

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1221
Judiciary

(Delegate Clippinger)

Public Information Act - Personnel and Investigatory Records - Complaints
Against Law Enforcement Officers

This bill specifies that a record relating to a formal complaint of job-related misconduct made against a law enforcement officer, including an investigation record, a hearing record, or a disciplinary decision, is not a personnel record for purposes of denying inspection under Maryland's Public Information Act (PIA) under specified circumstances. A custodian may deny inspection of records of an investigation, a hearing, or a decision involving a complaint of job-related misconduct made against a law enforcement officer, but may deny inspection by a person in interest or complainant only under specified conditions.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: A record relating to a formal complaint of job-related misconduct made against a law enforcement officer is not a personnel record for purposes of denying inspection if:

- the alleged misconduct involves the discharge of a firearm at a person by a law enforcement officer;

- the alleged misconduct involves the use of force by a law enforcement officer resulting in death or serious bodily injury; or
- a sustained investigatory finding was made by a law enforcement agency that a law enforcement officer (1) committed a sexual assault involving member of the public; (2) engaged in dishonesty, committed perjury, made false statements, filed false reports, or destroyed, falsified, or concealed evidence directly relating to the reporting, investigation, or prosecution of a crime; or (3) engaged in prohibited discrimination directly relating to the reporting, investigation, or prosecution of a crime.

Current Law: 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. PIA also requires denial of inspection for personal and confidential records, including personnel records. Personnel records include, but are not limited to, an application, a performance rating, or scholastic achievement information. However, a custodian must allow inspection of personnel records by a person in interest, an elected or appointed official who supervises the individual, and by employee organizations (but only specified portions of personnel 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, as provided under PIA. PIA specifies the types of records that are eligible for discretionary denials.

Records Pertaining to Investigations, Intelligence Information, or Security Procedures

A custodian may, subject to specified conditions, deny inspection of:

- records of investigations conducted by the Attorney General, a State's Attorney, a municipal or county attorney, a police department, or a sheriff;
- an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or
- records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a municipal or county attorney, a police department, a State or local correctional facility, or a sheriff.

A custodian may deny inspection of such records 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. Under the bill, these conditions apply to the denial of inspection by a person in interest *or* a complainant of a record relating to a formal complaint of job-related misconduct made against a law enforcement officer.

“Person in interest” means (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.

Procedure for Denial

A custodian who denies inspection of a public record must, within 10 working days, provide a written statement to the applicant that gives (1) the reason for denial; (2) if denying a part of a record on a discretionary basis, a brief explanation of why the denial is necessary and why redacting information would not address the reasons for the denial; (3) the legal authority for the denial; (4) a brief description of the undisclosed record (without disclosing the protected information); and (5) notice of the available statutory remedies.

Denial of Personnel Records Relating to Disciplinary Actions

In *Maryland Department of State Police v. Teleta S. Dashiell*, 443 Md. 435, 117 A.3d 1 (2015), the Court of Appeals held that the internal affairs records of an investigation into the conduct of a State police officer were “personnel records” exempt from mandatory disclosure under PIA, despite the fact that the respondent – who had filed a complaint against the officer – had identified the officer in a public forum and that her complaint against him was sustained. In addition, the court held that the respondent, as the complainant, was not a “person in interest” with respect to the requested records.

Law Enforcement Officers’ 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.

Background: 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 whom 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.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 1029 (Senators Carter and Smith) - Judicial Proceedings.

Information Source(s): Comptroller's Office; University System of Maryland; Morgan State University; Department of General Services; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Charles, Frederick, and Montgomery counties; City of Havre de Grace; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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