OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

OPINION

January 16, 2002

TO: Norman D. Butts
Inspector General

THROUGH: Charles W. Thompson, Jr.
County Attorney

Marc P. Hansen
Chief General Counsel

FROM: Judson P. Garrett, Jr.
Principal Counsel for Opinions and Advice

RE: Access to Personnel Records

This is an opinion of the Office of the County Attorney concerning your authority to access county personnel records.

QUESTION ADDRESSED

May the Office of the Inspector General (the "IG") inspect or obtain the personnel records of a County official or employee without the consent of the official or employee who is the subject of the record?

ADVICE

In our opinion, the IG may inspect or obtain the personnel records of a specific county official or employee (or particular classes of county officials or employees) when a valid statutory duty of the IG, such as an audit or investigation, demonstrably cannot be effectively executed without that access. The IG may not, however, publicly disclose that information.

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Nevertheless, our advice on this question is not free from doubt. The Court of Appeals of Maryland has never had occasion to address the issues presented by this question, and opinions of the Attorney General of Maryland suggest that the Maryland Public Information Act prohibits investigators from accessing state and local government personnel records unless otherwise authorized by state or federal law. Consequently, it would be prudent to ask the Attorney General to address the important state law question of whether the MPIA prevents your office from accessing county personnel records in the performance of your statutory duties. Of course, even if the Attorney General concurs, the only way to be certain, absent a dispositive decision of the Court of Appeals, is to amend State law to expressly authorize such access.

APPLICABLE LAW

1. *The Montgomery County Inspector General Law.*

The Montgomery County Inspector General law (the "IG law"), which is codified at MONT. CO. CODE § 2-151, provides, in pertinent part:

> (a) The goals of the Inspector General are to:
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> (1) review the effectiveness and efficiency of programs and operations of County government and independent County agencies;
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> (2) prevent and detect fraud, waste, and abuse in government activities; and
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> (3) propose ways to increase the legal, fiscal, and ethical accountability of County government departments and County-funded agencies.
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> * * *
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> (h) The Inspector General must attempt to identify actions which would enhance the productivity, effectiveness, or efficiency of programs and operations of County government and independent County agencies. In developing recommendations, the Inspector General may:
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> (1) conduct investigations, budgetary analyses, and financial, management, or performance audits and similar reviews; and
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> (2) seek assistance from any other government agency or private

party, or undertake any project jointly with any other governmental agency or private body.

In each project of the Office, the Inspector General should uphold the objective of complying with applicable generally accepted government auditing standards.

* * *

(l) Access to information.

(1) *The Inspector General is legally entitled to, and each department or office in County government and each independent County agency must promptly give the Inspector General, any document or other information concerning its operations, budget, or programs that the Inspector General requests.*[1] *The Inspector General must comply with any restrictions on public disclosure of the document or information that are required by federal or state law.* The Inspector General must immediately notify the Chief Administrative Officer, the County Attorney, and the President of the Council if any department, office, or agency does not provide any document or information within a reasonable time after the Inspector General requests it. The Chief Administrative Officer (for departments and offices in the Executive branch of County government), the County Attorney (for independent County agencies), and the Council President (for offices in the legislative branch of County government) must then take appropriate action (including legal action if necessary) to require the department, office, or agency to provide the requested document or information. (Emphasis added.)

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[1] Subsection (n) defines "independent County agency" as meaning: (1) the County Board of Education and the County school system; (2) The Maryland-National Capital Park and Planning Commission; (3) the Washington Suburban Sanitary Commission; (4) Montgomery College; (5) the Housing Opportunities Commission; (6) the County Revenue Authority; and (7) any other governmental agency (except a municipal government or a state-created special taxing district) for which the County Council appropriates or approves funding, sets tax rates, makes levies, or approves programs or budgets. We have not been asked, and we do not here address whether the County has the authority to subject state agencies for which the County provides such support (*e.g.*, the County Board of Education, the Md-Nat. Cap. Park and Planning Commission, the WSSC, and the Housing Opportunities Commission) to the authority of the IG.

(2) *If the Inspector General does not receive all necessary information under paragraph (1), the Inspector General may issue a subpoena to require any person to appear under oath as a witness or produce any record or other material in connection with an audit or investigation under this Section. The Inspector General may enforce any subpoena issued under this Section in any court with jurisdiction.* [Emphasis added.]

(3) The Inspector General may administer an oath or affirmation or take an affidavit from any person as necessary to perform the Inspector General's duties.

(4) Each employee of a County department or agency should report any fraud, waste, or abuse, to the Office of the Inspector General. After receiving a report or other information from any person, the Inspector General must not disclose that person's identity without the person's consent unless that disclosure is necessary to complete an audit or investigation.

Subsection (m) makes it a "Class A violation" to withhold or refuse to: (1) respond to a valid request for documents or information under this Section; (2) give false or misleading information in connection with any audit, study, or investigation under this Section; or (3) retaliate or threaten to retaliate against any person for filing a complaint with the IG, furnishing information, or cooperating in an audit, study, or investigation.[2]

The IG law also requires a work plan for the activities of the IG's Office. Although the plan must be made public, the IG may treat any item or suggestion for an item as confidential when advance public or agency knowledge of that item or suggestion would frustrate or substantially impede the work. The IG also must submit an annual report to the Council and the Executive on the activities of the Office and its major findings and recommendations during the previous fiscal year. And when a workplan item is completed, the IG must submit a written report to the County Council, the Executive and the head of each affected agency. The report must describe the purpose of the project, the research methods used, and the IG's findings and recommendations. After giving the Executive and the Council a reasonable opportunity to review the report, the IG must release it to the public, *subject to the state public information act.* A report, and any information received in

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[2]A Class A violation may be punished as a misdemeanor by a fine of not more than $1000 or confinement in the County jail for not longer than 6 months, or both. In the alternative and at the discretion of the enforcing agency, a Class A violation may be punishable as a civil violation and sanctioned by a civil penalty of $500 for the first violation and $750 for each subsequent violation. *See* MONT. CO. CODE § 1-19.

connection with the report, may be kept confidential until the report is released to the public.[3]

2. *The Maryland Public Information Act.*

The Maryland Public Information Act ("PIA"),[4] which is codified at MD. CODE ANN., STATE GOV'T §§ 10-611 through 10-630, creates a general right of access to public records, and expressly provides that it "shall be construed in favor of permitting inspection of a public record, with the least cost and least delay. . . ." § 10-612. Reflecting privacy concerns, however, the PIA exempts several kinds of records from this general right of access.[5] One of these exemptions applies to personnel records:

> § 10-616 (a). *Unless otherwise provided by law*, a custodian shall deny inspection of a public record, as provided in this section.[6]
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> * * *
>
> (i) *Personnel records.*
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> (1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information.[7]

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[3] MONT. CO. CODE § 2-151 (i) and (k).

[4] The popular name of this State law is rooted in LAWS OF MD. (1970) ch. 698, which codified the original version of the Act in then new Article 76A of the Maryland Code, entitled "Public Information."

[5] *See, e.g.*, §§ 10-615 (Required denials—In general); 10-616 (Same—Specific records); 10-617 (Same—Specific information); §10-618 (Permissible denials); 10-619 (Temporary denials); and 10-624 (Personal records).

[6] Emphasis added.

[7] "Although this list was probably not intended to be exhaustive, it does reflect a legislative intent that 'personnel records' means those documents that directly pertain to employment and an employee's ability to perform a job." *Kirwan v. The Diamondback*, 352 Md. 74, 82-82 (1998).*See also* 78 *Op. Att'y Gen.* 291, 292-94 (1993) ("Personnel records" commonly means "a record that identifies an employee, is kept by the employer, and relates to maters like the hiring, promotion, discipline, or dismissal of the employee . . . [and includes] not only papers contained in the employee's official personnel file maintained by the official custodian, . . . but also papers relating to a personnel matter in the hands of an authorized custodian . . . ") .

(2) A custodian shall permit inspection by:

(i) the person in interest; or

(ii) an elected or appointed official who supervises the work of the individual.

Willfully and knowingly permitting the inspection of a public record in violation of the PIA is a misdemeanor punishable by a fine not exceeding $1,000. § 10-627. In addition, § 10-626 provides civil sanctions for the improper disclosure of certain "personal" information:

> (a) A person, including an officer or employee of a governmental unit, is liable to an individual for actual damages and any punitive damages that the court considers appropriate if:
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> (1) the person willfully and knowingly permits inspection of use of a public record in violation of [the PIA]; and
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> (2) the public record names or, with reasonable certainty, otherwise identifies the individual by an identifying factor such as:
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> (i) an address;
> (ii) a description;
> (iii) a finger or voice print;
> (iv) a number; or
> (v) a picture.
>
> (b) If the court determines that the complainant has substantially prevailed, the court may assess a defendant reasonable counsel fees and other litigation costs that the complainant reasonably incurred.

Therefore, "[i]f a custodian unlawfully discloses personnel records in violation of [the PIA], the custodian may be subject to civil or criminal liability."[8]

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[8] 79 *Op. Att'y Gen.* 366, 375 (1994).

ANALYSIS

1. *The County's Home Rule Authority.*

A charter county has the authority to enact a local law that subjects documents and information in the possession of county agencies to IG audits and investigations.[9] However, as with all charter-home-rule enactments, the application of such a local law may be

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[9] Montgomery County is a charter county, having adopted a charter home rule as authorized by MD. CONST. Art. XI-A (the "Charter Home Rule Amendment"). The underlying purpose of charter home rule is "to share with counties and Baltimore City . . . powers formerly reserved to the General Assembly so as to afford the subdivisions certain powers of self-government." *Cheeks v. Cedlair Corporation*, 287 Md. 595, 597-98 (1980). The Charter Home Rule Amendment does this by: (1) requiring the General Assembly to provide a statutory grant of express powers for charter counties; (2) giving charter counties full power to enact local *laws* upon all matters covered by those powers; and (3) restraining the General Assembly from enacting a "public local law"on any subject covered by any of those powers. MD. CONST. art. XI-A, §§ 2- 4.

In obedience to this constitutional mandate, the General Assembly has enacted an Express Powers Act that gives charter counties "a wide array of legislative and administrative powers over local affairs." *Richmount Partnership v. Board of Supervisors of Elections*, 283 Md. 48, 57 (1978). Included among these powers is the authority to enact laws: (1) governing the conduct of county officers in the performance of their duties; (2) providing for the protection of county property; (4) regulating the making and award of county contracts; and (4) providing for auditing the accounts of all county officials. MD. ANN. CODE, art. 25A §5 (B), (E), (F), and (Q). The Express Powers Act also gives charter counties the general power "to pass all ordinances, resolutions or bylaws, not inconsistent with the provisions of this article or the laws of the State, as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the *peace, good government, health and welfare of the county*." *Id.* at §5 (S) (emphasis added). Because the Express Powers Act delegates the General Assembly's power to enact local laws, the scope of the County's legislative authority is as broad at the local level as that of the General Assembly at the state level. If the Legislature could pass a law on the subject, then a charter county may enact a local law on the same subject. *Montgomery Citizens League v. Greenhalgh*, 253 Md. 151, 165 (1969).

It is well settled that the General Assembly may enact laws giving administrative agencies and officials the power to access and compel by subpoena, if necessary, the production of information and records for purposes of an administrative investigation. *Equitable Trust Company v. State of Maryland Commission on Human Relations*, 287 Md. 80, 89-100 (1980); *State Human Relations Comm'n v. Baltimore County,* 46 Md. App. 45, 46 (1980). This power undoubtedly is part of the legislative powers granted charter counties under the Express Powers Act. The County Council, therefore, may give county administrative agencies and officials the power to compel, by administrative subpoena, the production of information for the purposes of a legitimate preliminary investigation that is within the scope of any of the express powers, including the general welfare power.

restrained by federal law, by a state public general law, or even by the County Charter.[10] Thus arises the question of whether the IG's authority to access county personnel records is restrained by PIA § 10-616 (a)(i) (the "PIA personnel records"), which prohibits the disclosure of personnel records to anyone other than the individual who is the subject of the record or the employee or official who supervises the work of that employee, "unless otherwise provided by law." This is essentially a twofold inquiry: (1) Does the PIA personnel records exemption ever apply to access to public records by government officials? (2) If it does, is the IG law within the "otherwise provided by law" exception to the PIA personnel records exemption?

2. *The Potential Restraints of the PIA Personnel Records Provision.*

The primary purpose of the PIA, which was first enacted in 1970,[11] is to grant *the public* a broad right to access public records.[12] Another "evident purpose [, however,] . . . is to balance the right of public access with the protection of personal privacy."[13] One would expect, therefore, that both the access and privacy provisions of the PIA would apply only to requests by members of *the public*. The language of several provisions of the PIA, however, especially as broadened in 1978,[14] repeatedly refers to requests by both "persons" and "governmental units,"[15] and "the Court of Special Appeals [has] applied the Act to a

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[10] The federal-preemption doctrine that emanates from the supremacy clauses of the U.S. and Maryland constitutions would insulate documents and information protected by federal statutes, regulations, or court rules from the conflicting disclosure requirements of local laws. Similarly, the Charter Home Rule Amendment (MD. CONST. art. XI-A, §3) would prohibit the application of a county disclosure law that conflicts with a privilege, confidentiality or non-disclosure provision of state pubic general law such as the PIA. And, of course, charter-based privileges, such as the Executive Privilege that arises from the separation of executive and legislative powers, prevent county laws from requiring the disclosure of information insulated by such privileges.

[11] 1970 MD. LAWS ch. 698.

[12] "All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees." § 10-612(a).

[13] 68 *Op. Att'y Gen.* 330, 338 (1983).

[14] *See* 1978 MD. LAWS ch. 1006. *See also* 63 *Op. Att'y Gen.* 453, 457 (1978) ("Under the most recent revision of the Act, the term "'person' was redefined to include 'governmental agency.' The result is that the Act clearly regulates not only access to public records by private parties, but also by public parties, as well.")

[15] *See* §§ 10-611(b) ("'Applicant' means a person or *governmental unit* that asks to inspect a public record"); 10-612(b) (The PIA "should be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person or *governmental unit* that requests the inspection"); 10-613(a) ("Except as otherwise provided by law, a custodian shall permit a person or

request of the State Human Relations Commission."[16] Indeed, the narrowness of the PIA personnel provision strongly suggests that the Legislature intended to limit access to personnel records by governmental officials as well as the public.

3. *The "Otherwise Provided By Law" Exception and Its Statutory Duties Test.*

In 1975, the Personnel Division of the Dept. of Health and Mental Hygiene asked the Attorney General if investigators from several different agencies, including the Legislative Auditor, could access personnel records of DHMH employees. General Burch advised that the words "duly elected and appointed officials," as used in the PIA personnel records exemption, should be given a relatively narrow construction:

> It seems clear that the investigators in question are not the duly elected and appointed officials who supervise the work of the subject of the personnel file. It follows therefore that the [PIA personnel file provision] would require your Division to deny the right of inspection of personnel records unless otherwise provided by law.[17]

Although he expressed the "belief that the Maryland Act was designed to assist *private* citizens and was not intended to impede State agencies in attaining information reasonably

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governmental unit to inspect any public record at any reasonable time") 10-614(a)(1) ("A person or *governmental unit* that wishes to inspect a public record shall submit a written application to the custodian"). (Emphasis supplied).

[16] 63 *Op. Att'y Gen.* at 457 (quoting *Prince George's County v. State of Maryland Commission on Human Relations*, 473, 484-85 (1978), vacated and remanded on other grounds, 285 Md. 205 (1979)).

[17] 60 *Op. Att'y Gen.* 554, 556 (1975), superceded on other grounds, 60 *Op. Att'y Gen.* 559 (1975), and disapproved, in part 76 *Op. Att'y Gen.* 287, 294 (1991) ("Although we do not overrule 60 *Opinions of the Attorney General* 554 and 63 *Opinions of the Attorney General* 453, because both opinions correctly treated the questions actually presented in them, we disapprove the statements in those opinions suggesting that the PIA does apply to records access during an audit by the Legislative Auditor"). *See also* 65 *Op. Att'y Gen.* 356, 368 (1980)("In our previous Opinions, we have advised that the words 'duly elected and appointed officials,' as used in [the PIA personnel records exemption], should be given a relatively narrow construction. * * * In our opinion, [this provision] was intended to give personnel file access only to the person who is the subject of the file or to those persons who actually supervise or are directly responsible for the supervision of the person who is the subject of the file. We do not believe that [the provision] was intended to establish access to the file for all elected or appointed officials of a public body. The word 'supervise' . . . is crucial. We thus believe that some concrete nexus or real or potential 'supervision' must exist between the official and the employee before the [provision] can be triggered . . .").

necessary to the performance of their official duties,"[18] the Attorney General explained, therefore, that it would be "necessary to examine the laws under which [an investigating agency or officer] operate[s] in order to decide whether they either explicitly or impliedly grant authority to inspect the files in question."[19]

In determining whether the Legislative Auditor's right of inspection was "otherwise provided by law," the Attorney General advised:

> Whether an examination of particular personnel files would be helpful in an investigation of this nature we do not know, but if the Legislative Auditor requires access to personnel files in order to effectively perform the duties imposed upon him by [the Legislative Auditor statute], he is entitled to knowledge of their contents in view of the mandate of [the PIA] that the custodian of personnel records shall not deny access to them when their inspection is otherwise provided by law.[20]

In 1978, "the General Assembly enacted a major overhaul of the PIA . . . that "made it clear that a government agency's access to the records of another agency was subject to the PIA's confidentiality provisions."[21] "Later that year, the Attorney General revisited the issue of the Legislative Auditor's access to records treated as confidential by the PIA itself, and, relying on the 1975 opinion and 1978 amendments, advised that "the PIA regulates access by the Legislative Auditor to medical records of [DHMH].'"[22] However, "based on the breadth of the access right in the audit statute . . . [t]he opinion quite convincingly demonstrated that the PIA was not a barrier to disclosure."[23] The Attorney General, nevertheless, encouraged clarifying legislation.

In 1980, at the request of the Department of Fiscal Services, legislation was introduced by the Joint Budget and Audit Committee for the purpose of "correcting and

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[18] *Id.*

[19] 60 *Op. Att'y Gen.* at 556.

[20] *Id.* at 556-57.

[21] 76 *Op. Att'y Gen.* 287, 292 (1991) (citing 1978 MD. LAWS ch. 1006).

[22] 76 *Op. Att'y Gen.* at 293 (quoting 63 *Op. Att'y Gen.* at, 458 The Attorney General has opined that "personnel records" includes "not only papers contained in the employee's official personnel file maintained by the official custodian, . . . but also papers relating to a personnel matter in the hands of an authorized custodian . . . ."

[23] *Id.*

clarifying" the authority of the Legislative Auditor to access to records.[24] In pertinent part, that legislation, as enacted, gave the employees of the Division of Audits (*i.e.*, the Legislative Auditor staff) the authority, when performing audits, to access, review and inspect:

> except where prohibited by the Federal Internal Revenue Code, all books, records, reports, files and papers, including those which are confidential by law, of any state agency, or other person or entity receiving state funds, with respect to any matters within the jurisdiction of the Division under [the Auditor law].[25]

In addition, as recommended by the Department of Fiscal Services, the Auditor's law was amended to provide "its own mandate for confidentiality, generally prohibiting disclosure by employees of the Division of audits of information ... obtain[ed] during an audit."[26]

In 1986, Attorney General Sachs, noting the PIA's "otherwise provided by law" exception to the personnel records exemption, advised the Calvert County Ethics Commission that although "[h]ome addresses and telephone numbers of State and local employees . . . [as well as] '[i]nformation about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history and activities, or credit worthiness,' is made ordinarily nondisclosable [by the PIA]," such information must be made public as required by the financial disclosure provisions of the Calvert County Ethics Code:

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[24] *See* Bill File, H.B. 547, 1980 Regular Session (Letter to the Chairman of the House Appropriations Committee from the Director of the then Department Fiscal Services, in which the Office of the Legislative Auditor was then housed).

[25] *See* 1980 MD. LAWS ch. 604 (codified, in pertinent part, at then MD. ANN. CODE, Art. 40, § 61B (c) (1), now MD. CODE ANN., STATE GOV. § 2-1223).

[26] 76 *Op. Att'y Gen.* at 291 (citing MD. CODE ANN., STATE GOV. § 2-1226, formerly MD. ANN. CODE, Art. 40, § 61B (c) (e)). As currently codified, this statute provides that information that an employee of the Office of Legislative Audits obtains during an audit or review is confidential, and may not be disclosed except to another employee of the Office of Legislative Audits. The Legislative Auditor may, however, authorize the disclosure of information obtained during an audit or review only to: another employee of the Department, with the approval of the Executive Director; federal, State, or local officials, or their auditors, who provide evidence to the Legislative Auditor that they are performing investigations, studies, or audits related to that same audit or review and who provide justification for the specific information requested; or the Joint Audit Committee, if necessary to assist the Committee in reviewing a report issued by the Legislative Auditor. If information that an employee obtains during an audit or review also is confidential under another law, the employee or the Legislative Auditor may not include in a report or otherwise use the information in any manner that discloses the identity of any person who is the subject of the confidential information.

> [The financial disclosure provision of t]he County ordinance unambiguously requires that [d]isclosure statements filed pursuant to this section . . . shall be maintained by the Commission as public records available for public inspection and copying.[27] That provision, in accordance with the [PIA], thus supersedes the usual confidentiality of information that is filed '"pursuant to" the financial disclosure provisions of the ordinance. Hence, if the information required by the Calvert County disclosure form is within the ambit of [the Calvert County Ethics Law], all information on the form must be disclosed.[28]

Although Calvert County, like all other local governments, was required by the State Ethics Law to enact conflict of interest provisions, including financial disclosure provision, applicable to its county officials:

> The disclosure required by the County's disclosure statement form is undeniably more detailed than the minimum that State law requires. [Citation omitted.] However, State law by no means prevents counties from adopting broader or more detailed disclosure requirements. *Montgomery County v. Walsh*, 275 Md. [502,] 510 [(1975)]. In fact, the State Ethics Commission's regulations, in addition to setting forth the minimum disclosure required, also discuss more detailed disclosure approaches that would be consistent with the principles of the State Public Ethics Law.[29]

The Attorney General also observed that "the Calvert County financial disclosure requirement, like all such requirements of both State and local law, is designed to guard against improper influence on the conduct of public business by requiring government officials and employees to make public disclosure of their financial affairs."[30] In addition, "Calvert County's requirements, as embodied in the local Commission's form, are patterned on the disclosure approaches discussed in those regulations and reflect the State [Ethics Law's financial] disclosure approach."[31]

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[27] The Attorney General here noted that "the State Ethics Commission—which is charged with ensuring that local ethics laws comport with the requirements of the State Public Ethics Law—has expressly stated that '[t]he local law, to be consistent with the [State] Public Ethics Law should provide that financial disclosure statements be held by the [local agency administering the ordinance] as public records available for public inspection and copying. COMAR 19A.04.02.05."

[28] 71 *Op. Att'y Gen.* 282, 283-84 (1986).

[29] *Id.* at 285.

[30] *Id.* at 284.

[31] *Id.* at 285.

Thus, General Sachs viewed, as "otherwise provided by law" for PIA purposes, a local ordinance that, although mandated in part by state law, required the disclosure—in detail well beyond that required by State law—of information otherwise not disclosable under the PIA information.

In 1991, Attorney General Curran issued an opinion advising the Governor on the procedures applicable to the Legislative Auditor's request for Executive Branch records and information. Although the opinion primarily addressed the procedural implications of the doctrine of executive privilege, which, because of its constitutional basis, bars the Auditor's statutorily created right of access,[32] the Attorney General also carefully reviewed the history of the PIA, its relationship to the Auditor statute, and prior Attorney General Opinions regarding the confidentiality provisions of the PIA, and said:

> Nothing in the 1980 legislation or its legislative history suggests that the two Attorney General opinions had been understood to authorize imposition of the procedural requirements of the PIA on the Legislative Auditor. Had agencies sought to do so, surely this legislation would have dealt with the subject, for there can be no doubt whatever that the procedures of the PIA are in most respects altogether incompatible with the efficient conduct of an audit. For example, the access right granted by the audit statute would be severely compromised if an agency were permitted to delay its response to the Legislative Auditor's request for access for up to 30 days. *See* SG §10-614(b)(1). It is likewise impossible to imagine that the General Assembly intended to allow an agency to delay an audit indefinitely by invoking the temporary denial authority in SG §10-619 or meant to authorize the agency to impose search fees under SG §10-621.
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> As we see it, the General Assembly intended its audit function to be an independent exercise of its constitutional prerogative to engage in oversight of Executive Branch agencies, concerning both their handling of funds and their performance. *See* 63 *Opinions of the Attorney General* at 453-54. And, as the 1980 amendments to the audit statute make clear, the General Assembly has unmistakably imposed a duty on Executive Branch officials to provide the information necessary to the conduct of an audit by the Legislative Auditor.[33]

In 1994, while concluding that disclosure of certain personnel information and records that were related to a U.S. District Court order did not violate the PIA, the Attorney General summarized:

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[32] 76 *Op. Att'y Gen.* at 295.

[33] *Id.* at 294.

> A series of Attorney General opinions has pointed out . . . that the "otherwise provided by law" exception authorizes access to confidential personnel and other records when a statute authorizes an official (the Legislative Auditor) to inspect records in order to carry out the official's duties.[34]

In 1996, the Attorney General advised that an auditor performing an audit of the Metropolitan Commission pursuant to the Single Audit Act of 1984, was entitled to obtain access to the Commission's personnel records. Federal OMB guidelines that authorized such auditors to examine personnel files for compliance purposes "if the auditor determines that inspection of the records would help achieve the purposes of the audit," constituted, in the opinion of the Attorney General, "federal 'law' that 'otherwise provides' for disclosure to the auditor."[35]

Last year, the Attorney General affirmed the continuing vitality of the "statutory duties test" for determining whether a law concerning a particular official or office otherwise provides for access to personnel files:

> [A]ny exception to the general prohibition against public access to personnel records must be supported by a clear legal basis ... as when 'the requesting agency has statutory duties which demonstrably cannot be effectively executed without access [to personnel records].[36]

4. *The County Law Issue.*

The "otherwise provided by law" exception and its "statutory duties" test would seem to apply equally to investigations by the Montgomery County IG. The IG law clearly and carefully authorizes the IG to access all county records in the course of performing the IG's statutory duties, and it underscores the importance of such access by granting the IG traditional investigative administrative subpoena authority, if necessary.[37] The Attorney

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[34] 79 *Op. Att'y Gen.* at 372 (citations omitted).

[35] 81 *Op. Att'y Gen.* at ___ [Opinion No. 96-013 (April 14, 1996)].

[36] 86 *Op. Att'y Gen.* at ___ (2001) [Opinion No. 01-013 (April 30, 2001)](quoting 78 *Op. Att'y Gen.* at 294) (quoting 60 *Op. Att'y Gen.* at 559).

[37] *See State Commission On Human Relations Commission v. Board of Education of Dorchester County*, Circuit Court for Dorchester County, Civil No. 5177 (October 30, 1984) (Memorandum and Order, pp.5-6) (State Human Relations Commission statute "provides otherwise" when it gives the Commission the power to subpoena employer records, including those of state agencies). Administrative subpoenae are appropriate when they meet the three-pronged test articulated in *Banach v. State Commission On Human Relations,* 277 Md. 503, 506 (1976).

General, however, has concluded that the "law" to which the "otherwise provided" phrase refers, both in the personnel records exemption and elsewhere in the PIA, does not include a law enacted by a county:

> In [the Attorney General's] opinion, a local ordinance does not constitute "other law" for purposes of SG § 10-615 and cannot be the basis of an exemption from disclosure under the PIA. As we have previously explained, a contrary interpretation "would allow...local entities at their election to undermine the [PIA]. ...[Had] the General Assembly intended to give this effect to ... a local ordinance, [local ordinances] would have been indicated in the list in SG §10-615...." Office of the Attorney General, *Public Information Act Manual*, 15 (8th ed. 2000). *See also* 71 *Op. Att'y Gen.* 297, 299-300 (1986).
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> Similarly, if disclosure of a particular record is forbidden by the PIA, its disclosure would not be "otherwise provided by law" simply because the ordinance authorized the disclosure. Most of the mandatory exemptions in the PIA appear designed to vindicate privacy or other interests deemed worthy of protection by the General Assembly. If a local ordinance by itself constituted other "law" authorizing disclosure, it could thwart the sometimes delicate balance of interests struck by the Legislature.[38]

We agree that a county law or ordinance that conflicts with the legislative balance of interests embodied in the PIA may not be given effect. A county enactment may not, directly or indirectly, either deny or authorize access to public records contrary to the mandate of the PIA. However, we think that, as demonstrated by the Attorney General's opinion that blessed the Calvert County financial disclosure requirement that exceeded the requirements of the State Ethics law, reading the PIA's "otherwise provided by law" exception so as to exclude *all* county laws or ordinances *per se* is to construe the PIA more narrowly than the General Assembly intended. For the following reasons, therefore, we conclude that the access provisions of the Montgomery County IG law do not conflict with the balance of privacy and access interests embodied in the PIA's personnel records exemption, and, consequently, the PIA's "otherwise provided by law" exception should be interpreted to include county laws such as the Montgomery County IG law.

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[38] 86 *Op. Att'y Gen.* at ___ (Opinion No. 01-013). Although this is the first formal opinion in which the Attorney General has stated it, this view has long been suggested by the Attorney General's Public Information Act Manual. *See* Office of the Attorney General, *Public Information Act Manual*, 8-9 (1st ed. 1980).

A statute is the written will of the Legislature. The cardinal rule for interpreting a statute is "to ascertain and carry out the real legislative intent."[39] And the beginning point for divining legislative intent is the language of the law itself.[40] "[W]hat the Legislature has written in an effort to achieve a goal is a natural ingredient of analysis to determine that goal,"[41] and "the words used are to be given 'their ordinary and popularly understood meaning, absent a manifest contrary legislative intention.'"[42]

Ascertainment of the meaning apparent on the face of a statute, therefore, need not end the inquiry.[43] We are not limited to the words of the statute as they are printed in a code. "Although the words of a statute are the starting point for ascertaining the legislative intent, they must not be read in a vacuum but should be considered in light of other manifestations of legislative intent."[44] "[W]e always are free to look at the context within which statutory language appears. "Even when the words of a statute carry a definite meaning, we are not 'precluded from consulting legislative history as part of the process of determining the legislative purpose or goal' of the law.'[45] We may consider other "external manifestations" or "persuasive evidence." These include the cause or necessity of the law;[46] its objectives and purposes;[47] its history;[48] its relationship to earlier and subsequent legislation; prior and contemporaneous statutes;[49] and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which the particular language is read in a given case.[50] "This enables us to put the statute . . . in its proper context and

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[39] *State v. Pagano*, 341 Md. 129, 133 (1996).

[40] *Morris v. Prince George's County*, 319 Md. 597, 603 (1990).

[41] *Kaczorowski v. Baltimore*, 309 Md. 505, 513 (1987).

[42] *Privette v. State,* 320 Md. 738, 744 (1990) (quoting *In re Arnold M.*, 298 Md. 515, 520 (1984)).

[43] *Kaczorowski*, 309 Md. at 514.

[44] *In re Douglas P.*, 333 Md. 387, 393 (1994).

[45] *Morris*, 319 Md. at 603-04.

[46] *Smith v. Higinbothom*, 187 Md. 115, 125 (1946).

[47] *Clark v. State,* 2 Md. App. 756, 761 (1968).

[48] *Welsh v. Kuntz*, 196 Md. 86, 93 (1950).

[49] *Department of Tidewater Fisheries v. Sollers*, 201 Md. 603, 611 (1953).

[50] *Kaczorowski,* 309 Md. at 514-515.

thereby avoid unreasonable or illogical results that defy common sense."[51]

Applying the principles of statutory construction to the PIA personnel records provision, we note that the nature of the duties of the County IG and the State's Legislative Auditor are strikingly similar.[52] The IG function, like the Legislative Auditor function, is basically an exercise of the County Council's prerogative to engage in oversight of Executive Branch agencies, as well as Legislative Branch agencies, concerning both their handling of funds and their performance. Both the Auditor and the IG are given, within the bounds of other applicable law, broad access to all files, and each is empowered to issue, if necessary, subpoenae enforceable by the courts. In this context, the restrains of the PIA, therefore, are as "altogether incompatible with the efficient conduct of" the IG's duties as they are with those of the Legislative Auditor. Just as the PIA's requirements would present insurmountable barriers if applied to the Legislative Auditor, so, too, they would effectively prevent the IG from carrying out similar duties under local law. So, too, the delicate balance the General Assembly has achieved between the personnel records privacy interests protected by the PIA and the investigative duties of the Legislative Auditor is no more disturbed by exempting the IG from the barriers of the PIA than by exempting the Legislative Auditor. Indeed, exempting a county IG from those barriers extends to the local level the very same balance that the Legislature has struck at the state level.[53]

The construction of the PIA, therefore, in the context of its legislative purpose, its general aim or policy, the ends to be accomplished, and its deference to the duties created by the Legislative Auditor's law, leads inevitably to the conclusion that the Legislature did not intend to inhibit the ability of a county auditor or IG to access the personnel records of a county official or employee when a county-law duty that is substantially the same as a duty of the Legislative Auditor cannot not be effectively executed without that access. Indeed,

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[51] *Adamson v. Correctional Medical Services, Inc.*, 359 Md. 238, 251-52 (2000) (quoting *Sinai Hospital of Baltimore v. Dept. of Employment and Training*, 309 Md. 28, 40 (1987)).

[52] *See, e.g.*, MD. CODE ANN., STATE GOV'T §§ 2-1217 *et seq.*

[53] For PIA purposes, the only potentially significant difference between the IG law and the Legislative Auditor law is the post-access treatment of information obtained from a personnel file must or may be made public. The General Assembly has drawn a delicate balance that permits the Auditor to access such information, but contains a *quid pro quo* that prohibits the release of that information to the public. If the IG law were construed to require or permit such disclosure, that balance would not be present, and, as a consequence, the IG law might not constitute "other authorizing law" for PIA purposes. We advise, therefore, that the provisions of the IG law that require "release [of] the report to the public, subject to the state public information act," and mandate the IG to "comply with any restrictions on public disclosure of the document or information that are required by federal or state law," should be read to impose restrictions similar to the confidential records restrictions that state law places on the Legislative Audit.

in our view, whenever a county law gives a local office or officer investigative duties that are substantially the same as those of a similar state office or officer and those duties cannot be effectively performed without access to personnel records, the interests at the state and local level are identical, and the balancing of those interests is precisely the same. Under these circumstances, it clearly would be illogical, unreasonable, and absurd to attribute to the General Assembly the intention to exempt the state office or official from the personnel-records inhibitions of the PIA while applying that insurmountable barrier to the county official. Therefore, like state statutes that impose duties that demonstrably cannot be effectively executed without access to personnel records, so too, local laws that impose similar duties on local officials are within the "otherwise provided by law"exception to the PIA's prohibition on the disclosure of personnel records.[54]

CONCLUSION

For these reasons, we conclude that the IG may inspect or obtain the personnel records of a specific county official or employee (or particular classes of county officials or employees) when a valid statutory duty of the IG, such as an audit or investigation, demonstrably cannot be effectively executed without that access.[55] The IG may not, however, publicly disclose that information.

Nevertheless, our advice on this question is not free from doubt. The Court of Appeals has never had occasion to address the issues presented by this question, and opinions of the Attorney General suggest that the PIA prohibits investigators from accessing state and local government personnel records unless otherwise provided by state or federal law. Consequently, it would be prudent to ask the Attorney General to address the important state law question of whether the PIA prevents your office from accessing county personnel records in the performance of your statutory duties. Of course, even if the Attorney General concurs, the only way to be certain, absent a dispositive decision of the Court of Appeals, is to amend State law to expressly authorize such access.

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[54] This is not to say that counties — even home rule counties — have the authority to enact laws creating general exemptions to the PIA's privacy provisions. But, when the Legislature has drawn a balance between the PIA's personnel-records-privacy provision and the statutory duties of a state official, a county-enacted local law that imposes substantially similar duties on a county official does not conflict with the PIA, and, therefore, like its corresponding state law, should constitute "other law" for PIA purposes.

[55] Because the "otherwise provided by law" exception turns on access being necessary to the performance of a statutory duty, the County Attorney has previously advised that neither the IG nor anyone else may be given general, unrestricted access to all personnel files— through the HR Vision system or otherwise—unless their statutory duties require such broad access.