an Ohio State University engineering professor, said. "I would not take chances with people's lives. After all, people are traveling bridges not riding roller coasters."

Sami Rizkalla, an engineering professor at North Carolina State University, also

said the types of problems identified on the I-65 bridge should be given "serious consideration to find out what is the problem."

Bullock said the state doesn't consider the I-65 findings to warrant immediate action.

"If we felt like it was an issue enough that it was a safety issue we'd either ... close a lane, reduce the loads or close it altogether if it was serious enough," he said. "But we don't feel like it's met that level."

The bridge was among the lowest rated among the 11 bridges up for re-inspection. Its deck and superstructure were rated "poor," while its substructure was considered "fair."

But Bullock said most of the bridge is in good shape. There's no money available to make the repairs, he said, but transportation officials may be able to tap a regional maintenance budget.

"There are some alternate funding sources," to address those issues, Bullock said. "We just don't have that sitting around ready to go."

{ } Gas tax debate

A fraction of the money in Kentucky's highway spending plan is set aside for existing bridges in Louisville.

The plan, which directs how the state's road money is spent for the next six years, includes \$1.34 billion for Louisville projects from 2007 to 2012. Less than 4 percent of the city's share, about \$50.2 million, is earmarked for bridge repairs.

That amount is "really weak, quite frankly, because what that means is that it's really unlikely to be addressed at all," said state Rep. Jim Wayne, Jefferson County's lone member on the General Assembly's transportation budget review subcommittee.

The highway plan has \$7.2 billion in scheduled projects, but only \$5.4 billion available in state and federal funds. The plan will be revisited when the legislature convenes next winter.

Following the Minnesota I-35W bridge collapse, some lawmakers have suggested raising the federal gasoline tax of 18.3 cents a gallon; President Bush has said he would reject any increase.

Wayne said it's clear that more money is needed to repair the nation's infrastructure including its bridges and he supports raising the federal gas tax, which has remained unchanged since 1993.

And, Wayne said, Kentucky also needs to consider raising its gas tax. The state collects 21 cents on each gallon of gas, which is nearly 5 cents less than the average in seven bordering states, according to Transportation Cabinet research.

"These issues are only going to get worse," said Wayne, D-Louisville. "The bridges are only going to deteriorate more, and the highways are only going to be more crowded."

But State Rep. Bob DeWeese said he has not heard any lawmakers talk about it.

"I think the chances of it getting legs in the near future are pretty slim,"

said DeWeese, R-Louisville.

Fletcher has no plans to support a gas tax increase, spokeswoman Jodi Whitaker said.

Adeli said he hopes the Minneapolis bridge collapse will be a "wake-up call" for the condition of the nation's infrastructure.

"We have about a million bridges in the U.S.," Adeli said in an e-mail. "About a quarter of them need repair or replacement. We need to invest significantly in the nation's infrastructure."

It's estimated that the Louisville bridges need more than \$155 million in repairs and other improvements, according to a federal database of bridge inspections.

The Kennedy Bridge, which carries I-65 between Louisville and Southern Indiana, is in need of nearly \$87 million in repairs, according to the database. State officials acknowledge that the bridge will likely need to be replaced in 20 years.

Reporter Marcus Green can be reached at (502) 582-4675.

On the Web

Check out a database and map of structurally deficient bridges at [www.courier-journal.com](http://www.courier-journal.com) Structurally deficient bridges

Eleven Jefferson County bridges are classified as structurally deficient at least one of their major elements was rated "poor" or worse. The bridges are:

- 1) Interstate 64 over Shawnee Golf Course
- 2) Interstate 264 west ramp to I-64 west
- 3) U.S. 31 over the Salt River
- 4) Eastern Parkway over CSX tracks
- 5) Interstate 65 over Broadway
- 6) I-65 over Main Street and floodwall
- 7) I-65 north exit ramp to I-64
- 8) I-64 entrance ramp to Kennedy Bridge
- 9) I-65 south exit ramp to I-64
- 10) Kennedy Bridge approach
- 11) Kennedy Bridge

LOAD-DATE: August 24, 2007

LANGUAGE: ENGLISH

GRAPHIC: INFORMATIONAL  
AND MAP BY THE COURIER-JOURNAL: CHRONOLOGY OF BRIDGES WITH PROBLEMS, ELEMENTS,

RATINGS AND CLASSIFICATIONS (SEE LIBRARY MICROFILM OR PDF PAGES)

PUBLICATION-TYPE: Newspaper

JOURNAL-CODE: lou

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# CAPITAL-GAZETTE NEWSPAPERS

2000 Capital Drive  
Annapolis, Maryland 21401

**TOM MARQUARDT**  
Executive Editor

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June 6, 2007

Kathleen Izdebski  
Opinions and Advice Division  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

Dear Ms. Izdebski:

In response to Bob McDonald's request for comment on the Maryland Public Information Act, I submit the following:

Our only experience with SG §10-618(j) has been in the recent Sunshine Week audit of emergency preparedness records. Queen Anne's County initially denied us the documents, then complied after further consideration. Anne Arundel County denied us the documents, then said it would reconsider the request. To date, they have not supplied any documents. The law's broad interpretation and its conflict with federal laws have been cited as the reason for the denial.

Although there is scant information to point to flaws in the language, I believe this section is too broadly written. For example, I believe the public has the right to know if area bridges are safe to use. If we asked for the latest inspections, would documents be denied because they would "reveal vulnerability assessments"? Would fire inspections of Orioles stadium be denied because vendors store propane or because the maintenance crew stores hazardous cleaning material?

The overly broad language offers convenient protection to government officials who are failing to serve the public. Bridges could be on the verge of collapse because of shoddy maintenance and the public couldn't be warned because inspection would "endanger the life or physical safety of an individual."

And, shouldn't the public know if local officials have an adequate evacuation plan for them? Are emergency personnel prevented from telling the public what routes to take because disclosing such information would be revealing "vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures"?

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If a new baseball stadium is proposed, is the designer prohibited from showing the public a schematic because it would “reveal the building’s structure or facility’s internal layout?”

I think the law needs to limit restrictions and state what is NOT included in the denials. Custodians also should have to demonstrate the potential consequences of a disclosed document. Perhaps documents should be “permissible,” so custodians don’t feel legally bound to deny them.

In regards to specific language changes, I will defer to Eric Lieberman, counsel for the Maryland Delaware DC Press Association, who will respond under separate cover.

Sincerely,

A handwritten signature in black ink that reads "Tom Marquardt". The signature is written in a cursive style with a long horizontal line extending to the left from the start of the name.

Tom Marquardt



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# WASHINGTON SUBURBAN SANITARY COMMISSION

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14501 Sweitzer Lane • Laurel, Maryland 20707-5902

July 31, 2007

Robert N. McDonald  
Chief Counsel  
Opinions and Advice  
Office of the Attorney General  
200 Saint Paul Place  
Baltimore, MD 21202-2021

Dear Mr. McDonald:

Thank you for the opportunity to share our experience with the application of the new exception for records related to public security codified in Section 10-618(j) of the State Government Article. As you know, WSSC is an agency of the State of Maryland created by the General Assembly for the purpose of providing public water and sewer to the residents of Montgomery and Prince George's Counties. WSSC owns and operates two large water treatment plants, four large wastewater treatment plants, several smaller wastewater treatment plants, numerous pump stations, and more than 5,000 miles of water pipelines and more than 5,000 miles of sewer lines throughout the two counties.

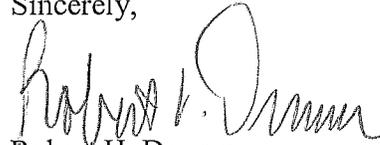
WSSC has used this exception in two very important ways. First, we have denied a request for plans and drawings that show the location of our water and wastewater systems on one occasion using this exception with the proviso that the applicant would be permitted to review these documents if the applicant consented to a background check by our Security and Safety Services Group. The applicant did agree to this background check and was ultimately permitted access to these documents. The second method we have used this exception is legal support for the WSSC's Engineering Records/Information (WERI). WSSC recognizes that engineers and applicants for new water and sewer service need to access as-built plans and specifications for our water and sewer system in order to design and construct extensions to the system. Pursuant to the WERI, applicants seeking access to WSSC's electronic records management system must first undergo a background security check.



Robert N. McDonald  
July 31, 2007  
Page 2

WSSC believes that this exception to the Public Information Act is an important tool for safeguarding our water and sewer system and should be retained. If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert H. Drummer". The signature is fluid and cursive, with a large initial "R" and "D".

Robert H. Drummer  
Senior Counsel  
(301) 206-8161

RHD/egs

cc: Jerome K. Blask

Kimberly A. Millender  
County Attorney  
410-386-2030, 1-888-302-8978  
fax 410-840-8931, TT 410-848-9747



Department of the County Attorney  
Carroll County Government  
225 North Center Street  
Westminster, Maryland 21157

June 18, 2007

Kathleen M. Izdebski  
Opinions and Advice Division  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, Maryland 21202

Re: Request for Information and Comment regarding  
Section 10-618(j) of the Public Information Act  
Our File No. 13,330-0001

Dear Ms. Izdebski:

On behalf of Carroll County, Maryland, I am responding to your request for information regarding the County using Section 10-618(j) of the Public Information Act to deny access to public records. Thank you for the opportunity to reply and provide this important information to you. Based on my review of records, Carroll County has had limited occasion to invoke Section 10-618(j) as a means for denying access to public records. In fact, Carroll County has only used the exception twice that I was able to uncover under the following circumstances:

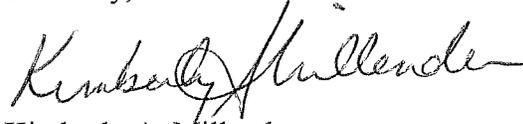
- ❖ September 2005 – the media requested all information and documents related to an emergency preparedness drill held by the County. Based on Section 10-618(j), the County denied access to portions of the documents and videotape of the event that related to specific emergency and security procedures, specific emergency tactics, and personnel deployment techniques, which information was redacted and the remainder released.
- ❖ January 2007 – the media requested copies of all of the County's emergency operations' plans. Similarly, under Section 10-618(j), the County denied access to portions of the plans that related to locations of medical and storage facilities, records of airports and emergency response facilities, where hazardous materials are stored, locations and infrastructure of water and wastewater treatment systems, and operational and evacuation plans and protocols, which information was redacted and the remainder released.

I hope this information is helpful to you in your response to the General Assembly. If you have any questions, please feel free to contact me.

**CARROLL COUNTY**  
*a great place to live, a great place to work, a great place to play*

Letter to K. Izbedski  
June 18, 2007  
Page Two

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly A. Millender". The signature is fluid and cursive, with a large initial "K" and "M".

Kimberly A. Millender  
County Attorney

cc: Robert N. McDonald, Chief Counsel  
Opinions and Advice Division  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, Maryland 21202

David Bliden, Executive Director  
Maryland Association of Counties  
169 Conduit Street  
Annapolis, Maryland 21401-2571

Steven D. Powell, Chief of Staff  
Board of County Commissioners



**TALBOT COUNTY, MARYLAND**  
OFFICE OF LAW

MICHAEL L. PULLEN  
County Attorney

11 N. Washington Street  
Easton, MD 21601  
Phone: 410-770-8092  
Fax: 410-770-8089

August 2, 2007

Kathleen M. Izdebski  
Opinions and Advice Division  
Office of the Attorney General  
200 Saint Paul Place  
Baltimore, Maryland 21202-2021

Re: Maryland Association of Counties - Maryland Public Information Act  
Request for Information and Comment

Dear Ms. Izdebski:

We are in receipt of your memorandum dated May 31, 2007, to the Maryland Association of Counties. We have never been requested to disclose the type of information referred to in your memorandum and have never asserted the privilege authorized by SG §10-618(j).

If you have any questions, comments, or concerns, please do not hesitate to communicate with me.

Very truly yours,

Michael L. Pullen

MLP/pjf

cc: R. Andrew Hollis, County Manager

I:\County Attorney\MISCELLANEOUS CORRESPONDENCE\EL - OFFICE OF THE ATTORNEY GENERAL 7.24.07.doc

**BOARD OF EDUCATION OF HARFORD COUNTY**

**102 S. Hickory Avenue  
Bel Air, Maryland 21014**

**OFFICE OF GENERAL COUNSEL**

**PATRICK P. SPICER, Esquire**  
*General Counsel*  
**Ellen M. Petrick**  
*Executive Secretary*

Telephone: (410) 638-4005

Fax: (410) 638-4022

June 19, 2007

Robert N. McDonald, Esquire  
Office of the Attorney General  
200 Saint Paul Place  
Baltimore, Maryland 21202-2021

RE: Request for Information and Comment/Maryland Public  
Information Act

Dear Mr. McDonald:

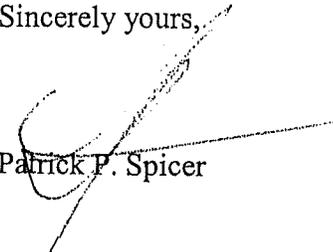
Please be advised that I am General Counsel for the Board of Education of Harford County. As such, my role includes review of and response to requests made to the Board under the Maryland Public Information Act (MPIA).

Your letter of May 31, 2007 to Dr. Carl W. Smith of the Maryland Association of Boards of Education and related attachment referenced above has been turned over to me for review and response.

Please be advised that the Board of Education of Harford County supports continuation and maintenance of the exception for records related to public security codified at Annotated Code of Maryland, State Government Article 10-618(j). My client believes that continuation and maintenance of this exception is justified in light of the potential security risks that may be involved regarding public schools and their campuses in the event the exception was abrogated.

Please advise should you have any questions regarding the above.

Sincerely yours,

  
Patrick P. Spicer

/emp

Cc: Mr. Mark M. Wolkow  
Superintendent

DAVID R. CRAIG  
HARFORD COUNTY EXECUTIVE

LORRAINE COSTELLO  
DIRECTOR OF ADMINISTRATION



ROBERT S. McCORD  
COUNTY ATTORNEY

NANCY L. GIORNO  
DEPUTY COUNTY ATTORNEY

HARFORD COUNTY GOVERNMENT

DEPARTMENT OF LAW

July 16, 2007

Kathleen M. Izdebski  
Opinions & Advice  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

Re: SG §10-618(j)

Dear Ms. Izdebski:

I am writing on behalf of the Sheriff of Harford County, as his Legal Advisor, concerning the Attorney General's inquiry about the agency's use of State Gov't Art. §10-618(j).

The Sheriff has no record of his denying any requests for records that may have been covered by §10-618(j). Nevertheless, Sheriff Bane strongly supports the legislation and would encourage the General Assembly to retain this important exemption.

Even if this exemption has not been used extensively, it remains critical to the State's efforts to maintain the safety and security of its facilities. If even one significant terrorist attack is thwarted because information has been withheld under §10-618(j), the exemption would have been beneficial.

Thank you for your attention to this matter.

Sincerely,

Karen J. Kruger  
Senior Assistant County Attorney

KJK/cll

cc: L. Jesse Bane, Sheriff

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# MARYLAND CHIEFS OF POLICE ASSOCIATION

6716 Alexander Bell Drive  
Suite 200  
Columbia, MD 21046  
Phone: (410) 312-4420  
Fax: (410) 290-1061

July 23, 2007

**President**

Douglas Holland  
Chief of Police  
Hyattsville, MD

Kathleen M. Izdebski  
Opinions & Advice  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

**1st Vice President**

Jeffrey Spaulding  
Chief of Police  
Westminster, MD

Re: SG §10-618(j)

Dear Ms. Izdebski:

**2nd Vice President**

Bernadette DiPino  
Chief of Police  
Ocean City, MD

I am writing on behalf of the Executive Board and membership of the Maryland Chiefs of Police Association (MCPA) concerning MD Code Ann., State Gov't Art., §10-618(j). The Association strongly supports the retention of this important exemption to Maryland's Public Information Act.

**Immediate Past President**

Douglas DeLeaver  
Chief of Police  
Maryland Transit  
Administration Police

This narrowly-tailored exemption serves to protect information that would be of interest to criminals who may be planning to commit terrorist attacks. If even one threat to public safety is prevented through reliance on this exemption, it will have proved its worth. As drafted, the statute appears to be comprehensive and adequate to meet law enforcement needs, while still serving the public's interest in accessing public records.

**Executive Director**

Larry Harmel  
Director  
MARCPA

The Association thanks the Attorney General for his attention to this important matter.

**Counsel**

Karen J. Kruger, Esq.

Sincerely,

Karen J. Kruger  
Counsel

KJK/cll

cc: Chief Douglas Holland, President  
Larry E. Harmel, Executive Director  
Michael F. Canning, Jr., Manis & Canning

Mission Statement

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**From:** "Town of Church Hill" <townofchurchhill@verizon.net>  
**To:** <PIA@oag.state.md.us>  
**Date:** Tue, Aug 28, 2007 6:11 PM  
**Subject:** Public Information Act Exception Comments

Dear Ms. Izdebski:

The Town of Church Hill has NOT had to invoke SC subsection 10-618(j) in connection with denial of access to public records. We have a population of about 540 now, but are growing rapidly as a result of in-fill development.

As Town Administrator, I feel SG subsection 10-618(j) should be retained as part of the Public Information Act. There are certain things the public should NOT know or have access to such as documents that might provide valuable information in the planning and completion of terrorist attacks. We have a waste water treatment plant and use cylinders of chlorine and sulfur dioxide. We are only allowed to have a restricted number of each on site. No one knows when and where a terrorist attack might occur, but I do not want to know that because I gave individuals access to certain information, I aided them in their attack.

As a private citizen, I strongly believe this country is too open and free with providing access to information. I get very angry every time I hear the news reports or read about them in the newspapers. In some cases, we may as well give the terrorists our entire strategic plans because the press practically tells the terrorists everything now. We would be extremely foolish to think we are not vulnerable because we live in a rural area and terrorists wouldn't think about living in our small community. They can be anywhere, and people are too worried about the First Amendment, racial profiling, and getting our troops out of Iraq and Afghanistan to realize who might be living next door and what they may be doing.

I strongly believe in the Constitution and protecting it, but we need to think about our founding fathers and the drafters of this document. Would they allow the British or any potential terrorist/enemy access to any public document? Politics has clouded our judgment since the Constitution was originally adopted and signed. From time to time, it has been necessary to amend it because the times were changing. But, the times are changing again and we are not considering the potentially deadly consequences of our "openness".

I believe in the Constitution and this Country with all my heart. I value our freedoms, but I do not want to see this freedom of information used against us as it has been done in the past and will continue unless we put restrictions on "sensitive" documents. I fought for our right to enjoy and maintain our freedoms. I enlisted in the United States Marine Corps (Air Traffic Control and Ground Controlled Approach) and served my country honorably, as did my son (he was in Desert Storm - USMC Radio Recon and Hostage Rescue). My husband served five years in the United States Air Force (he installed communication lines). My father and father-in-law both served in the Army. Even now, we are all prepared to offer our services.

We are teaching terrorists to fly, computer skills, medical training, etc. They are everywhere and we are blind to them until something happens. Most people are afraid to "get involved" and just hide in their closets (I actually have a resident who did that instead of calling the police). When something happens, they ask the government why they allowed it to happen. We always have to blame someone and government or the President are the usual targets.

We can inform the public without giving them all the specific details. They do not need to know every little detail. Even in a police investigation, they always withhold certain information from the press so they can weed out the crackpots, but because the government is providing the information, we have to tell them everything or give them access to "sensitive" records because they are classified as "public" records.

I realize I am not giving any tangible reasons to retain this law, but it definitely is my view. Should it be modified or changed in any way? Yes, it should be more restrictive regarding the "public" documents,

plans, etc. that are included in the current law. By "restrictive", I mean other "public" records should be added to the list.

I apologize for "getting on my soapbox", but I strongly believe this is a vitally important and necessary law which should be expanded upon for the good of the people. I am very passionate when it comes to matters such as this. And I believe our founding fathers are "turning over in their graves" as they see what politically motivated politicians have done over the years and the situation we now find ourselves in.

I could go on but I think I have made it clear how I feel. For the record, I must make it clear that these are my own personal opinions, both as a Town Administrator and a private citizen. These opinions do NOT necessarily reflect the opinions of the Town Commissioners of Church Hill or the residents. I have been working for the Town for over twenty-two years and know the importance of the Public Information Act and Freedom of Information Act. I also know there are some things that I feel our residents should not have access to, but we are required to make it available (now in about five different languages I might add). Too much information is a dangerous thing. If we don't learn from our mistakes, history is bound to repeat itself. This law is a step in the right direction.

Thank you for allowing me to "vent". I do hope some of the things I have said are seriously considered. Repealing this law would be a serious mistake.

Sincerely,

Marie L. Rameika  
Town Administrator/Clerk  
Town of Church Hill  
(and Church Hill area resident)

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TOWN OF CHURCH HILL  
324 MAIN STREET  
PO BOX 85  
CHURCH HILL, MD 21623

410-758-3740 - OFFICE  
410-556-6635 - FAX

\*\*\*NEW EMAIL ADDRESS\*\*\*

[townofchurchhill@verizon.net](mailto:townofchurchhill@verizon.net)

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Marie L. Rameika  
~ Town Administrator/Clerk

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# Appendix D

**COMMENTS OF THE MARYLAND-DELAWARE-DISTRICT OF COLUMBIA  
PRESS ASSOCIATION ON THE PUBLIC INFORMATION ACT EXCEPTION  
FOR RECORDS RELATED TO PUBLIC SECURITY**

October 3, 2007

The Maryland-Delaware-District of Columbia Press Association ("MDDC") respectfully submits the following information and comment on the Public Information Act exception for records related to public security ("Section 10-618(j)"). We understand that these comments will be used in connection with the Attorney General's required review and report to the Governor and the General Assembly on the continued necessity of the exception and recommendations for changes or modifications (if any).

MDDC is a nonprofit membership corporation whose approximately 165 newspaper members include The Baltimore Sun, The Washington Post, all of the dailies and virtually all of the non-daily newspapers published in Maryland, Delaware and the District of Columbia. MDDC and its members are vitally interested in the Maryland Public Information Act ("PIA"), MD State Gov't Code §10-611 *et seq.*, which we use on a regular basis to report on matters of public interest, including the workings of public bodies in Maryland.

MDDC does not object to retaining Section 10-618(j) in its current form, but we do not believe that the exception should be expanded further. We also recommend that the Attorney General review Section 10-618(j) again in five years, and that State and local employees receive adequate training to ensure effective implementation.

Below are MDDC's responses to the specific questions asked in the Attorney General's Request for Information and Comment:

**1. Has a government agency cited SG § 10-618(j) to justify a refusal to allow you to inspect or copy public records? If so, please describe the nature of the request and the circumstances of the denial of access.**

Yes. We surveyed our membership to find out whether a government agency had cited Section 10-618(j) as a basis for denying a PIA request to inspect records. We discovered at least one instance where it was asserted as the basis for denying inspection of records.

In the Spring of 2007, MDDC participated in a statewide Sunshine Week 2007 national audit. As part of the audit, the Capital-Gazette Newspapers sent someone to the Anne Arundel Local Emergency Planning Committee ("LEPC") to inspect its Comprehensive Emergency Response Plan ("CERP"), a document that is public under the federal Emergency Planning and Community Right-to-Know Act of 1986. The CERP contains information local officials will need if there is a chemical spill or other event involving hazardous materials.

The request was referred to the Anne Arundel County Attorney's Office, which subsequently responded in a letter that the newspaper was required to resubmit its request to the Maryland Department of the Environment. The County Attorney further denied the request "to the extent that any information you request is not covered by other federal or State law, in accordance with § 10-618(j) of the Act." A copy of the letter is attached hereto, as well as an article by Jim Lee of the Carroll County Times summarizing the statewide audit results.

**2. What views, if any, do you have as to the merits of retaining SG §10-618(j) as part of the Public Information Act? Please explain your view.**

MDDC does not oppose retaining Section 10-618(j) as part of the Public Information Act.

We believe that Section 10-618(j) strikes an appropriate balance between the interests in access to public records and the threat posed by terrorism. MDDC supported the exception after it was amended to ensure that inspection of covered records would be denied only to the extent it would jeopardize the security of any building, structure, or facility, endanger the life or physical safety of an individual, or facilitate the planning of a terrorist attack. Our support was also based on the fact that the exception did not extend to inspection records of State or local governments, or citations issued by State or local governments, of private-sector buildings, structures, or facilities that have experienced a catastrophic event, and that the Attorney General would review implementation after five years.

MDDC would oppose efforts to broaden the current exception. The importance of public access to the sorts of records covered by this exception was highlighted after an interstate bridge in Minneapolis collapsed into the Mississippi River on August 1, killing 13 people. Following the bridge collapse, reporters across the country reviewed public bridge inspection records and published important stories that answered questions about the soundness of other bridges, the frequency of bridge inspections, and the adequacy of funding to make repairs. Here are some examples of these stories (full copies of which are attached hereto):

- The Washington Post reported that "[b]ridge inspection reports maintained by Washington area governments show that several major bridges are deteriorating and need repairs, with defects that range from missing chunks of concrete on an abutment of the Key Bridge to heavy structural deterioration on the 11<sup>th</sup> Street Bridge over the Anacostia River." The article further explained that "[d]espite significant flaws in some of the spans, engineers and transportation officials emphasize that the region's bridges are safe and that some deficiencies are largely cosmetic, not structural."
- The Baltimore Sun reported on the decaying state of bridges owned by CSX in the Baltimore area and the debate between the company and the city over whose job it is to maintain them.

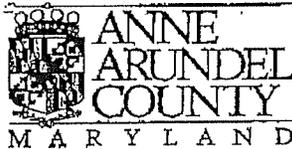
- USA TODAY analyzed federal inspection records and found that “at least 96 interstate highway bridges rated ‘structurally deficient’ by government inspectors in 1982 had the same rating last year, suggesting they weren’t fixed or had lapsed and again require repair.”
- The Courier-Journal (Louisville, Kentucky) reported that “[e]leven Louisville bridges are being re-evaluated by the state because of a Minneapolis highway collapse are riddled with deteriorating parts, including broken concrete, cracked girders and missing bolts, according to their latest inspection reports.” The article noted that state transportation officials maintained that the bridges were safe, but that they did not have the funds to make all of the needed repairs.

**3, Do you believe that SG §10-618(j) should be changed or modified in any way? Please explain in detail.**

No. However, in light of the important interests at stake here, we recommend further review of the exception five years from now. Following the mixed results of the Sunshine Week audit, we also recommend continued training of State and local employees to ensure consistent and proper handling of PIA requests in general and specifically requests for records that may be covered by Section 10-618(j).

We appreciate the opportunity to submit these comments. Please feel free to contact us if you have any questions regarding any of the above, or if you would like additional information.

Respectfully submitted,  
Eric Lieberman  
Vice President and Counsel, The Washington Post  
Chair, MDDC Government Affairs Committee



# Office of Law

Jonathan A. Hodgson, County Attorney

County Executive John R. Leopold

2660 Riva Road, 4<sup>th</sup> Floor  
P.O. Box 6675  
Annapolis, Maryland 21401  
410-222-7888

Loti L. Blair  
Senior Assistant County Attorney  
lblair@aaacounty.org

June 29, 2007

Mr. Stuart A. Samuels  
Assistant Managing Editor  
Capital Gazette Newspapers  
2000 Capital Drive  
Annapolis, Maryland 21401

RE: Information Request

Dear Mr. Samuels:

Your email addressed to Rhonda Wardlaw dated June 19, 2007, has been forwarded to me. In that email, you request information under the Maryland Public Information Act, Maryland State Government Code Annotated §§10-611, et seq. (the "Act"). Specifically, you request "a copy of the Comprehensive Emergency Response Plan maintained by the Local Emergency Response Committee," which you contend "is considered public record under the Emergency Planning and Community Right to Know Act of 1986." This is a refinement of your previous request for "a copy of the Comprehensive Emergency Response Plan maintained by the Local Emergency Response Committee."

The Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA") provides governments and the public access to certain information related to planning for chemical incidents. Other federal and State laws and regulations also apply to the information you have requested.

Pursuant to the EPCRA and other laws and regulations, Anne Arundel County provides information to the Maryland Department of the Environment ("MDE"), which compiles the information for the County and other local governments and has an established procedure that complies with laws and regulations for providing permitted access to public information. I am advised that a request to the MDE must be made in writing. In order to provide the best possible service, MDE asks that you provide specific information concerning the records that you are interested in, that you be specific about the type of information you are seeking, and that you provide the EPCRA section number related to the information if possible. You should also include as much specific facility information as possible, such as the facility name and full address, including zip

Page 2

June 29, 2007

code. The request should be sent to Patricia S. Williams, Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD 21230.

To the extent that any information you request is not covered by other federal or State law, in accordance with § 10-618(j) of the Act, your request is denied. That section permits the County to deny disclosure of "response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures" if such disclosure would be contrary to the public interest and comports with other provisions of the subsection. The County has determined that disclosure would be contrary to public interest; the disclosure would jeopardize security of buildings, structures, or facilities, may facilitate the planning of a terrorist attack, or may endanger the life or physical safety of an individual; and the denial is not contrary to § 10-618(j)(3) or (4).

As your request has been partially denied, I am required to advise you that you may seek judicial review of this denial in accordance with § 10-623 of the Act.

Thank you for your attention to this matter.

Sincerely,



Lori L. Blair  
Senior Assistant County Attorney

# Carroll County Times

Print Page

## Audit reveals rampant secrecy

By Jim Lee, Times Staff Writer

In Kent County, people can find out in a matter of minutes how their officials would react in the event of an emergency.

In Wicomico County, people asking for the same documents are told releasing the information is against county policy.

Across the state, auditors asking for their community's Comprehensive Emergency Response Plan — a document that by federal law should be readily available to the public — were met with distrust, disorganization and denials.

Of 23 Maryland jurisdictions surveyed, only six auditors were able to immediately obtain the document. Eight were denied outright. The remainder encountered myriad difficulties in their attempts to get the information.

"That's disappointing," said Eric Lieberman, chairman of the Government Affairs Committee for the Maryland-Delaware-D.C. Press Association and deputy counsel and director of government affairs for The Washington Post. "It makes me wonder what kind of training public officials are getting in their responsibilities under the law."

The audit was part of a nationwide project coordinated by several news agencies to test public record access as part of Sunshine Week, an annual event designed to highlight open government and the public's right to know.

By law, states are supposed to designate Local Emergency Planning Committee districts. Among their responsibilities, the LEPCs are supposed to maintain community response plans that identify facilities using hazardous materials, describe emergency procedures, and outline evacuation plans and emergency notification procedures. The plans are supposed to be updated annually and LEPCs are supposed to notify the public each year about the plan's availability.

Debra Gersh Hernandez, Sunshine Week audit project coordinator, said the emergency response plan was chosen because it is supposed to be public, and it is something that is relevant across many communities.

"I think citizens have a right to know what hazardous materials are in their community," she said. "This is basic information that people need to know."

### A range of responses

Sue Willits, director of the Kent County Office of Emergency Services, said the county's basic plan is available on a CD and also on the county's Web site.

"I feel our plan is policy, policy is public," she said. "The step-by-step procedures to follow that are private."

Keeping details of the plan out of public view is allowable under the federal Emergency Planning and Community Right to Know Act of 1986. The two-tier access is designed to ensure that the public is informed of potential dangers in their community, but officials can keep more sensitive information private.

Many jurisdictions, however, don't make that distinction.

In Wicomico County, LEPC Management Agency Deputy Director David Shipley said Wicomico's policies are different from other communities.

Shipley originally said the plan was not public. Later, he said the plan could be viewed but could not be copied.

"Nobody was ever prohibited from viewing it," he said. "In my mind, reviewing and copying are two different things."

Bob McDonald, chief, Opinions and Advice for the state attorney general's office, said he was not aware of any such

distinction.

"As a general rule, any record that is open to public inspection is also open to copying," he said.

Lieberman of the Washington Post agreed.

"It doesn't make common sense that you can read the document but can't make a copy of it," he said.

#### Denials and delays

Officials in several jurisdictions forwarded the request to their county attorneys, many of whom denied or delayed access to the plans.

Ernest Crofoot, county attorney in Caroline County, sent a reply to the requestor indicating that he would have to review the entire document — at a cost of \$195 an hour — and that the total cost would be in the range of \$1,200 to \$1,600 plus \$114 for copying.

"To proceed with the handling of your request, the county must receive an advance against the costs in the amount of \$1,200," Crofoot wrote in a response to the requester.

Lieberman said receiving incorrect information from county attorneys is especially troubling.

"The lawyers have an obligation to research the law before they give advice to county employees about what they can and can't release," he said.

Crofoot said later that the initial request was unclear and he thought the auditor wanted the entire plan instead of just the public portion.

"We interpreted the request to be something much more significant," he said.

McDonald said the attorney general's office recommends that people requesting public documents do so in writing, even though it is not required by law.

"It's important that you make clear what you are asking for," he said. "Especially when it is something that people may not ask for every day or that could be misinterpreted."

Agencies denying access to a document must do so in writing, and they must cite specific sections under the law that allow the denial.

In many cases, however, that didn't happen, either.

In Dorchester County, officials made a vague reference to the Department of Homeland Security and said the plan was not a public document.

In Queen Anne's County, officials cited an exemption in the federal law that they say allows them to deny access.

McDonald said he was not familiar with the exemption, and would have to do further research to see if it applied.

"I did notice, however, there is a related section that says it doesn't pre-empt any state law," he said.

Auditors encountered other difficulties as well, including: reaching the person responsible for the document; not receiving a response after several attempts; not being given the document until after they identified themselves as reporters; and being told the document was unavailable because it was being updated.

#### Alarms raised

In order to avoid the possibility of being treated differently, auditors were asked to not identify themselves as reporters. Despite that, in Anne Arundel County, access to the document was denied until the reporter's credentials were verified.

Audit coordinator Hernandez said it doesn't make sense to allow reporters access but not the public.

"In essence, they are really denying the information to the public, which is the bottom line," she said.

After that initial contact, Arundel refused to release the document anyway.

In Carroll County, Office of Public Safety director William Martin said the plan wasn't available because it was being updated.

Martin has since retired. Vivian Laxton, Carroll County Public Information Office administrator, later contacted the reporter to say the plan was available.

"I know that whoever it was ultimately should have gotten a copy of the plan," she said.

Auditors were asked to conduct their surveys between Jan. 8 and Jan. 19.

As auditors fanned out, word of the multiple requests got back to the Department of Homeland Security, which sent e-mails to emergency management agencies across the nation.

"Just wanted to give you a heads up in case you haven't heard," wrote Niki Edwards, external affairs officer for the Department of Homeland Security in an e-mail sent Jan. 19 to the Maryland Emergency Management Agency.

The e-mail subject line was "Emergency Plans being sought by newspapers."

"You may want to alert your leadership and counties, as other states appear to be doing," Edwards wrote.

The same day, MEMA forwarded the e-mail to counties across the state. In his e-mail, MEMA's Jeff Welsh wrote "Our position at MEMA is that this would be treated as a public information act request and we would forward it to our assistant AG."

Since the e-mail went out, more agencies have responded to the initial requests.

Dick DeVore, director of the Allegany Office of Emergency Management, said he didn't know it was a reporter when he sat down with the auditor, explained the document and offered to make copies.

"I did not put two and two together until much later," he said.

Regardless of the audit, DeVore said, he knew the document requested was public and said his job is to help inform residents.

"Our approach here as far as emergency management services is that it is a cooperative venture between government and the citizens," he said.

Willits, in Kent County, said she didn't know it was a reporter making the request, either. But, she said, e-mails going around after the audit foretold that the results would not be good.

"The consensus was most Maryland counties did not relinquish their plan," she said.

Better training could help, she said, and the upcoming directors' conference in May would be the perfect venue.

"You could have a whole panel discussion," she said.

McDonald said the attorney general's office conducts training for municipalities through such organizations as the Maryland Association of Counties and Maryland Municipal League.

"The AG's office would be happy to send someone to participate in any training for which MEMA requested our assistance," McDonald wrote in an e-mail.

Reach Jim Lee at 410-857-7878 or e-mail [jimlee@lcniofmd.com](mailto:jimlee@lcniofmd.com).

#### The audit

Several media groups, including the American Society of Newspaper Editors, Coalition of Journalists for Open Government, National Freedom of Information Coalition and Society of Environmental Journalists joined to coordinate a nationwide test of access to public records as part of Sunshine Week.

Auditors were asked to visit their Local Emergency Planning Commission between Jan. 8 and Jan. 19 and ask for a copy of the Comprehensive Emergency Response Plan. Auditors were then asked to complete a series of survey questions and send the answers, along with a narrative describing their experience, to the national coordinators of the project.

#### What is Sunshine Week?

Sunshine Week is a national initiative to open a dialogue about the importance of open government and freedom of information. Participants include print, broadcast and online news media, civic groups, libraries, nonprofits, schools and others interested in the public's right to know.

The Florida Society of Newspaper Editors launched Sunshine Sunday in 2002 in response to efforts by some Florida legislators to create scores of new exemptions to the state's public records law. FSNE estimates that some 300 exemptions to open government laws were defeated in the legislative sessions that followed its three Sunshine Sundays, because of the increased public and legislative awareness that resulted from the Sunshine Sunday reports and commentary.

Several states followed Florida's lead, and in June 2003, ASNE hosted a Freedom of Information Summit in Washington where the seeds for Sunshine Week were planted.

With an inaugural grant from Knight Foundation, the ASNE FOI Committee launched Sunshine Week in March 2005. It continues to be celebrated each year in mid-March, coinciding with National FOI Day and James Madison's birthday on March 16.

## ArkType

**Published on:** Sunday, 8/05/2007, A section,  
M2 edition, VA zone, A01

**Inches:** 34 **Words:** 1263 **Slug:** localbridges5

# Inspections Note Significant Flaws, But Officials Call Area Bridges Safe

**By Michael Laris**  
**Washington Post Staff Writer**

The 14th Street Bridge has a long, craggy hole near the area that once was a drawbridge. A span over Columbia Pike in Arlington County has exposed reinforcement bars. The joints holding up Chain Bridge have aged severely.

Bridge inspection reports maintained by Washington area governments show that several major bridges are deteriorating and need repairs, with defects that range from missing chunks of concrete on an abutment of the Key Bridge to heavy structural deterioration on the 11th Street Bridge over the Anacostia River.

The inspection reports, which the federal government requires every two years, offer a striking picture of the state of area bridges and the difficult task officials face as they try to ensure safety. Despite significant flaws in some of the spans, engineers and transportation officials emphasize that the region's bridges are safe and that some deficiencies are largely cosmetic, not structural.

Any bridge would be closed immediately if inspections turned up an indication of imminent danger, officials said.

The reports show that two major Anacostia crossings — the Frederick Douglass Bridge and the 11th Street span — have been declared "structurally deficient," the same designation as the bridge that collapsed Wednesday in Minneapolis. The Douglass Bridge was shut down in July for an overhaul scheduled to be completed next month. The 11th Street Bridge is scheduled for major revamping in 2009.

The "structurally" deficient label has been applied to 15 bridges in the District, officials said, and more than 1,600 others in Maryland and Virginia. Nationwide, there were 73,764 such bridges last year.

It is a broad designation that covers major deterioration in a bridge's key components but is not a list of teetering bridges. If a span's deck or one of its main structural features is declared a four or lower on a 10-point scale, it goes on the list. Engineers can then step up inspections and repairs, pending far-reaching improvements or possible replacement. A four is deemed "poor condition," while a one represents "imminent failure" and zero is "failed."

The 11th Street Bridge, for example, received a rating of four after it was found to have large holes in parts of its main structure.

Bridges are critical to the District, which is split by the Anacostia, and to the Washington region, essentially cut in half by the Potomac River. Five of the region's most heavily traveled bridges carry tens of thousands of commuters over the Potomac each day. The Capital Beltway is anchored by two massive structures that connect Virginia and Maryland: the Woodrow Wilson and American Legion bridges.

The Legion Bridge was last inspected at the end of 2006, and a summary of the report showed that its major elements had no serious problems. Workers are cleaning, repairing and repainting the underside of the rusting span.

The Wilson Bridge was inspected before it opened last summer. As a precaution, Maryland transportation officials are preparing to inspect a span along the Capital Beltway in Montgomery County, near the Prince George's County border, that was built similarly to the crumbled Minneapolis bridge. State officials did not

release the most recent inspection report for the Chesapeake Bay Bridge, saying they need to review it first to make sure the findings are understandable and do not breach security.

Across the region, the reports provide what amounts to a priority list for transportation departments. An inspection that shows a bridge in dire condition leads to emergency repair work. Less severe findings could lead to patch jobs, such as temporary reinforcements, and closer scrutiny. The documents also are used to determine how bridge maintenance and reconstruction money is spent.

The reports show that in some cases, significant problems are pointed out years before new steel or cement replacements are readied.

An October 2004 letter from a District transportation consultant, for instance, recommended that all pins and hangers -- the structural joints that support the span -- on the Chain Bridge be replaced or, at a minimum, tested, refurbished and reinstalled.

"The bridge was constructed in 1937 so the pins and hangers have 67 years of weathering and fatigue," according to the letter. "The pins and hangers have not undergone regular inspection over the life of the structure so the rate of deterioration can not be determined."

Officials are in the process of choosing a contractor and said work on the bridge would begin soon, said Ardeshir Nafici, the District's acting chief transportation engineer. "Things don't happen instantly," Nafici said, adding that engineers pay special attention to bridges that are undergoing the long process of being overhauled.

The Chain Bridge is not listed as structurally deficient.

But government bridge engineers said long delays don't necessarily mean increased danger, even with structurally deficient bridges.

The Washington Boulevard bridge over Columbia Pike -- which a 2006 inspection report notes has "full height vertical cracks" on two major supports -- has been structurally deficient for 27 years, noted Nicholas J. Roper, a bridge design engineer for the Virginia Department of Transportation.

Engineers have called for its replacement, and the bridge first made it onto the state's main construction list in the early 1990s. Designs for a full replacement are being drawn up, but construction is at least two years away.

"Structural deficiency tells me to inspect more frequently, perform maintenance more frequently and, if possible, repair whatever is deficient to upgrade the condition rating and remove it from the 'bridges-to-replace list,'" Roper said. "Eventually, though, replacement may be the only option that works."

In other words, "It's like your car. You start repairing it so much, it would be cheaper to buy a new one," said Kathleen Penney, deputy chief engineer for the District's transportation department.

The inspection reports filed in three gray cabinets in the D.C. transportation department's New York Avenue office offer a vivid account of the reality of deteriorating bridges.

The covers have shiny color photos showing the arches of the Key Bridge with ducks in its foreground and Georgetown behind. Another depicts the Washington Monument behind a picture of the 14th Street Bridge. Inside, the images and descriptions are less rosy. The most serious cases come with a "Letter of Concern" or even more urgent "Critical Finding Reports."

In September 2004, a District consultant noted holes "varying in size from 2 [inches] diameter up to 15 inches long" on the 11th Street Bridge, which carries Interstate 295 over the Anacostia.

A report in January said the main bridge structure is in "poor condition" with "moderate to heavy corrosion." That bridge was given a federal rating, known as a sufficiency rating, of 23 out of 100. A rating under 50 means a bridge is eligible for replacement.

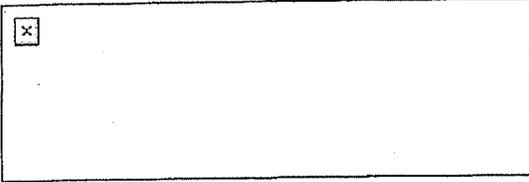
"The bridges are safe, I can tell you that. But we have some deficiencies based on the reports we get every two years, or less than two years," Nafici said. "This is an ongoing process, a daily process."

Government engineers say they are constantly fighting age and physics in maintaining the region's bridges.

"The principle is that bending paper clip," Roper said. "Metal can bend both directions, back and forth, back and forth, up and down. After time, it begins to get tired. When it gets tired, it begins to get brittle. . . . The same type of thing is happening up on bridges, or buildings, or anything that uses steel or steel supports."

But, he said, such structures are built with a buffer so that they will not fail after deterioration or unforeseen stresses. "You need extra capacity in that bridge for things that go beyond just 'Will it carry the truck?' "

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## 'Bridge Lady' says span is falling down Years of complaining brings some support but no funds to Fort Avenue

Date: Sunday, August 5, 2007

Section: TELEGRAPH

Edition: Final

Page: 1A

Source: Sun reporter

Byline: Jill Rosen

Illustration: PHOTO(S) / MAP(S)

Graph Source: 1. & 2. KIM HAIRSTON : SUN PHOTOGRAPHER

3. SUN NEWS GRAPHIC

Caption: 1. Karen Johns looks over a patch on the Fort Avenue **Bridge**, which is rated "structurally deficient."

2. The underside of the Fort Avenue **Bridge** over the CSX railroad tracks shows exposed metal and missing concrete. Karen Johns has been complaining about the decay to city and state officials for several years.

3. Fort Avenue **Bridge**

[http://archive.baltsun.trb/cgi-](http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Sunday&date=5&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A)

[bin/sunarchive.pl?day=Sunday&date=5&month=August&year=2007&edition=Final&local=TELEGRAPH&page=](http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Sunday&date=5&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A)

[1A](http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Sunday&date=5&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A)

[1A](http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Sunday&date=5&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A)

To get the **bridge** near her Locust Point home fixed, Karen Johns says she'll stand naked with a sign.

No one wants it to come to that, but after nearly a decade of ignored letters, phone calls and so many appeals to politicians that she's lost count, it just might. "I'm just afraid the **bridge** is going to collapse one day," she says. "I've been trying to get someone to take care of this for 10 years.

"I don't care how safe they tell me it is. I'm not in another world that I can't see what's right and what's wrong. If you walked under the **bridge**, you would never go over it."

Maryland politicians and inspectors have acknowledged serious problems with the 90-year-old **bridge** in the 1200 block of Fort Ave. - essentially the only way in or out of the heart of the Locust Point peninsula - but nothing has been done.

For years, engineers and community activists have sounded the alarm about the decaying state of America's **bridges**, warning of the billions of dollars in needed repairs and upgrades. The American Society of Civil Engineers estimated in 2005 that it would cost \$9.4 billion per year over 20 years to adequately repair the more than 70,000 **bridges** nationwide that are rated "structurally deficient" - which includes the one in Locust Point. But political, financial and bureaucratic hurdles have routinely thwarted efforts to attack the backlog in **bridge** repairs.

That all may have changed Wednesday, when an interstate highway **bridge** over the Mississippi River in Minneapolis collapsed. Because the **bridge** had been faulted in inspection reports as "structurally deficient" for at least 17 years, people across the country are now second-guessing the safety of the nation's **bridges**, including the thousands that span Maryland's roads, waterways and railroad tracks.

Though railroad conglomerate CSX owns the Locust Point **bridge**, which leads to Fort McHenry, the company and the city dispute whose job it is to maintain it.

"It's going to take something like Minnesota," Johns says, "for them to say, 'Oh, maybe we should have done something.'"

Johns, 66, stands in the morning sun atop the bridge, scuffing a flip-flop along the crumbling concrete. She points down to a crack at least an inch wide, thick enough to easily see the trash-strewn tracks below. She leans over the side of the bridge, pointing to spots where the concrete has worn away to expose the structure's rusty metal skeleton.

"Can you see the metal bars through the concrete?" she asks. "Before some of these other spots were patched, the holes were big enough that kids were putting their heads through to watch the trains."

When Johns peers over the side of the bridge, she's afraid her spectacles will slide off her nose and land on the tracks below, lost like everything else that litters the tracks - a bent bicycle, a baby carriage, scores of soda bottles. The garbage gets her riled up, but nothing like the condition of the bridge itself.

The widow and grandmother knits, tends flowers and harangues elected officials about her bridge.

In 1999 Johns walked from rowhouse to rowhouse in her South Baltimore neighborhood collecting about 90 signatures on a petition urging city leaders to invest in an inspection and a cleanup.

She's written and called Sen. Barbara A. Mikulski, former Sen. Paul S. Sarbanes, BGE, former Gov. Parris N. Glendening, Sheila Dixon when she led the City Council, former city health commissioner Peter L. Beilenson, former City Councilman John L. Cain, all of her state lawmakers, and she's pretty sure she wrote to President Bush. "The politicians," she says, "know me as The Bridge Lady."

"I sound like a chronic complainer, but it's my community. If you don't get off your duff and say something about it, nothing is going to be changed."

State Sen. George W. Della Jr. has heard Johns' appeal many times.

"She's at every South Baltimore Little League parade. She gets us when we're out campaigning; I know she's grabbed Martin [O'Malley]," he says. "She's relentless, and she's right."

O'Malley, when he was Baltimore's mayor, wrote Johns acknowledging that the bridge needed \$2 million in repairs and that "we are working to develop an improvement and funding schedule."

That was more than seven years ago.

Mikulski responded in 2002 to one of Johns' many letters, calling the bridge "deplorable." The senator said she contacted John Snow, CSX's chairman and CEO, and then-Transportation Secretary Norman Y. Mineta. Mikulski added: "I absolutely share your concern about this issue."

Johns saves a thick bundle of correspondence from politicians, city transportation officials and CSX engineers. She spreads the letters out in her living room like a museum display, reading bits of them aloud. In a 1999 letter, CSX's assistant chief engineer recommends that his company work with the city to replace the bridge, saying it could be justified "in terms of public safety, economic benefits and enhancement of the local neighborhood."

"The roadway slab, supported by the superstructure, is showing the first signs of distress," R.P. Garro wrote. "It just cannot handle the increased heavier truck traffic much longer. The time is right to progress this bridge replacement project."

In the most recent state inspection, the bridge scored a disappointing 36 out of 100 - anything less than 50 is a problem, officials say.

Despite the ranking and Garro's concerns, Gary Sease, a CSX spokesman, said last week that company inspectors found the bridge "structurally sound" last October.

Even so, Sease says CSX believes it "would be a good path to go down" if his company and the city could work together to apply for federal money to replace the bridge.

Baltimore Transportation Director Alfred H. Foxx, however, says the city's been trying to negotiate with CSX about the Fort Avenue Bridge for the six years he's worked there - and about 15 years in total.

"I've even offered to take over the bridge, if they'd contribute to the repairs. It seems like everything has dropped," he says. "Are we frustrated? Sure we are."

Foxx estimates it would cost \$5.5 million to replace the bridge. Though he thinks the bridge needs "a complete overhaul," Foxx said the structure is not on the verge of collapse. If it were, he said, he wouldn't be dicker with CSX.

"If the bridge poses a problem where I think it will be unsafe, I'll just take the money from the city and go ahead and fix it," he says. "We'd work it out with CSX later."

As the city and the railroad company wrangle over money and responsibility, Johns looks at the bridge fretfully from her front window. Her local representatives share her concern.

"Am I worried about it? Yeah, yeah," says City Councilman Edward L. Reisinger. "You got school buses going over there to get to Fort McHenry and to school, you got employees of Tide Point coming and going. I mean, that bridge is used, a lot."

Della has all but had it with the situation, calling it "an accident just waiting to happen."

"I've asked the city to look at these things in the past and the comeback is all the time, 'There's no danger; they're structurally sound,'" he says. "But I'm telling ya, it doesn't look that way to me."  
Johns says she's about ready to give up. She's swept glass from the bridge's sidewalks herself. She's bought paint to cover the graffiti herself.  
And after a decade of complaints, she feels like she may as well be talking to herself.  
"I don't want nobody to get hurt," she says. "But I hope late one night it just falls. Just so I can say, 'I told you so.'"

## 7. New attention to 5 old CSX bridges 'Deficient' city spans are topic of meeting; who pays for repairs is issue SUN FOLLOW-UP

Date: Thursday, August 9, 2007

Section: TELEGRAPH

Edition: Final

Page: 1A

Source: SUN REPORTER

Byline: Jill Rosen

Illustration: Photo(s)

Graph Source: 1 - 5. Photos by Kenneth K. Lam : Sun photographer

6 & 7. Photos by (left) Kenneth K. Lam and (right) Kim Hairston : Sun photographers

8. CHRISTINE FELLEENZ : SUN CARTOGRAPHER

Caption: 1. SISSON STREET BRIDGE Bridge sufficiency rating: 44.9 out of 100

2. GREENMOUNT AVENUE BRIDGE Bridge sufficiency rating: 48.7

3. HARFORD ROAD BRIDGE Bridge sufficiency rating: 49.8

4. FORT AVENUE BRIDGE Bridge sufficiency rating: 36.4

5. WICOMICO STREET BRIDGE Bridge sufficiency rating: 32

6 & 7. Five bridges in Baltimore owned by the CSX railroad are badly deteriorated and in need of immediate repair or replacement, according to the city director of transportation. Above left, a train passes under one of them, the Harford Road bridge. Right, Karen Johns has been campaigning since 1999 to get some state or local official to order the Fort Avenue bridge repaired.

8. BALTIMORE AND LOCATION OF BRIDGES

[http://archive.baltsun.trb/cgi-](http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Thursday&date=9&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A)

[bin/sunarchive.pl?day=Thursday&date=9&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A](http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Thursday&date=9&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A)

<http://archive.baltsun.trb/cgi-bin/sunarchive.pl?day=Thursday&date=9&month=August&year=2007&edition=Final&local=TELEGRAPH&page=1A>

Mayor Sheila Dixon and city and state lawmakers demanded yesterday that railroad conglomerate CSX fix its crumbling bridges in Baltimore before it's too late.

Voicing support for a Locust Point grandmother who has been trying for nearly a decade to get a bridge near her home repaired, Dixon called the condition of the Fort Avenue bridge a "top priority," while state lawmakers appealed to the governor and Maryland's transportation secretary to throw their weight into the effort. CSX owns the Locust Point bridge that leads to Fort McHenry, as well as four other "structurally deficient" bridges in Baltimore. For more than a decade, the company and the city have argued over whose job it is to maintain the ailing spans. Deputy Mayor Andy Frank said yesterday that city officials, who will meet with CSX representatives today, expect the railroad company to produce a list by early next week of exactly what the company is prepared to repair and replace.

"It's been going on too long," Frank said. "We're prepared to force it to a conclusion."

Gary Sease, a CSX spokesman, said the company believes the bridges are safe. "We stress that the bridges are structurally sound. But certainly we want to go forward with the discussion of the potential replacement as the city recommends."

In Maryland and around the country last week, people began looking more closely at the safety of bridges after an eight-lane span in Minneapolis collapsed into the Mississippi River during rush hour.

Minnesota state engineers recommended seven years ago that the bridge be replaced or redecked, the Minneapolis Star Tribune reported yesterday. In Baltimore in 1999, officials deemed the Fort Avenue bridge, which is now 90 years old, ready for replacement.

After what happened in Minnesota, Karen Johns, who lives near the bridge in the 1200 block of Fort Ave., told The Sun that she would stand naked with a sign if that's what it took to get the structure fixed.

To no avail, she has already gone door-to-door on a petition drive and contacted just about every local, state and federal politician in Maryland.

Last night she planned to attend a neighborhood meeting and wave around a piece of the bridge.

"It's a hunk of rust," she said. "I want all these people to get off their duff and give me support."

Baltimore Transportation Director Alfred H. Foxx estimates it would cost \$5.5 million to replace the Fort Avenue bridge, which scored a disappointing 36 out of 100 on its most recent inspection.

Any bridge that scores less than 50 should be replaced or have major rehabilitation, according to federal guidelines. Four other CSX bridges also scored below 50 - spans along Sisson Street, Wicomico Street, Harford Road and Greenmount Avenue. It's unclear how much it would cost to replace and repair these structures.

"We are all concerned," Dixon said. "This one is one of our top priorities." She said transportation officials were meeting with engineers "as we speak, to focus on what needs to be done."

Yesterday state Sen. George W. Della Jr. and Del. Brian K. McHale sent a letter to Gov. Martin O'Malley and state Transportation Secretary John D. Porcari, urging them to "exercise the goodwill and strength of your offices to require the responsible party(s) to replace or repair this bridge."

"If the responsible party here doesn't come to the plate, we can't wait until a tragedy happens," Della said.

Porcari responded immediately, saying he would happily use his influence to help the city, although his office has had "limited success" dealing with CSX on other issues.

"We'll push as hard as we can to help the city in any way," he said.

O'Malley's spokesman, Rick Abbruzzese, said the governor would help, too: "He feels that if the incident in Minnesota proves anything, we can't wait to make these kind of investments in our infrastructure."

Sease, the CSX spokesman, said today's meeting will be "an important first step" to address the bridge issues - first and foremost, who must pay for the repairs.

"They are certainly a shared responsibility of the city and CSX," he said. "We want to have a thorough and frank discussion to identify the best way to address the bridge issues."

Sease said the public attention is definitely spurring the matter.

"The mayor's keen interest in this and that of the other politicians may help us and the city resolve once and for all what the responsibilities are in terms of maintenance and possible replacement," he said.

Baltimore and CSX have had something of a contentious relationship recently. For 4 1/2 years after a train derailment and fire in the Howard Street tunnel, they disagreed about who was responsible - eventually settling for CSX to make a \$2 million payment to the city to help defray costs.

City Councilwoman Mary Pat Clarke hopes CSX will tend to all five of the Baltimore bridges.

"CSX needs to take care of its property and take care of the people of our city. I'm very glad we're beginning to highlight this need. They need to get to work for us," she said. "They are on notice."

As for Johns, she's encouraged by all the political buzz that her bridge quest has attracted, particularly from Dixon, yet she won't relax until she sees a repair crew pull up on Fort Avenue.

"Talk is cheap, honey," she said. "I want to see it in black and white."

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USA TODAY

August 30, 2007 Thursday  
FINAL EDITION

## Scores of bridges 'deficient' since '80s; 3.8 million vehicles on the spans daily

BYLINE: Brad Heath

SECTION: NEWS; Pg. 1A

LENGTH: 418 words

Dozens of the nation's highway bridges that fell into disrepair 25 years ago still need overhauls to fix cracks, corrosion and other long-festering problems, a USA TODAY analysis of federal inspection records shows.

At least 96 interstate highway bridges rated "structurally deficient" by government inspectors in 1982 had the same rating last year, suggesting they weren't fixed or had lapsed and again require repair, according to the records. Those spans carry 3.8 million cars and trucks every day.

Such crossings face increased scrutiny after an interstate bridge in Minneapolis plummeted into the Mississippi River on Aug. 1, killing 13 people and triggering a wave of renewed safety inspections across the country. That collapse, still under investigation, also sparked calls from lawmakers to accelerate long-delayed -- and costly -- repairs.

"I think the challenge is that as these bridges continue to have their lives extended with maintenance, the states don't have the funds to go ahead with the types of replacements that some of the bridges will ultimately need," says Frank Moretti, director of policy and research for TRIP, a transportation advocacy group.

Some of the 96 bridges appear not to have undergone major overhauls since they were listed as deficient in 1982.

Many others have been fixed and since relapsed to being "structurally deficient" again. That rating means some parts of the bridge need to be scheduled for repair or replacement.

The Interstate 35W bridge that collapsed Aug. 1 was listed as deficient in 1990, though investigators did not judge it dangerous. About 2,800 interstate spans were listed as deficient last year, U.S. Transportation Department records show.

"We're confident these bridges are safe," says Charles Carrier, a spokesman for the Department of Transportation in New York, where 35 bridges made the list. "If we can't keep them safe, we close them."

Carrier and authorities in other states said some of the bridges have been patched this year, and others are scheduled for repairs. Most will need to be replaced or overhauled, says Kazem Farhoumand of the Rhode Island Transportation Department.

"You need more than just maintenance," he says. "You have to spend a lot of money and a lot of time and a lot of effort."

The National Transportation Safety Board is investigating the Minneapolis bridge collapse. Investigators are checking the bridge's de-icing system and examining the weight of construction materials and vehicles that were on it before it fell.

LOAD-DATE: August 30, 2007

LANGUAGE: ENGLISH

GRAPHIC: GRAPHIC, Color, Julie Snider, USA TODAY, Source: USA TODAY analysis of U.S. Dept. of Transportation records (Bar graph)

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The Courier-Journal (Louisville, Kentucky)

August 23, 2007 Thursday  
METRO Edition

## Missing bolts, cracked girders on area bridges

BYLINE: Marcus Green magreen@courier-journal.com The Courier-Journal

SECTION: NEWS; Pg. 1A

LENGTH: 1467 words

State calls spans safe, but it lacks money for all repairs

By Marcus Green

magreen@courier-journal.com

{}The Courier-Journal

Eleven Louisville bridges being re-evaluated by the state because of a Minneapolis highway collapse are riddled with deteriorating parts, including broken concrete, cracked girders and missing bolts, according to their latest inspection reports.

Although the re-evaluations won't be done before September, state transportation officials maintain that the bridges which include highway overpasses, exit ramps and other elevated roadways are safe, based on inspections done between 2005 and 2007, and they say highway crews are making some fixes.

But the officials concede they don't have the money to make all the repairs needed, and only one of the spans, a stretch of Eastern Parkway near the University of Louisville's Belknap Campus, is slated for major rehabilitation in the next five years.

Just 4 percent of the \$1.3 billion slated for Louisville transportation projects through 2012 will be used for repairing bridges.

Matt Bullock, chief district engineer for the Kentucky Transportation Cabinet's Louisville district, said the state would "have them all fixed up if we had unlimited funds." But he added: "We are confident in the safety of our bridges."

The eleven bridges are among 38 in Kentucky that Gov. Ernie Fletcher ordered reviewed by the state transportation department. All 38 are at least 500 feet long and listed as "structurally deficient" because at least one of their major elements the roadway, the superstructure that supports traffic and the substructure that includes piers and abutments was rated in "poor" condition or worse during their last state inspections.

The "structurally deficient" rating is the same given to the I-35W bridge that plunged into the Mississippi River in Minneapolis Aug. 1, killing at least 13 people.

One such span in Louisville is the Kennedy Bridge, which The Courier-Journal reported earlier this month has a missing anchor bolt that connects the bridge with a supporting pier; severe cracks on its roadway; and worn pins that help connect its trusses.

Reports on Jefferson County's 10 other bridges slated for review show similar problems. Among the dozens of findings detailed in the reports, inspectors discovered piers with broken pieces of concrete, including some with large missing chunks on a ramp to the Kennedy Bridge.

Some of those problems have already been addressed, according to the state, including the Kennedy's ramp.

"That's getting fixed as we speak," Bullock said.

Crews shored up a column on a ramp from I-264 West to I-64 West before work began this summer on a major rehabilitation of I-64 downtown.

And repairs are to be completed by November on cracked piers on an approach to the Kennedy Bridge and an exit ramp from the bridge, according to the state.

The Eastern Parkway span which has a seriously cracked roadway and has deteriorating piers, according to a March 2006 report is included in the state's six-year highway plan. The plan determines how the state and federal road money is distributed. The report gave the bridge's substructure a "poor" rating and found moderate cracking on the roadway and abutments and other crumbling areas throughout the bridge.

Those findings don't require immediate repairs, said David Steele, a Transportation Cabinet engineer.

"It's a common occurrence," Steele said. "It's just alerting us to keep an eye on it."

In 2009, the bridge, which carries an estimated 13,000 vehicles daily, is slated for a \$2.5 million rehabilitation. It will overlay the roadway to fix cracking and potholes and repair the loss of concrete under bearing rollers.

#### { } Funding an issue

During a review last September, a state inspector noted several areas where the structural steel was deteriorating on an Interstate 65 bridge over Main Street and a downtown floodwall.

The findings included cracks in the girders and "several" bolts missing or loose in various places in the superstructure the portion of the bridge that includes its beams and bearing devices that support the roadway.

Two independent engineers who reviewed the inspection reports, which The Courier-Journal obtained under the state's open records law, said the findings gave them pause.

"I'd say they are serious and should be fixed immediately," Hojjat Adeli, an Ohio State University engineering professor, said. "I would not take chances with people's lives. After all, people are traveling bridges not riding roller coasters."

Sami Rizkalla, an engineering professor at North Carolina State University, also

said the types of problems identified on the I-65 bridge should be given "serious consideration to find out what is the problem."

Bullock said the state doesn't consider the I-65 findings to warrant immediate action.

"If we felt like it was an issue enough that it was a safety issue we'd either ... close a lane, reduce the loads or close it altogether if it was serious enough," he said. "But we don't feel like it's met that level."

The bridge was among the lowest rated among the 11 bridges up for re-inspection. Its deck and superstructure were rated "poor," while its substructure was considered "fair."

But Bullock said most of the bridge is in good shape. There's no money available to make the repairs, he said, but transportation officials may be able to tap a regional maintenance budget.

"There are some alternate funding sources," to address those issues, Bullock said. "We just don't have that sitting around ready to go."

{ } Gas tax debate

A fraction of the money in Kentucky's highway spending plan is set aside for existing bridges in Louisville.

The plan, which directs how the state's road money is spent for the next six years, includes \$1.34 billion for Louisville projects from 2007 to 2012. Less than 4 percent of the city's share, about \$50.2 million, is earmarked for bridge repairs.

That amount is "really weak, quite frankly, because what that means is that it's really unlikely to be addressed at all," said state Rep. Jim Wayne, Jefferson County's lone member on the General Assembly's transportation budget review subcommittee.

The highway plan has \$7.2 billion in scheduled projects, but only \$5.4 billion available in state and federal funds. The plan will be revisited when the legislature convenes next winter.

Following the Minnesota I-35W bridge collapse, some lawmakers have suggested raising the federal gasoline tax of 18.3 cents a gallon; President Bush has said he would reject any increase.

Wayne said it's clear that more money is needed to repair the nation's infrastructure including its bridges and he supports raising the federal gas tax, which has remained unchanged since 1993.

And, Wayne said, Kentucky also needs to consider raising its gas tax. The state collects 21 cents on each gallon of gas, which is nearly 5 cents less than the average in seven bordering states, according to Transportation Cabinet research.

"These issues are only going to get worse," said Wayne, D-Louisville. "The bridges are only going to deteriorate more, and the highways are only going to be more crowded."

But State Rep. Bob DeWeese said he has not heard any lawmakers talk about it.

"I think the chances of it getting legs in the near future are pretty slim,"

said DeWeese, R-Louisville.

Fletcher has no plans to support a gas tax increase, spokeswoman Jodi Whitaker said.

Adeli said he hopes the Minneapolis bridge collapse will be a "wake-up call" for the condition of the nation's infrastructure.

"We have about a million bridges in the U.S.," Adeli said in an e-mail. "About a quarter of them need repair or replacement. We need to invest significantly in the nation's infrastructure."

It's estimated that the Louisville bridges need more than \$155 million in repairs and other improvements, according to a federal database of bridge inspections.

The Kennedy Bridge, which carries I-65 between Louisville and Southern Indiana, is in need of nearly \$87 million in repairs, according to the database. State officials acknowledge that the bridge will likely need to be replaced in 20 years.

Reporter Marcus Green can be reached at (502) 582-4675.

#### On the Web

Check out a database and map of structurally deficient bridges at [www.courier-journal.com](http://www.courier-journal.com) Structurally deficient bridges

Eleven Jefferson County bridges are classified as structurally deficient at least one of their major elements was rated "poor" or worse. The bridges are:

- 1) Interstate 64 over Shawnee Golf Course
- 2) Interstate 264 west ramp to I-64 west
- 3) U.S. 31 over the Salt River
- 4) Eastern Parkway over CSX tracks
- 5) Interstate 65 over Broadway
- 6) I-65 over Main Street and floodwall
- 7) I-65 north exit ramp to I-64
- 8) I-64 entrance ramp to Kennedy Bridge
- 9) I-65 south exit ramp to I-64
- 10) Kennedy Bridge approach
- 11) Kennedy Bridge

LOAD-DATE: August 24, 2007

LANGUAGE: ENGLISH

GRAPHIC: INFORMATIONAL  
AND MAP BY THE COURIER-JOURNAL: CHRONOLOGY OF BRIDGES WITH PROBLEMS, ELEMENTS,

RATINGS AND CLASSIFICATIONS (SEE LIBRARY MICROFILM OR PDF PAGES)

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## CAPITAL-GAZETTE NEWSPAPERS

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June 6, 2007

Kathleen Izdebski  
Opinions and Advice Division  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

Dear Ms. Izdebski:

In response to Bob McDonald's request for comment on the Maryland Public Information Act, I submit the following:

Our only experience with SG §10-618(j) has been in the recent Sunshine Week audit of emergency preparedness records. Queen Anne's County initially denied us the documents, then complied after further consideration. Anne Arundel County denied us the documents, then said it would reconsider the request. To date, they have not supplied any documents. The law's broad interpretation and its conflict with federal laws have been cited as the reason for the denial.

Although there is scant information to point to flaws in the language, I believe this section is too broadly written. For example, I believe the public has the right to know if area bridges are safe to use. If we asked for the latest inspections, would documents be denied because they would "reveal vulnerability assessments"? Would fire inspections of Orioles stadium be denied because vendors store propane or because the maintenance crew stores hazardous cleaning material?

The overly broad language offers convenient protection to government officials who are failing to serve the public. Bridges could be on the verge of collapse because of shoddy maintenance and the public couldn't be warned because inspection would "endanger the life or physical safety of an individual."

And, shouldn't the public know if local officials have an adequate evacuation plan for them? Are emergency personnel prevented from telling the public what routes to take because disclosing such information would be revealing "vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures"?

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If a new baseball stadium is proposed, is the designer prohibited from showing the public a schematic because it would “reveal the building’s structure or facility’s internal layout?”

I think the law needs to limit restrictions and state what is NOT included in the denials. Custodians also should have to demonstrate the potential consequences of a disclosed document. Perhaps documents should be “permissible,” so custodians don’t feel legally bound to deny them.

In regards to specific language changes, I will defer to Eric Lieberman, counsel for the Maryland Delaware DC Press Association, who will respond under separate cover.

Sincerely,

A handwritten signature in black ink that reads "Tom Marquardt". The signature is written in a cursive style with a long horizontal stroke extending to the left.

Tom Marquardt



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# WASHINGTON SUBURBAN SANITARY COMMISSION

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July 31, 2007

Robert N. McDonald  
Chief Counsel  
Opinions and Advice  
Office of the Attorney General  
200 Saint Paul Place  
Baltimore, MD 21202-2021

Dear Mr. McDonald:

Thank you for the opportunity to share our experience with the application of the new exception for records related to public security codified in Section 10-618(j) of the State Government Article. As you know, WSSC is an agency of the State of Maryland created by the General Assembly for the purpose of providing public water and sewer to the residents of Montgomery and Prince George's Counties. WSSC owns and operates two large water treatment plants, four large wastewater treatment plants, several smaller wastewater treatment plants, numerous pump stations, and more than 5,000 miles of water pipelines and more than 5,000 miles of sewer lines throughout the two counties.

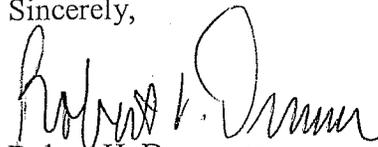
WSSC has used this exception in two very important ways. First, we have denied a request for plans and drawings that show the location of our water and wastewater systems on one occasion using this exception with the proviso that the applicant would be permitted to review these documents if the applicant consented to a background check by our Security and Safety Services Group. The applicant did agree to this background check and was ultimately permitted access to these documents. The second method we have used this exception is legal support for the WSSC's Engineering Records/Information (WERI). WSSC recognizes that engineers and applicants for new water and sewer service need to access as-built plans and specifications for our water and sewer system in order to design and construct extensions to the system. Pursuant to the WERI, applicants seeking access to WSSC's electronic records management system must first undergo a background security check.



Robert N. McDonald  
July 31, 2007  
Page 2

WSSC believes that this exception to the Public Information Act is an important tool for safeguarding our water and sewer system and should be retained. If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Robert H. Drummer  
Senior Counsel  
(301) 206-8161

RHD/egs

cc: Jerome K. Blask

Kimberly A. Millender  
County Attorney  
410-386-2030, 1-888-302-8978  
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Department of the County Attorney  
Carroll County Government  
225 North Center Street  
Westminster, Maryland 21157

June 18, 2007

Kathleen M. Izdebski  
Opinions and Advice Division  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, Maryland 21202

Re: Request for Information and Comment regarding  
Section 10-618(j) of the Public Information Act  
Our File No. 13,330-0001

Dear Ms. Izdebski:

On behalf of Carroll County, Maryland, I am responding to your request for information regarding the County using Section 10-618(j) of the Public Information Act to deny access to public records. Thank you for the opportunity to reply and provide this important information to you. Based on my review of records, Carroll County has had limited occasion to invoke Section 10-618(j) as a means for denying access to public records. In fact, Carroll County has only used the exception twice that I was able to uncover under the following circumstances:

- ❖ September 2005 – the media requested all information and documents related to an emergency preparedness drill held by the County. Based on Section 10-618(j), the County denied access to portions of the documents and videotape of the event that related to specific emergency and security procedures, specific emergency tactics, and personnel deployment techniques, which information was redacted and the remainder released.
- ❖ January 2007 – the media requested copies of all of the County's emergency operations' plans. Similarly, under Section 10-618(j), the County denied access to portions of the plans that related to locations of medical and storage facilities, records of airports and emergency response facilities, where hazardous materials are stored, locations and infrastructure of water and wastewater treatment systems, and operational and evacuation plans and protocols, which information was redacted and the remainder released.

I hope this information is helpful to you in your response to the General Assembly. If you have any questions, please feel free to contact me.

**CARROLL COUNTY**

*a great place to live, a great place to work, a great place to play*

Letter to K. Izbedski  
June 18, 2007  
Page Two

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly A. Millender". The signature is fluid and cursive, with a large initial "K" and "M".

Kimberly A. Millender  
County Attorney

cc: Robert N. McDonald, Chief Counsel  
Opinions and Advice Division  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, Maryland 21202

David Bliden, Executive Director  
Maryland Association of Counties  
169 Conduit Street  
Annapolis, Maryland 21401-2571

Steven D. Powell, Chief of Staff  
Board of County Commissioners



**TALBOT COUNTY, MARYLAND**  
OFFICE OF LAW

MICHAEL L. PULLEN  
County Attorney

August 2, 2007

11 N. Washington Street  
Easton, MD 21601  
Phone: 410-770-8092  
Fax: 410-770-8089

Kathleen M. Izdebski  
Opinions and Advice Division  
Office of the Attorney General  
200 Saint Paul Place  
Baltimore, Maryland 21202-2021

Re: Maryland Association of Counties - Maryland Public Information Act  
Request for Information and Comment

Dear Ms. Izdebski:

We are in receipt of your memorandum dated May 31, 2007, to the Maryland Association of Counties. We have never been requested to disclose the type of information referred to in your memorandum and have never asserted the privilege authorized by SG §10-618(j).

If you have any questions, comments, or concerns, please do not hesitate to communicate with me.

Very truly yours,

Michael L. Pullen

MLP/pjf

cc: R. Andrew Hollis, County Manager

I:\County Attorney\MISCELLANEOUS CORRESPONDENCE\L - OFFICE OF THE ATTORNEY GENERAL 7.24.07.doc

**BOARD OF EDUCATION OF HARFORD COUNTY**  
**102 S. Hickory Avenue**  
**Bel Air, Maryland 21014**

**OFFICE OF GENERAL COUNSEL**

**PATRICK P. SPICER, Esquire**  
*General Counsel*  
**Ellen M. Petrick**  
*Executive Secretary*

Telephone: (410) 638-4005  
Fax: (410) 638-4022

June 19, 2007

Robert N. McDonald, Esquire  
Office of the Attorney General  
200 Saint Paul Place  
Baltimore, Maryland 21202-2021

RE: Request for Information and Comment/Maryland Public  
Information Act

Dear Mr. McDonald:

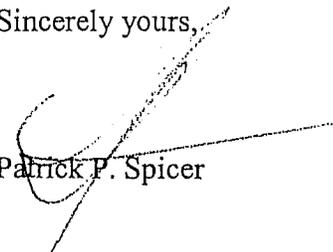
Please be advised that I am General Counsel for the Board of Education of Harford County. As such, my role includes review of and response to requests made to the Board under the Maryland Public Information Act (MPIA).

Your letter of May 31, 2007 to Dr. Carl W. Smith of the Maryland Association of Boards of Education and related attachment referenced above has been turned over to me for review and response.

Please be advised that the Board of Education of Harford County supports continuation and maintenance of the exception for records related to public security codified at Annotated Code of Maryland, State Government Article 10-618(j). My client believes that continuation and maintenance of this exception is justified in light of the potential security risks that may be involved regarding public schools and their campuses in the event the exception was abrogated.

Please advise should you have any questions regarding the above.

Sincerely yours,

  
Patrick P. Spicer

/emp

Cc: Mr. Mark M. Wolkow  
Superintendent

DAVID R. CRAIG  
HARFORD COUNTY EXECUTIVE



ROBERT S. McCORD  
COUNTY ATTORNEY

LORRAINE COSTELLO  
DIRECTOR OF ADMINISTRATION

NANCY L. GIORNO  
DEPUTY COUNTY ATTORNEY

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HARFORD COUNTY GOVERNMENT

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DEPARTMENT OF LAW

July 16, 2007

Kathleen M. Izdebski  
Opinions & Advice  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

Re: SG §10-618(j)

Dear Ms. Izdebski:

I am writing on behalf of the Sheriff of Harford County, as his Legal Advisor, concerning the Attorney General's inquiry about the agency's use of State Gov't Art. §10-618(j).

The Sheriff has no record of his denying any requests for records that may have been covered by §10-618(j). Nevertheless, Sheriff Bane strongly supports the legislation and would encourage the General Assembly to retain this important exemption.

Even if this exemption has not been used extensively, it remains critical to the State's efforts to maintain the safety and security of its facilities. If even one significant terrorist attack is thwarted because information has been withheld under §10-618(j), the exemption would have been beneficial.

Thank you for your attention to this matter.

Sincerely,

Karen J. Kruger  
Senior Assistant County Attorney

KJK/cll

cc: L. Jesse Bane, Sheriff

*Preserving Harford's past; promoting Harford's future*

MY DIRECT PHONE NUMBER IS 410-638-3205

220 SOUTH MAIN STREET BEL AIR, MARYLAND 21014 410.638.3000 • 410.879.2000 • TTY 410.638.3086 • www.harfordcountymd.gov

THIS DOCUMENT IS AVAILABLE IN ALTERNATIVE FORMAT UPON REQUEST.



Since 1961

# MARYLAND CHIEFS OF POLICE ASSOCIATION

6716 Alexander Bell Drive  
Suite 200  
Columbia, MD 21046  
Phone: (410) 312-4420  
Fax: (410) 290-1061

July 23, 2007

**President**  
Douglas Holland  
Chief of Police  
Hyattsville, MD

Kathleen M. Izdebski  
Opinions & Advice  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

**1st Vice President**  
Jeffrey Spaulding  
Chief of Police  
Westminster, MD

Re: SG §10-618(j)

Dear Ms. Izdebski:

**2nd Vice President**  
Bernadette DiPino  
Chief of Police  
Ocean City, MD

I am writing on behalf of the Executive Board and membership of the Maryland Chiefs of Police Association (MCPA) concerning MD Code Ann., State Gov't Art., §10-618(j). The Association strongly supports the retention of this important exemption to Maryland's Public Information Act.

**Immediate Past President**  
Douglas DeLeaver  
Chief of Police  
Maryland Transit  
Administration Police

This narrowly-tailored exemption serves to protect information that would be of interest to criminals who may be planning to commit terrorist attacks. If even one threat to public safety is prevented through reliance on this exemption, it will have proved its worth. As drafted, the statute appears to be comprehensive and adequate to meet law enforcement needs, while still serving the public's interest in accessing public records.

**Executive Director**  
Larry Harmel  
Director  
MARCPA

The Association thanks the Attorney General for his attention to this important matter.

**Counsel**  
Karen J. Kruger, Esq.

Sincerely,

Karen J. Kruger  
Counsel

KJK/cll

cc: Chief Douglas Holland, President  
Larry E. Harmel, Executive Director  
Michael F. Canning, Jr., Manis & Canning

## Mission Statement

**"To unite law enforcement executives in delivering innovative, high-quality police services."**

**From:** "Town of Church Hill" <townofchurchhill@verizon.net>  
**To:** <PIA@oag.state.md.us>  
**Date:** Tue, Aug 28, 2007 6:11 PM  
**Subject:** Public Information Act Exception Comments

Dear Ms. Izdebski:

The Town of Church Hill has NOT had to invoke SC subsection 10-618(j) in connection with denial of access to public records. We have a population of about 540 now, but are growing rapidly as a result of in-fill development.

As Town Administrator, I feel SG subsection 10-618(j) should be retained as part of the Public Information Act. There are certain things the public should NOT know or have access to such as documents that might provide valuable information in the planning and completion of terrorist attacks. We have a waste water treatment plant and use cylinders of chlorine and sulfur dioxide. We are only allowed to have a restricted number of each on site. No one knows when and where a terrorist attack might occur, but I do not want to know that because I gave individuals access to certain information, I aided them in their attack.

As a private citizen, I strongly believe this country is too open and free with providing access to information. I get very angry every time I hear the news reports or read about them in the newspapers. In some cases, we may as well give the terrorists our entire strategic plans because the press practically tells the terrorists everything now. We would be extremely foolish to think we are not vulnerable because we live in a rural area and terrorists wouldn't think about living in our small community. They can be anywhere, and people are too worried about the First Amendment, racial profiling, and getting our troops out of Iraq and Afghanistan to realize who might be living next door and what they may be doing.

I strongly believe in the Constitution and protecting it, but we need to think about our founding fathers and the drafters of this document. Would they allow the British or any potential terrorist/enemy access to any public document? Politics has clouded our judgment since the Constitution was originally adopted and signed. From time to time, it has been necessary to amend it because the times were changing. But, the times are changing again and we are not considering the potentially deadly consequences of our "openness".

I believe in the Constitution and this Country with all my heart. I value our freedoms, but I do not want to see this freedom of information used against us as it has been done in the past and will continue unless we put restrictions on "sensitive" documents. I fought for our right to enjoy and maintain our freedoms. I enlisted in the United States Marine Corps (Air Traffic Control and Ground Controlled Approach) and served my country honorably, as did my son (he was in Desert Storm - USMC Radio Recon and Hostage Rescue). My husband served five years in the United States Air Force (he installed communication lines). My father and father-in-law both served in the Army. Even now, we are all prepared to offer our services.

We are teaching terrorists to fly, computer skills, medical training, etc. They are everywhere and we are blind to them until something happens. Most people are afraid to "get involved" and just hide in their closets (I actually have a resident who did that instead of calling the police). When something happens, they ask the government why they allowed it to happen. We always have to blame someone and government or the President are the usual targets.

We can inform the public without giving them all the specific details. They do not need to know every little detail. Even in a police investigation, they always withhold certain information from the press so they can weed out the crackpots, but because the government is providing the information, we have to tell them everything or give them access to "sensitive" records because they are classified as "public" records.

I realize I am not giving any tangible reasons to retain this law, but it definitely is my view. Should it be modified or changed in any way? Yes, it should be more restrictive regarding the "public" documents,

plans, etc. that are included in the current law. By "restrictive", I mean other "public" records should be added to the list.

I apologize for "getting on my soapbox", but I strongly believe this is a vitally important and necessary law which should be expanded upon for the good of the people. I am very passionate when it comes to matters such as this. And I believe our founding fathers are "turning over in their graves" as they see what politically motivated politicians have done over the years and the situation we now find ourselves in.

I could go on but I think I have made it clear how I feel. For the record, I must make it clear that these are my own personal opinions, both as a Town Administrator and a private citizen. These opinions do NOT necessarily reflect the opinions of the Town Commissioners of Church Hill or the residents. I have been working for the Town for over twenty-two years and know the importance of the Public Information Act and Freedom of Information Act. I also know there are some things that I feel our residents should not have access to, but we are required to make it available (now in about five different languages I might add). Too much information is a dangerous thing. If we don't learn from our mistakes, history is bound to repeat itself. This law is a step in the right direction.

Thank you for allowing me to "vent". I do hope some of the things I have said are seriously considered. Repealing this law would be a serious mistake.

Sincerely,

Marie L. Rameika  
Town Administrator/Clerk  
Town of Church Hill  
(and Church Hill area resident)

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TOWN OF CHURCH HILL  
324 MAIN STREET  
PO BOX 85  
CHURCH HILL, MD 21623

410-758-3740 - OFFICE  
410-556-6635 - FAX

\*\*\*NEW EMAIL ADDRESS\*\*\*

townofchurchhill@verizon.net

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Marie L. Rameika  
~ Town Administrator/Clerk