

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 720 (Senator Collins)
Education, Health, and Environmental Affairs

State Government - Public Information Act - Records Related to Public Safety

This bill requires a custodian of a public record to deny inspection of a part of the public record that contains information related to: (1) emergency response plans; (2) communication and security systems; (3) the assignments and duties of essential personnel; (4) the building plans of public schools and executive, legislative, and judicial officers; and (5) water or wastewater system plans. The bill does not preclude a person from seeking judicial review of a denial of an inspection request. A person seeking judicial review of a denial must prove by clear and convincing evidence that the denial is contrary to the public interest.

The bill is effective June 1, 2002.

Fiscal Summary

State Effect: Any change in State activities related to inspection of public records would not materially affect State finances. Any increase in the number of cases brought to challenge denials of public record inspection requests is assumed to be small and could be handled with the existing budgeted resources of the Judiciary.

Local Effect: Any change in local government activities related to inspection of public records would not materially affect local government finances.

Small Business Effect: None.

Analysis

Current Law: Generally, a custodian of a public record must permit inspection of the record at a reasonable time.

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) a State statute; (b) a federal statute or regulation; (c) the Maryland Rules; or (d) an order of a court of record. Denial of inspection is also mandatory for public records relating to adoption, welfare records, letters of reference, and specified information about an individual maintained by a library. Denial of inspection is required for information in a public record relating to certain medical, psychological, and sociological information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

Unless otherwise provided, 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. Other 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.

When a person is denied inspection of a public record, the person may file a complaint with the circuit court for the county where: (1) the complainant resides or has a principal place of business; or (2) the public record is located. The custodian, as defendant, has the burden of sustaining a decision to deny inspection and may submit a memorandum to the court in support of the decision. Such cases take precedence on the court's docket. The court may enjoin the governmental unit or its employee from withholding the record, order the record's production, and hold the employee in contempt. Allowable damages for successful plaintiffs include actual damages, punitive damages, counsel fees, and other litigation costs. If the action of the custodian in withholding the record was arbitrary or capricious, the court must send a certified copy of its finding to the custodian's appointing authority, who in turn, must take the disciplinary action that the circumstances warrant.

Additional Information

Prior Introductions: None.

Cross File: HB 916 (Delegate McIntosh) – Commerce and Government Matters.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of the Environment, Maryland State Department of Education, Department of State Police, Department of Health and Mental Hygiene, Maryland Emergency Management Agency, Department of Legislative Services

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