

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 210 (Chairman, Health and Government Operations)
(By Request – Departmental – Business and Economic Development)
Health and Government Operations

Public Information Act - Business and Economic Development

This departmental bill authorizes a custodian to deny inspection of a public record that contains information related to a proposal for commercial or financial assistance generated, received, or being negotiated by the Department of Business and Economic Development (DBED) before: (1) DBED and all other parties execute all final commitment letters related to the proposed financial or commercial assistance; or (2) the Legislative Policy Committee gives final approval of the proposed assistance if such approval is required by law.

Fiscal Summary

State Effect: None. The bill is procedural in nature and would not directly affect governmental finances.

Local Effect: None.

Small Business Effect: DBED has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

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.

Courts frequently rule on interpretations of the State and federal Public Information Acts. The U.S. Court of Appeals for the District of Columbia ruled in *National Parks and Conservation Association v. Morton* (1974) that financial or commercial information a person is required to give the government should be considered confidential if disclosure would impair the government's ability to obtain the necessary information in the future or it would cause substantial harm to the person's competitive position. More recently, in *Office of the Governor v. Washington Post Co.* (2000), the Maryland Court of Appeals held that a record of a telephone call about an economic development project is not confidential information, though notes detailing the substance of the discussion might be.

Chapter 357 of 2002 authorizes the custodian of a public record to deny public inspection of the following proprietary and commercial contract information belonging to the Maryland Port Administration (MPA) or any private operating company that it creates: (1) rates or proposed rates generated, received, or negotiated by MPA, including rates in stevedoring and terminal services contracts; (2) a proposal generated, received, or negotiated by MPA for a business to locate, expand, or remain in the State; or (3) research or data compiled for MPA to assess its competitive position with respect to other ports.

Background: This bill applies to financial assistance provided under DBED's financing programs, including the Economic Development Opportunities Program Fund (Sunny Day fund). The Sunny Day program provides conditional grants or loans to business projects that are considered to have an extraordinary economic impact. The Legislative Policy Committee must approve Sunny Day projects, which are generally the largest in terms of State financial assistance.

DBED advises that premature release of information for certain projects could endanger the department's negotiating position with private sector entities and potentially make it impossible to conclude the transaction.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Business and Economic Development, Office of the Attorney General, Department of Legislative Services

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ncs/jr

Analysis by: Ann Marie Maloney

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