# Written Testimony for the Maryland General Assembly’s Joint Committee on Transparency and Open Government

# Tuesday, December 4, 2012

Good afternoon. My name is J.H. (“Jim”) Snider. I am the President of iSolon.org and a Fellow at the Edmond J. Safra Center for Ethics at Harvard University.

During 2000, I worked as an American Political Science Association Congressional Fellow in Communications and Public Policy on the U.S. Senate Judiciary Committee under Senator Patrick Leahy. Senator Leahy was the champion of eFOIA legislation in the late 1990s, and we tried to develop a vision for next generation open government. The basic idea behind eFOIA is that government should proactively make important public documents available online.

Unfortunately, despite much hype to the contrary, the advent of the Internet in Maryland has too often been used to harm rather than help transparency. If you had told me in the mid-1990s that this would be the case, I probably wouldn’t have believed it. But in the absence of a strong commitment from the General Assembly to ensure that the Internet is used to bolster transparency rather than protect public officials from accountability, the latter use has too often been the case.

I’ve previously testified at length and on multiple occasions before this committee on the misuse of information technology by local governments to make themselves less accountable while publicly touting the cases where they appear to do otherwise. I’ve also published a related op-ed in the *Washington Post*, [Maryland’s Fake Open Government](http://www.washingtonpost.com/wp-dyn/content/article/2010/04/17/AR2010041702662.html). Instead of repeating myself, I’d like to point you to some governments that could be a model for Maryland.

The best model I know of is Estonia, a relatively poor country a fourth the population of Maryland and a country that only became independent after the fall of the Soviet Union less than 25 years ago. Estonia has become well known for its prowess in information technology, both in the private sector (think Skype) and public sector (think online voting). Its expertise in cybersecurity--while maintaining an [open society](http://www.telecomtv.com/comspace_newsDetail.aspx?n=49335&id=e9381817-0593-417a-8639-c4c53e2a2a10)--is also of the first rank. Less known is its accomplishments in the area of [open government](http://legislationline.org/topics/country/33/topic/3), especially [proactively putting government documents online](http://www.epractice.eu/en/document/288216). You might also check out the [Council of Europe’s International Convention on Access to Official Documents](http://www.freedominfo.org/2009/06/12-european-countries-sign-first-international-convention-on-access-to-official-documents/), signed by Estonia.

Another model I’d encourage you to consider is the Federal government’s, especially its efforts to put public documents not just online on agency websites but in the cloud, searchable across agencies. Although its accomplishments tend to substantially lag Estonia, it’s still a useful reference point, and I’d encourage you to look at the White House’s August 24, 2011 [Managing Government Records Directive](http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-18.pdf) sent to the heads of executive departments and agencies. Here I’ll just cite from the introduction:

“Records are the foundation of open government…. Records protect the rights and interests of the people, and hold officials accountable for their actions…. This Directive requires that to the fullest extent possible, agencies eliminate paper and use electronic record keeping.”

Another model I’d encourage you to look at is New York City, where the Bloomberg administration has moved beyond the typical open government rhetoric to meaningful accomplishment. Here I’d recommend you check out [NYOpenGovernment.com](http://nyopengovernment.com/NYOG/) and [Local Law 11 of 2012](http://www.nyc.gov/html/doitt/html/open/local_law_11_2012.shtml), passed on March 7, 2012. You might also check out [cities.data.gov](http://www.data.gov/communities/cities), where one of the participating cities is Baltimore.

One database Baltimore has put online in a structured, machine readable format is the [salaries of its 14,000+ city employees](https://data.baltimorecity.gov/Financial/Baltimore-City-Employee-Salaries-2011/ijfz-2v3c). Now if there is any dataset that would be a test of your seriousness in modernizing Maryland’s Public Information Act, I’d suggest that it is public employee compensation. For many local Maryland governments, 80% or more of the budget goes to compensation.

By law in Maryland, salary information is already nominally public because it is widely recognized that democratic accountability is impossible unless the public knows how much its public officials are paid. But for the great majority of local governments in Maryland, it is not meaningfully public. This is largely because those who seek to exercise their rights to access such information have a reasonable expectation of harassment, and sometimes harassment with very serious consequences. Consequently, it is rarely made public in a way that would be useful to the public. If compensation information were made publicly available proactively, the public would not have to risk harassment in seeking to access it.

Compensation information is also a classic illustration of why information needs to be made available in a searchable, electronic form. For a typical county or local school system with thousands of workers, making salary information available in paper form is practically worthless for doing any type of meaningful statistical analysis. Note that with today’s sophisticated electronic payroll systems, making such information available in a structured, machine-readable format is technologically trivial.

Lastly, the response to any effort to make compensation information meaningful public—and I’m sure you are perfectly aware of that response—is a classic illustration of the political obstacles and phony arguments you must deal with in trying to modernize the Public Information Act.

On a state agency level, I want to mention my distress and disappointment at the failure of Maryland’s State Board of Elections to comply with the Public Information Act in a timely way on an issue of great public importance. Its behavior is yet another illustration of the sometimes perverse incentives both state agencies and local governments have to violate the spirit and letter of Maryland’s Public Information Act when common citizens attempt to use the Act to hold their governments accountable.

I hope you will consider the State Archives an integral part of any reform of the Public Information Act. Surprisingly, the quality of its archives of crucial documents necessary to establish local legislative history, which in turn is necessary to establish legislative intent and government accountability, has significantly declined since the 1970s, despite the intervening advent of the information technology revolution.

I hope you will exhibit the political courage necessary to implement the open government ideals of the Public Information Act in the face of the political pressure exerted by local public officials to remain as unaccountable as possible. Needless to remind you, the lobbyists who work on their behalf have a long track record of effective opposition to laws necessary to realize the ideals of the Public Information Act.