

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 838

(Senator Carter, *et al.*)

Judicial Proceedings

**Maryland Public Information Act - Personnel Records of Law Enforcement
Officers - Inspections by Investigative Agencies**

This bill establishes that, under the Maryland Public Information Act (PIA), if a personnel record is the record of a law enforcement agency on a law enforcement officer, a custodian must allow inspection by a representative of an agency with authority to administratively investigate the law enforcement officer's alleged misconduct.

Fiscal Summary

State Effect: This bill is not anticipated to materially affect State finances or operations.

Local Effect: This bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law/Background:

Maryland Public Information Act

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. Generally, however, a custodian must deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information. A custodian must allow inspection of a personnel record by:

- the “person in interest”;
- an elected or appointed official who supervises the work of the custodian; or
- a specified employee organization (of specified portions of the personnel record).

A “person in interest” is defined as (1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit; (2) if the person has a legal disability, the parent or legal representative of the person; or (3) as to requests for correction of certificates of death under State law, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased, as specified.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time and within 10 working days of receiving a request.

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. In general, 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. In general, denial of inspection is also required for that part of a public record relating to certain medical, psychological, sociological, and financial information; trade secrets; certain personal information about public employees; and other specified information and records.

Discretionary Denials

Unless otherwise specified, if a custodian believes that inspection of a record or part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of the record or 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 may deny inspection by a person in interest only to the extent that the inspection would (1) interfere with a valid and proper law enforcement proceeding; (2) deprive another person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source; (5) disclose an investigative technique or procedure; (6) prejudice an investigation; or (7) endanger the life or physical safety of an individual.

Denial of Personnel Records Relating to Disciplinary Actions

Formal complaints of job-related misconduct, including investigation records, related hearing records, or disciplinary decisions, qualify as components of a personnel record as determined in *Maryland Department of State Police v. Teleta S. Dashiell*, 443 Md. 435, 117 A.3d 1 (2015). In addition, the Court of Appeals found in *Dashiell* that a person making a complaint against a government employee is not a “person in interest” in regards to mandated inspections of personnel records under PIA.

Civilian Oversight Entities

There are two civilian oversight entities in Maryland with oversight and investigatory authority over law enforcement agencies. The Prince George’s County Citizen Complaint Oversight Panel was established in 1990. The panel is authorized to review the complete internal affairs investigations (subject to provisions of State law) of complaints made against Prince George’s County law enforcement officers. The panel makes conclusions regarding the investigation. The panel also has subpoena powers, with authorization from the Prince George’s County Council, to facilitate its investigations.

Chapter 197 of 1999 established the Civilian Review Board of Baltimore City. It is authorized to process complaints lodged by members of the public who allege abusive language, false arrest, false imprisonment, harassment, or excessive force by members of the Baltimore Police Department. The board may also review police department’s policies and make recommendations to the police commissioner. The board may issue subpoenas to compel the production of records.

Law Enforcement Officer Bill of Rights

The Law Enforcement Officers Bill of Rights (LEOBR) was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of 26 specified State and local agencies. The investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal must be conducted in accordance with LEOBR.

Before an interrogation, the law enforcement officer under investigation must be informed in writing of the nature of the investigation. A complete record must be kept of the entire interrogation, including all recess periods, of the law enforcement officer. The record may be written, taped, or transcribed. If the law enforcement agency orders the officer to submit to a test, examination, or interrogation, the results are not admissible or discoverable in a criminal proceeding against the law enforcement officer. On written request, a law enforcement officer may have expunged from any file the record of a formal complaint under specified conditions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Charles, and Montgomery counties; City of Havre de Grace; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2019
mm/mcr

Analysis by: Thomas S. Elder

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