

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 514 (Senator Waldstreicher)
Education, Health, and Environmental Affairs

Public Information Act - Required Denials - Distribution Lists

This bill (1) defines “distribution list” to mean a list of recipients who have affirmatively opted to receive information or alerts and (2) narrows an existing requirement pertaining to the denial of inspection of distribution lists. The bill requires a custodian of a public record to deny inspection of only *the part of* a specified distribution list – and a request to be added to a distribution list – that identifies a physical address, an email address, or a telephone number of an individual. Under current law, a custodian must deny inspection of the full list, as specified. In addition, the bill excludes distribution lists used for the sole purpose of sending informational notices from the bill’s requirements.

Fiscal Summary

State Effect: The bill’s changes can be handled with existing budgeted resources.

Local Effect: The bill’s changes can be handled with existing local government resources.

Small Business Effect: None.

Analysis

Current Law: Under Maryland’s Public Information Act (PIA), 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, for example, hospital and medical records, financial records, certain police and related criminal records, and licensing records.

Chapters 39 and 40 of 2018 required a custodian to deny inspection of a distribution list and a request to be added to a distribution list that identifies a physical address, an email address, or a telephone number of an individual that is used by a governmental entity or an elected official for the sole purpose of (1) periodically sending news about the official activities of the governmental entity or official or (2) sending informational notices or emergency alerts. “Governmental entity” means a unit or an instrumentality of the State or of a political subdivision.

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.

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.

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.

Duties of Custodians

Generally, a custodian of a public record must permit inspection of any public record at any reasonable time. A custodian must designate types of public records that are to be made available to any applicant immediately on request and maintain a current list of the types of public records that have been so designated. Each custodian must adopt reasonable rules or regulations that, consistent with PIA, govern timely production and inspection of a public record.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 717 (Delegate Carr, *et al.*) - Health and Government Operations.

Information Source(s): Office of the Attorney General; Maryland State Department of Education; Maryland Department of Transportation; Charles, Frederick, and Montgomery counties; Maryland Association of Counties; City of Havre de Grace; Maryland Municipal League; Department of Legislative Services

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