

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 698
Judiciary

(Delegate Barron, *et al.*)

Public Information Act - Records Relating to Alleged Job-Related Misconduct by
Law Enforcement Officers

This bill specifies that a record related to a formal complaint of job-related misconduct against a “law enforcement officer,” including an investigation record or record of any discipline imposed, is not a personnel record under the Maryland Public Information Act (MPIA), making such a record subject to disclosure, except under specified conditions.

The bill also expands the definition of “person in interest,” to include an individual that has made a formal misconduct complaint against a law enforcement officer and the law enforcement officer that is the subject of the complaint, making both individuals eligible to review the record of the investigation or adjudication of the complaint.

Fiscal Summary

State Effect: The bill’s changes can be handled with existing budgeted resources, as the number of MPIA requests for investigation or discipline records is not expected to substantially increase.

Local Effect: The bill’s changes can be handled with existing budgeted resources, as the number of MPIA requests for investigation or discipline records is not expected to substantially increase.

Small Business Effect: None.

Analysis

Bill Summary: The bill incorporates the definition of “law enforcement officer” that exists in § 3-101 of the Public Safety Article, with two additions: (1) an officer who serves in a probationary status and (2) an officer who serves at the pleasure of the appointing authority of a county or municipal corporation.

A custodian of a record may deny the inspection of records of an investigation or adjudication of alleged job-related misconduct by a law enforcement officer, including records of any discipline imposed, under conditions specified in current law.

Current Law: A “person in interest” is defined in MPIA as (1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit; (2) if the person has a legal disability, the parent or legal representative of the person; or (3) as to requests for correction of certificates of death, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the deceased individual at the time of the deceased’s death.

With specific regard to personnel records, custodians must deny inspection of those records, except by (1) the person in interest or (2) an elected or appointed official who supervises the work of the custodian.

Maryland Public Information Act Generally

Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any *Public Information Act Manual* published by OAG.

Duties of Custodians

A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time. A custodian must notify an applicant in writing or via email within 10 working days of receiving a request if the estimated time to produce responsive records exceeds more than 10 working days.

Required Denials

A custodian must deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. Denial of inspection is also mandatory for public records relating to adoption, welfare records, hospital records, letters of reference, specified information about an individual maintained by a library, retirement records, certain police records, criminal charging documents, arrest warrants, personnel records, certain hospital and school records, records of certain State agencies, certain recorded and surveillance images, and captured plate data collected by automatic license plate reader systems. Denial of inspection is required for information in a public record relating to certain medical, psychological, sociological, and financial information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

Discretionary Denials

Unless otherwise specified, if a custodian believes that inspection of a part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of that part of the record. Permissible denials include information relating to documents that would not be available through discovery in a lawsuit, certain information about publicly administered tests, research projects conducted by an institution of the State or a political subdivision, real estate appraisals of property to be acquired by the State prior to its acquisition, certain information on inventions owned by State public higher educational institutions, and trade secrets or confidential information owned by the Maryland Technology Development Corporation.

A custodian that denies inspection of a public record on this basis must provide (1) a written statement to the applicant giving the reason for denial; (2) the legal authority on which it is based; (3) a brief description of the undisclosed record (without disclosing the protected information); and (4) a notice of the statutory remedies available.

Background: In *Maryland Department of State Police v. Dashiell*, 105 A.3d 489 (2014), the Maryland Court of Appeals ruled that records pertaining to an internal police investigation of an officer initiated by the plaintiff in this case were “personnel records,” and thus not required to be disclosed to a third party under MPIA. The court also held that a complainant is not a “person in interest” to whom a custodian may release personnel records. Since the disposition of this case, there has been some concern about the ability of a person who is affected by the misconduct of a law enforcement officer to be apprised of the outcome of any investigation or disciplinary action taken as a result of his/her formal complaint.

Additional Information

Prior Introductions: None.

Cross File: SB 362 (Senator Conway) - Judicial Proceedings and Education, Health, and Environmental Affairs.

Information Source(s): cities of Baltimore and Westminster; Kent, Montgomery, Washington, and Worcester counties; towns of Bel Air and Leonardtown; Comptroller's Office; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of General Services; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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Analysis by: Michelle Davis

Direct Inquiries to:
(410) 946-5510
(301) 970-5510