

May 26, 1992

The Honorable R. Clayton Mitchell, Jr.
Speaker of the House of Delegates
State House
Annapolis, Maryland 21401

Dear Mr. Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed House Bill 1084.

House Bill 1084 addresses State employees' grievance and appeal records. In its final form, it would require that grievance or appeal records be given to both complaining employees and their representatives, and repeal the requirement that these records be filed in the office of the Secretary of Personnel. House Bill 1084 would also prohibit the personnel records of an employee from including records of a grievance or appeal and its disposition. Finally, it would require the Office of Administrative Hearings (OAH) instead of the Department of Personnel (DOP) to provide forms.

Early in the Session, the Department of Personnel supported House Bill 1084. However, the bill was subsequently amended to include appeal records and this has significantly altered the complexion of the proposal.

The express statutory prohibition on the inclusion of grievance or appeal records and dispositions in an employee's personnel record could result in a consequence that I am sure was not anticipated by the supporters of House Bill 1084 and that alone requires my veto. While excluding grievance and appeal records and dispositions from personnel records, House Bill 1084 does not provide for the maintenance of these records (which are in the custody of the State) in any other manner. The failure to specifically designate appropriate procedures for handling these records generates questions such as whether these records may be maintained by management at all, and if so, where and under what conditions. Absent resolution of these questions, there is an unanswered issue of confidentiality regarding grievance and appeal records. Currently, Section 10-616(h) of the State Government Article exempts the personnel records of an individual from disclosure to the public. The Department of Personnel informs me that because the subject materials would be excluded from personnel records, there is no provision as to how the materials should be treated under laws relating to access to public records since no part of these materials would then have protection of those laws. It is possible, therefore, that the privacy rights of individual employees could be jeopardized.

This prohibition on the inclusion of grievance or appeal records and dispositions in personnel records could also have the effect of seriously impeding the ability of supervisors in State government to make reasoned, appropriate decisions on the level and nature of discipline to be imposed on employees. Only the information contained in an official personnel record is proper for progressive discipline (proportionally higher penalties based on a record of previous offenses). The exclusion of timely records of prior disciplinary proceedings from personnel records would make the imposition of progressive discipline difficult and in some cases impossible, and would add time consuming and costly issues to the hearing process or to litigation. It would also eliminate