

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 777

(Senator Carter)

Judicial Proceedings

Judiciary

**Task Force to Study Public Information Act Requests Made to Law Enforcement
 - Establishment**

This bill establishes a Task Force to Study Public Information Act Requests Made to Law Enforcement to review and study (1) costs charged by law enforcement agencies in relation to disclosure of records requested under the Maryland Public Information Act (PIA); (2) procedures applied by law enforcement agencies in the disclosure of records requested under PIA; and (3) the status and operations of the Maryland Public Information Act Compliance Board (PIACB). The Office of the Attorney General (OAG) must provide staff for the task force. A member of the task force may not receive compensation as a member of the task force but is entitled to reimbursement for expenses. The task force must submit to the General Assembly an interim report on its findings by December 31, 2022, and a final report by December 31, 2023. **The bill takes effect June 1, 2022, and terminates February 29, 2024.**

Fiscal Summary

State Effect: General fund expenditures for OAG increase by \$51,900 in FY 2023 for contractual staff, as discussed below. Future years reflect termination of the contractual position in FY 2024. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	51,900	21,000	0	0	0
Net Effect	(\$51,900)	(\$21,000)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Maryland's 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. Each governmental unit that maintains public records must identify a representative whom a member of the public may contact to request a public record. OAG must post all such contact information on its website and in any PIA Manual published by OAG.

Fees and Fee Waivers

Under PIA, an official custodian may charge an applicant a reasonable fee for the actual costs of the search, preparation, and reproduction of any public record in a standard format, including the cost of media and mechanical processing. If an applicant requests a public record in a customized format, an official custodian may charge a reasonable fee for the search, preparation, and reproduction of the public record. "Reasonable fee" means a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit. The staff and attorney review costs included in the calculation of actual costs incurred must be prorated for each individual's salary and actual time attributable to the search for and preparation of a public record for inspection. The custodian may not charge a fee for the first two hours that are needed to search for a public record and prepare it for inspection.

The official custodian may waive a fee if the applicant asks for a waiver and (1) the applicant is indigent and files an affidavit of indigency or (2) after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.

Inspection of Records Relating to Investigations of Police Misconduct

Chapter 62 of 2021 establishes that, except for a record of a technical infraction, a record relating to an administrative or criminal investigation of misconduct by a law enforcement officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, is not a protected personnel record for purposes of PIA. Instead, these records are treated as investigatory records subject to discretionary denial of inspection as provided under PIA. A custodian may deny inspection by a person in interest only under specified conditions and must allow inspection of such records by the U.S. Attorney, the Attorney General, the State Prosecutor, or the State's Attorney for the jurisdiction relevant to the record.

When inspection of a record relating to an administrative or criminal investigation of police officer misconduct is granted to anyone other than the U.S. Attorney, the Attorney General, the State Prosecutor, or the State's Attorney for the jurisdiction relevant to the record, a

custodian must redact specified information. Specifically, the custodian must redact the record to the extent that the record reflects (1) medical information of the person in interest; (2) personal contact information of the person in interest or a witness; or (3) information relating to the family of the person in interest. A custodian may redact the record to the extent that the record reflects witness information other than personal contact information. When the record is inspected, the custodian must notify the person in interest but may not disclose the identity of the requestor to the person in interest.

Office of the Public Access Ombudsman

The Office of the Public Access Ombudsman reviews and resolves disputes between applicants and custodians over requests for public records. Chapter 658 of 2021 expands the duties of the ombudsman to include resolving disputes relating to fees.

The ombudsman may not compel a custodian to disclose public records or redacted information. However, if an applicant files a complaint with the office challenging a denial or exemption, the custodian must demonstrate that the denial or exemption is clearly applicable to the requested public record and, if inspection of part of a public record is denied on a discretionary basis, that the harm from disclosure is greater than the public interest in access to the information.

Public Information Act Compliance Board

PIACB, a five-member board appointed by the Governor, receives, reviews, and resolves complaints from applicants alleging that a custodian of a public record charged an unreasonable fee of more than \$350. The board must issue a written opinion as to whether a violation occurred and, if it finds that a custodian charged an unreasonable fee, order the custodian to reduce the fee and refund the difference, as specified.

Effective July 1, 2022, Chapter 658 expands the jurisdiction of the board to include receiving, reviewing, and resolving additional types of PIA disputes and institutes an integrated PIA complaint resolution process that includes the Public Access Ombudsman. Under the Act, an applicant, an applicant's designee, or a custodian may file a written complaint with PIACB if (1) the complainant has attempted to resolve the dispute through the Office of the Public Access Ombudsman and (2) the ombudsman has issued a final determination stating that the dispute was not resolved.

State Expenditures: OAG advises, and the Department of Legislative Services (DLS) concurs, that it is unable to absorb staffing duties for the task force with existing resources. DLS notes that the bill takes effect 30 days prior to the effective date of Chapter 658, which, as discussed above, expands the jurisdiction of PIACB and institutes a new, integrated PIA complaint resolution process. It is anticipated that OAG staff currently assigned to support

PIACB and the Public Access Ombudsman will likely be fully subscribed with existing duties related to this transition during the timeframe within which the task force will be completing its work.

Thus, general fund expenditures increase by \$51,928 in fiscal 2023, which accounts for a 30-day start-up delay from the bill's June 1, 2022 effective date. This estimate reflects the cost of hiring one half-time contractual attorney to staff the task force. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	0.5
Salary and Fringe Benefits	\$44,850
Operating Expenses	<u>7,078</u>
Total FY 2023 State Expenditures	\$51,928

Future year expenditures reflect termination of the contractual position in fiscal 2024, following the completion of the task force's final report.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Any expense reimbursements for task force members are assumed to be minimal and absorbable within existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Harford, Montgomery, and Talbot counties; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; City of College Park; Maryland Municipal League; Alcohol and Tobacco Commission; Office of the Attorney General; Comptroller's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; University System of Maryland; Morgan State University; Department of General Services; Maryland Department of Health; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Office of Administrative Hearings; *MarylandReporter.com*; Department of Legislative Services

Fiscal Note History:
km/mcr

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Analysis by: Elizabeth J. Allison

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