

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 5

(Senator Kagan)

Education, Health, and Environmental Affairs

Health and Government Operations

Public Information Act - 9-1-1 Communications - Denial of Part of a Public
Record

This bill requires a custodian, before granting inspection under the Maryland Public Information Act (PIA) of the part of a 9-1-1 communications record that depicts a victim of specified crimes, to (1) notify the victim or the victim’s representative, as specified, and (2) consider any response received from the victim/representative before granting or denying the inspection. A custodian must grant or deny an application for inspection of such a record within 50 days after receiving an application to inspect the record, instead of within 30 days. A custodian must allow inspection by the person in interest.

Fiscal Summary

State Effect: None. The bill is procedural in nature and does not materially affect State operations or finances.

Local Effect: The bill’s requirements can likely be handled with existing local resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines a “victim” as a victim of specified crimes (generally relating to domestic violence; abuse/neglect of a child and related crimes; abuse/neglect of a vulnerable adult; and specified sexual crimes). The bill defines a “victim’s representative” as a family member or guardian of a victim who is a minor, deceased, or

disabled. A “victim’s representative” does not include a person acting in concert with a person alleged to have committed the crime against the victim.

Before granting inspection of the part of a 9-1-1 communications record depicting a victim, a custodian must (1) notify the victim or the victim’s representative of the request within 30 days after receiving the request, if the custodian has contact information for the victim or victim’s representative; (2) allow 10 days for a response from the victim or the victim’s representative indicating that inspection may be contrary to the public interest; and (3) consider any response received from the victim or the victim’s representative in determining whether to grant or deny the inspection.

A custodian may redact relevant portions of a 9-1-1 record to avoid denying the release of the entire record.

The bill’s provisions may not be construed to create a right of civil action for a victim or victim’s representative or affect the discovery or evidentiary rights of a party to a civil suit or criminal prosecution, nor can a custodian restrict access to a public record that has been entered into evidence in a court proceeding.

Current Law:

Maryland’s Public Information Act, Generally

PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any *Public Information Act Manual* published by OAG.

Required Denials: 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 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, hospital 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.

Discretionary Denials: 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. PIA specifies the types of records that are eligible for discretionary denials, including documents that would not be available through discovery in a lawsuit.

A custodian that denies inspection of a public record on this basis must provide (1) a written statement to the applicant giving the reason for denial; (2) the legal authority on which it is based; (3) a brief description of the undisclosed record (without disclosing the protected information), including an explanation of why redacting information would not address the reason for the denial; and (4) a notice of the statutory remedies available.

A custodian must grant or deny inspection promptly, but not more than 30 days after receiving the application.

For purposes of PIA, a “person in interest” means a person or governmental unit that is:

- the subject of a public record;
- a designee of the person or governmental unit; or
- in the case of a person that has a legal disability, the parent or legal representative of the person.

Recordings of 9-1-1 calls are generally available for public inspection under PIA, unless a specific exception applies.

Background: The Virginia Freedom of Information Act exempts some personal identification information of 9-1-1 callers from mandatory disclosure and authorizes the information to be redacted. The exemption applies to subscriber data and other identifying information of a personal, medical, or financial nature collected by or provided to a local governing body in connection with a 9-1-1 or E-9-1-1 emergency dispatch system or an emergency notification or reverse 9-1-1 system if such records are not otherwise publicly available.

Pennsylvania’s Right to Know Law exempts records or parts of records, except for time response logs, that pertain to audio recordings, telephone, or radio transmissions received by emergency dispatch personnel, including 9-1-1 recordings. However, if an agency or a court determines that the public interest in disclosure of a 9-1-1 recording or transcript of a 9-1-1 recording outweighs the interest in nondisclosure, it may be released.

Additional Information

Prior Introductions: SB 1054 of 2018, a similar bill as introduced, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: HB 215 (Delegates Jackson and Krebs) - Health and Government Operations.

Information Source(s): Caroline County; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - January 24, 2019
mag/mcr Third Reader - March 28, 2019
 Revised - Amendment(s) - March 28, 2019

Analysis by: Thomas S. Elder

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