

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 979 (Senator Carter, *et al.*)
Education, Health, and Environmental Affairs

Public Information Act - Personnel and Investigatory Records - Formal
Complaints Against Public Employees

This bill establishes that a record related to a formal complaint of job-related misconduct made against a public employee, including an investigation record, a hearing record, or disciplinary decision, is not a personnel record and thus not subject to *mandatory* denial of inspection under Maryland's Public Information Act (PIA). Instead, a custodian of a public record *may*, subject to specified existing conditions, deny the inspection of a record generally relating to the investigation, hearings, or decisions involving a complaint of job-related misconduct made against a public employee.

Fiscal Summary

State Effect: Potential minimal increase in State expenditures if there is a substantial increase in the volume of PIA requests, as discussed below. Revenues are not materially affected.

Local Effect: Potential minimal increase in local expenditures if there is a substantial increase in volume of PIA requests, as discussed below. Local revenues are not materially affected.

Small Business Effect: None.

Analysis

Current Law: PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Generally, however, a custodian must deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information. A custodian must allow inspection of a personnel record by:

- the “person in interest”;
- an elected or appointed official who supervises the work of the custodian; or
- a specified employee organization (of specified portions of the personnel record).

A “person in interest” is defined 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 under State law, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased, as specified.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time and within 10 working days of receiving a request.

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. In general, denial of inspection is also mandatory for public records relating to adoption, welfare 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. In general, denial of inspection is also required for that part of a public record relating to certain medical, psychological, sociological, and financial information; trade secrets; certain personal information about public employees; and other specified information and records.

Discretionary Denials

Unless otherwise specified, if a custodian believes that inspection of a record or part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of the record or part of the record. PIA specifies the types of records that are eligible for discretionary denials, including documents that would not be available through discovery in a lawsuit.

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), including an explanation of why redacting information would not address the reason for the denial; and (4) a notice of the statutory remedies available.

A custodian may deny inspection *by a person in interest* only to the extent that the inspection would (1) interfere with a valid and proper law enforcement proceeding; (2) deprive another person of a right to a fair trial or an impartial adjudication; (3) constitute

an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source; (5) disclose an investigative technique or procedure; (6) prejudice an investigation; or (7) endanger the life or physical safety of an individual.

State/Local Expenditures: State and local government agencies employing significant numbers of law enforcement, correctional enforcement, and administrative enforcement personnel are likely to experience an increase in the number of requests for personnel records under PIA as a result of the bill. In the absence of a reliable estimate of the number of such requests that each State and local agency receives under the bill, the need for additional staff to handle any increase in workload cannot be assessed. To the extent that specific agencies experience a substantial number of additional PIA requests under the bill, they may require additional personnel to review the personnel records and make a determination under PIA criteria. However, based on information provided by multiple State agencies and local governments, the Department of Legislative Services does not anticipate an increased need for staff as a result of the bill.

Additional Information

Prior Introductions: HB 402 of 2016, a similar bill, received a hearing in the House Health and Government Operations Committee but was subsequently withdrawn. Its cross file, SB 671, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but was subsequently withdrawn.

Cross File: HB 413 (Delegate Barron, *et al.*) - Health and Government Operations.

Information Source(s): Anne Arundel and Montgomery counties; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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