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February 9, 2011

The Honorable Nancy J. King
222 James Senate Office Building
Annapolis, Maryland 21401-1991

Dear Senator King:

You have asked for advice concerning Senate Bill 230, "Public Information Act – Required Denials – Senior Citizen Activities Centers." Specifically, you have asked whether the information protected by the bill would be available to the public under current law. It is my view that the Public Information Act would permit inspection of documents containing this information with respect to enrollees and members of publicly run senior citizen activities centers unless the publicly run senior citizen activities center, or the government agency that controls the senior citizen activities centers for the political subdivision, has promulgated regulations defining the information in question as sociological information.

Senate Bill 230 would provide that:

A custodian shall deny inspection of the part of a public record that contains the name, address, telephone number, or electronic mail address of any individual enrolled in or any member of a senior citizen activities center.

The Public Information Act is broadly designed to give "all persons ... access to information about the affairs of government and the official acts of public officials and employees." State Government Article ("SG") § 10-612(a). To accomplish this aim, it provides that "a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time." SG § 10-613(a)(1).

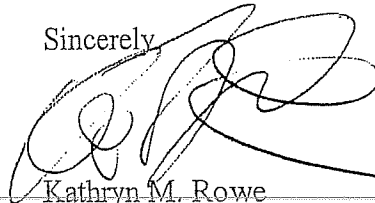
The term "public record" is broadly defined to include "the original or any copy of any documentary material that is ... made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of business." SG § 10-611(g)(1)(i). This description is broad enough to reach the records of facilities such as hospitals, that are an instrumentality of a political subdivision. *Moberly v. Herboldsheimer*, 276 Md. 211 (1975). It does not, however, reach records kept by a private facility, even if the records are required by a governmental agency and the agency has access to them. 80 *Opinions of the Attorney General* 257 (1995) (applicants for residential child care facility licenses). In light of

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the above, records of publicly run senior citizen activities centers would be public records, and would be subject to inspection unless there is an exception in the law.

There are no discrete public interest, personal information, or unwarranted invasion of privacy exceptions to the Public Information Act. *Police Patrol v. Prince George's County*, 378 Md. 702, 716-717 (2003). Under SG § 10-612(b), the Public Information Act is to be construed more narrowly, and its exemptions construed more broadly, when privacy issues are at stake. *Id.* at 717. Inspection may not be denied, however, unless there is some basis in law. *Id.* While the Public Information Act contains many exceptions that are directed at the protection of privacy, including one, SG § 10-617(l)(1), that addresses the holding of the *Police Patrol* case, there is no provision that would expressly protect the records of publicly run senior citizen activities centers. The sole possibility I have identified is SG § 10-617(c) which permits denial of inspection of the portions of records containing information that the official custodian has defined as sociological information.¹ The term "sociological information" is not defined in the statute, and no case addresses the permissible breadth of this authorization. It is my view that it would not be unreasonable to define the term to include identifying information with respect to the enrollees and members of senior citizen activities centers, because the identification reveals that the persons identified are receiving services. In the absence of a regulation with this definition, however, a publicly run senior citizen activities center would have to grant access to documents containing this information.

Sincerely,



Kathryn M. Rowe
Assistant Attorney General

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¹ "Official custodian" means an officer or employee of the State or a political subdivision who, whether or not the officer or employee has physical custody and control of a public record, is responsible for keeping the public record." SG § 10-611(d).