

Honorable Marvin Mandel  
 Governor of Maryland  
 State House  
 Annapolis, Maryland 21404

Re: House Bill 462

Dear Governor Mandel:

Although we approve House Bill 462 as constitutionally permissible, two provisions which may present significant interpretive problems warrant comment.

As amended in the Senate, the bill would create a new Section 1A of Article 76A which would provide:

"The State, counties, municipalities and political subdivisions, or any agencies thereof, shall maintain only such information about a person as is relevant and necessary to accomplish a purpose of the governmental entity or agency which is required to be accomplished by statute or executive order of the Governor or the chief executive of a local jurisdiction. Moreover, all persons are entitled to information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To this end, the provisions of this Act shall be construed in every instance with the view toward public access, and the minimization of costs and time delays to persons requesting information."

Lines 535 through the unnumbered line following line 544 (emphasis supplied).

A question has arisen over whether this paragraph constitutes merely "a policy section which states the general objectives of the Act in order that administrators and courts may know its purposes," 1A Sutherland Statutory Construction §20.12, or constitutes an affirmative restriction on the keeping of public records by the agencies affected. In our view, while the second sentence of new Section 1A would constitute a policy statement, the first sentence is both worded and intended as a prohibition or affirmative restraint upon the keeping of records by the agencies affected. Not only is the language itself the traditional mandatory "shall," but also the title of the bill reflects this provision by means of language specifically "requiring State and local governments to maintain only necessary and relevant information about persons;....."

We are unable to assess the impact of such a