

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 83 (Delegate Krebs, *et al.*)

Health and Government Operations

Judicial Proceedings

Public Records - Inspection

This bill establishes that under the Public Information Act (PIA), an official custodian is required to designate types of public records of the governmental unit that are to be made available to any applicant immediately on request, and to maintain a current list of the types of public records that have been so designated. The bill also repeals the requirement that an applicant may not receive a copy of a judgment until the time for appeal expires or the appeal is dismissed or adjudicated.

Fiscal Summary

State Effect: The bill's requirements can be handled within existing budgeted resources. The bill has no material impact on State revenues.

Local Effect: The bill does not affect local government finances. The bill's requirements can be handled within existing budgeted resources.

Small Business Effect: None.

Analysis

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

However, 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, certain recorded and surveillance images, and captured plate data collected by automatic license plate reader systems. 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. 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.

A custodian must provide an applicant who is authorized to inspect a public record with a copy, printout, or photograph of the public record, or provide the applicant with access to the public record to make the copy, printout, or photograph, upon the applicant's request. A custodian must provide the copy in a searchable and analyzable electronic format if the public record is in that format, the applicant requests the copy in that format, and the custodian is able to provide a copy in that format without disclosing confidential or protected information or information that the custodian has decided should not be inspected.

An applicant may not have a copy of a judgment until the time for appeal expires or the appeal is dismissed or adjudicated. However, according to the Office of the Attorney General, this prohibition applies only to nonlitigants, since the Maryland Rules of Procedure require copies of court judgments to be furnished to litigants.

According to the Office of the Attorney General's *Maryland Public Information Act Manual*, the basic mandate of the PIA is to enable people to have access to government records without unnecessary cost or delay. The PIA applies to "virtually all" public agencies or officials in the State, including any unit or instrumentality of the State or a political subdivision. Additionally, "public records" are any records that are made or received by a covered public agency in connection with the transaction of public business; the scope is broad, so that all "records" possessed by an agency generally fall within the definition.

The “custodian” and “official custodian” of agency records are the public officials who must take actions under the PIA, and their roles are central to the PIA’s structure. A custodian is any authorized person who has physical custody and control of the agency’s public records; an agency official or employee may become a “de facto” custodian if the person assumes custody of public records, even if the person is not entitled by law to possess agency records. An “official custodian” is the agency officer or employee who has the overall legal responsibility for the care and keeping of public records; an official custodian can also be the “custodian” under the PIA, depending on who has physical custody and control of the records. The official custodian must adopt reasonable rules or regulations that govern the timely production and inspection of public records. The official custodian also sets fee schedules, is authorized to decide whether to seek court action to protect records from disclosure, and *must consider whether to* designate specific types of public records that can be made available immediately on request and to maintain a list of such records. Often, the head of the agency is the official custodian.

In annotations to the newly codified 2014 General Provisions Article, the General Provisions Article Review Committee notes that the provision allowing a custodian to maintain a list of types of available records is likely meant to be a mandatory requirement (rather than merely authorized) if records are designated as immediately available on request, and that the General Assembly may wish to clarify this provision. Additionally, the committee notes that the provision which temporarily restricts the ability to copy a judgment appears to be inconsistent with the Maryland Rules of Procedure, which state that court records are presumed to be open to the public for inspection, and that except as otherwise provided by or pursuant to the Rules, a custodian of a court record must permit a person to inspect such a record. The Rules also generally allow copying of court records and make restrictive provisions of the PIA inapplicable unless expressly incorporated into the Rules. Under the Maryland Constitution, a Court of Appeals rule may supersede a statute; however, the General Assembly has the power to override the rule change.

State Fiscal Effect: The bill requires, rather than merely authorizes, State agencies to designate the types of public records that are immediately available to an applicant upon request, and to maintain a list of records so designated. State agencies advise that the requirements can be handled with existing resources.

The bill also repeals the requirement that an applicant may not receive a copy of a judgment until the time for appeal expires or the appeal is dismissed or adjudicated. The Judiciary advises that it is not able to determine the number of additional requests it may receive as a result of this change. The Department of Legislative Services assumes any increase can be handled with existing resources.

Local Fiscal Effect: The bill also requires, rather than merely authorizes, local governments to designate the types of public records that are immediately available to an applicant upon request, and to maintain a list of records so designated. Local governments advise that the bill's requirements can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: SB 444 (Senator Ready) – Judicial Proceedings.

Information Source(s): Carroll, Harford, Montgomery, and St. Mary's counties; State Department of Assessments and Taxation; Office of the Attorney General; Maryland Department of Agriculture; Baltimore City Community College; Department of Business and Economic Development; Department of Natural Resources; Department of Information Technology; Maryland Department of Planning; Maryland Department of the Environment; State Ethics Commission; Department of General Services; Department of Housing and Community Development; Maryland Higher Education Commission; Department of Health and Mental Hygiene; Maryland Commission on Civil Rights; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Maryland State Lottery and Gaming Control Agency; Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Maryland Association of County Health Officers; Department of State Police; Morgan State University; Maryland Department of Aging; Department of Public Safety and Correctional Services; Public School Construction Program; Maryland Department of Transportation; University System of Maryland; Department of Veterans Affairs; Department of Legislative Services

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Analysis by: Sasika Subramaniam

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