

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 658

(Delegate Carter, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

**Joint Committee on Transparency and Open Government - Study on Appeals
Under the Maryland Public Information Act**

This bill requires the Joint Committee on Transparency and Open Government to conduct a study on how to improve the administrative process for resolving appeals under the Maryland Public Information Act (MPIA). The study is required to take into consideration (1) appeals from denials and fees charged under MPIA; (2) the administrative processes used by other states to resolve appeals; (3) the costs to State government, local government, and the public with resolving appeals; and (4) input from specified entities. By January 1, 2015, the committee must report its findings and any recommended legislation to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee.

The bill takes effect July 1, 2014, and terminates June 30, 2015.

Fiscal Summary

State Effect: The required study can be handled with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Joint Committee on Transparency and Open Government

Chapter 509 of 2011 established the Joint Committee on Transparency and Open Government within the General Assembly to provide continuing legislative oversight regarding transparency and open government and to recommend initiatives that increase citizen access to government resources, publications, and actions. The Department of Legislative Services staffs the joint committee.

Maryland Public Information Act

MPIA grants the public a broad right of access to records that are in the possession of State and local government agencies. The Act's basic mandate is to enable people to have access to government records without unnecessary cost or delay. Custodians have a responsibility to provide such access unless the requested records fall within one of the exceptions in the statute. The MPIA authorizes judicial review of the denial of a request to inspect a public record. Judicial reviews of denials occur in the circuit court where the records are located or where the complainant resides or has a place of business. These cases are required to take precedence on the docket, unless the court has other cases it considers of greater importance.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time. A custodian has to 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. 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, and certain recorded and surveillance images. Denial of inspection is required for information in a public record relating to certain medical, psychological, sociological, and financial information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

Unless otherwise specified, 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.

Background: Based on a review of available reports on the handling of open government laws in other states, the Department of Legislative Services observed several substantial variations among jurisdictions, including variations in (1) the ratio of open meetings complaints to public information complaints; (2) the enforcement and review process for state laws equivalent to MPIA; and (3) the role of the committees and offices designated to handle open government law issues, *e.g.*, some jurisdictions provide a formal appeals proceeding for complaints through designated offices and committees devoted to open government laws, while other jurisdictions require the designated offices and committees to field more general inquiries concerning open government laws.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Office of Administrative Hearings, Hawaii Office of Information Practices, Illinois Office of the Attorney General, New York Department of State (Committee on Open Government), Rhode Island Office of the Attorney General, Tennessee Comptroller of the Treasury (Office of Open Records Counsel), Department of Legislative Services

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