

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 1154 (Delegate McComas)  
Health and Government Operations

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**Access to Public Records - Permissible Denials of Records Created by Applicant  
or Previously Provided to Applicant**

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This bill authorizes a custodian to deny access to a public record if the custodian certifies that: (1) the record was created by the applicant seeking access to the record, or the applicant's attorney; or (2) a copy of the record was previously provided to the applicant, an agent of the applicant, or the applicant's attorney.

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**Fiscal Summary**

**State Effect:** Potential decrease in State agency expenditures to the extent the bill reduces the number of Public Information Act (PIA) requests to which agencies must respond.

**Local Effect:** Potential decrease in State's Attorneys expenditures to the extent that the bill reduces the number of PIA requests to which State's Attorneys must respond.

**Small Business Effect:** None.

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**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.

Rules adopted by the Court of Appeals (Title 16, Chapter 1000 of the Maryland Rules) differ from the PIA in how they treat access to “case records.” Case records are records that come into the court’s possession because they were filed by litigants in judicial actions. The exceptions to the disclosure requirements under the rules are generally narrower than those under the PIA.

Parties to an action in which a case record is filed can file a motion to seal or limit inspection of the record. Persons who file case records have the responsibility of informing the custodian if all or part of the case record being filed should be shielded from inspection. However, it is the custodian’s decision whether or not to permit inspection of the case record.

Electronic court records are subject to the same inspection provisions as paper records.

**Background:** The Office of the Attorney General advises that it and State’s Attorneys offices receive a number of PIA requests from convicted individuals (applicants) for case files. The reasons behind these requests include appeals and lawsuits pertaining to the applicants’ convictions. A substantial portion of the information in these files was either provided to the applicants by their attorneys, or is in the possession of their attorneys.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

**Fiscal Note History:** First Reader - March 6, 2006  
nas/rhh

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