

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 67 (Senator West)
Education, Health, and Environmental Affairs

Public Information Act – Applications for Inspection – Responses and Time Limits

The bill shortens several time limits under Maryland’s Public Information Act (PIA) for State and local governmental agencies to respond to applications to inspect public records. The bill reduces, from 30 days to 7 days after receipt of an application, the amount of time a custodian of a public record has to grant or deny an application to inspect a public record and, for an approved application, produce the public record. If a custodian reasonably believes that it will take more than 5 working days (reduced from 10 working days under current law) to produce a public record, the custodian must provide the applicant with a specified notice within 5 working days. For a custodian who denies an application, the bill reduces, from 10 working days to 5 working days after receipt of the application, the amount of time the custodian has to provide the applicant with a written statement explaining the denial.

Fiscal Summary

State Effect: State expenditures (all funds) increase significantly, by *a minimum* of \$1.9 million in FY 2021 and \$2.3 million annually thereafter, under the assumptions discussed below. State revenues increase to the extent agencies seek to recuperate costs through fees, as discussed below.

Local Effect: Local expenditures increase, significantly in some cases, beginning in FY 2021 for local governments to comply with the bill’s changes, as discussed below. Local revenues increase to the extent local governments seek to recuperate costs through fees, as discussed below. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law:

Granting or Denial of an Application

A person or governmental unit that wishes to inspect a public record generally must submit a written application to the custodian. A custodian must grant or deny an application promptly but generally no more than 30 days after receiving the application. A custodian who approves an application must produce the public record immediately or within a reasonable period that is needed to retrieve the public record but no more than 30 days after receiving the application.

A custodian who denies an application must, within 10 working days, provide the applicant with a written statement 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.

Notification of Delay

If a custodian reasonably believes that it will take more than 10 working days to produce a public record, the custodian must, within 10 working days after receiving the request, indicate in writing or by electronic mail the (1) amount of time the custodian anticipates it will take to produce the public record; (2) an estimate of the range of fees that may be charged to comply with the request; and (3) the reason for the delay.

Extension of Time Limits

Any time limit imposed under PIA provisions governing the timeliness of application decisions may, with the consent of the applicant, be extended for up to 30 days.

Background:

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 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.

Denials

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. 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.

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.

Fees and Fee Waivers

An official custodian may charge an applicant the actual cost of the search, preparation, and reproduction of any public record in a *standard* format, including the cost of media and mechanical processing. If an applicant requests a public record in a *customized* format, an official custodian may charge a reasonable fee for the search, preparation, and reproduction of the public record. PIA authorizes fee waivers under specified circumstances.

Office of the Public Access Ombudsman

The Office of the Public Access Ombudsman reviews and resolves disputes between applicants and custodians over requests for public records. The ombudsman may not compel a custodian to disclose public records or redacted information. However, if an applicant files a complaint with the office challenging a denial or exemption, the custodian

must demonstrate that the denial or exemption is clearly applicable to the requested public record and, if inspection of part of a public record is denied on a discretionary basis, that the harm from disclosure is greater than the public interest in access to the information.

Public Information Act Compliance Board

The Public Information Act Compliance Board, a five-member board appointed by the Governor, receives, reviews, and resolves complaints from applicants alleging that a custodian of a public record charged an unreasonable fee of more than \$350. The board must issue a written opinion as to whether a violation occurred and, if it finds that a custodian charged an unreasonable fee, order the custodian to reduce the fee and refund the difference, as specified.

2019 Joint Chairmen's Report

The 2019 *Joint Chairmen's Report* directed OAG to prepare a report providing information on the volume of the State's PIA requests. The [report](#), dated December 27, 2019, presents PIA data collected from 23 cabinet-level Executive Branch agencies. **Exhibit 1** displays, for fiscal 2019, the number of PIA requests received by surveyed agencies, the percentage of requests for which an initial response was sent within 10 business days of receipt, and the percentage of requests for which a final response was sent within 30 days of receipt. As denoted in the exhibit, OAG found that some agencies did not track or had internally inconsistent data for certain metrics.

According to the report, "Many agencies report that they need additional resources, such as more staff, funding, training, and/or technologies" to improve PIA performance. In addition, the report reveals that many agencies do not have staff dedicated solely to carrying out PIA responsibilities.

Exhibit 1
Fiscal 2019 PIA Request Volumes and Response Times by Agency

| <u>Agency</u> | <u>Number of Requests</u> | <u>Initial Response Sent within 10 Business Days of Receipt</u> | <u>Final Response Sent within 30 Business Days of Receipt</u> |
|---|---------------------------|---|---|
| Environment | 3,424 | * | 89% |
| State Police | 2,459 | 11% | 93% |
| Transportation | 1,036 | ** | ** |
| Health | 604 | ** | ** |
| Labor | 286 | 90% | 84% |
| Public Safety and Correctional Services | 223 | ** | 85% |
| Secretary of State | 187 | 99% | ** |
| Education | 184 | ** | ** |
| Natural Resources | 141 | ** | ** |
| General Services | 65 | ** | 82% |
| Agriculture | 58 | ** | ** |
| Housing and Community Development | 38 | 92% | ** |
| Human Services | 37 | 100% | 43% |
| Budget and Management Planning | 30 | * | * |
| Commerce | 25 | 100% | ** |
| Juvenile Services | 17 | 100% | 100% |
| Information Technology | 14 | 100% | ** |
| Military | 13 | 100% | 100% |
| Aging | 8 | 100% | 100% |
| Veterans | 5 | 100% | 100% |
| Maryland Higher Education Commission | 3 | 100% | 100% |
| Disabilities | 2 | 100% | 100% |
| | 0 | --- | --- |

* Agency did not track metric.

** Data was internally inconsistent.

Source: Office of the Attorney General

State Revenues: State revenues increase to the extent that agencies seek to recuperate costs related to handling PIA requests under the bill's compressed timeline through fees charged in accordance with PIA. However, any such impact cannot be reliably estimated at this time. OAG found that, during fiscal 2019, agencies charged fees in response to fewer than 20% of PIA requests. Roughly half of the agencies surveyed by OAG never charged fees.

State Expenditures: Under the bill, State agencies must respond to PIA requests within a significantly compressed timeline. PIA request volumes and resources dedicated to responding to PIA requests vary by agency. In addition, staff time and resources associated with responding to PIA requests vary significantly based on the scope and nature of requests.

The Department of Legislative Services (DLS) requested information from 18 State agencies on the fiscal and operational impact of the bill, 17 of which responded to the requests. Most of the responding State agencies expressed concern that the bill's compressed timeline for responding to PIA requests would significantly impact operations and/or require additional resources. Thirteen agencies advise that *at least* one additional regular, full-time staff dedicated solely or primarily to handling PIA requests is required. Additional personnel needs reported by agencies range from one to as many as 35 regular, full-time personnel and include both administrative and professional/legal positions.

DLS is unable to independently verify individual agencies' staffing needs at this time. In addition, because the bill affects all State agencies – not only those surveyed by DLS – the bill's total impact on State expenditures cannot be readily quantified. However, DLS advises that many agencies will need to hire at least one additional regular, full-time staff to meet PIA obligations within the timeframes established under the bill, and some agencies will likely need to hire several additional, full-time staff.

Accordingly, DLS estimates that State expenditures (all funds) increase by *at least* \$1.9 million in fiscal 2021, which accounts for the bill's October 1, 2020 effective date, and by *at least* \$2.3 million annually thereafter. This estimate reflects the cost of hiring at least 31 regular, full-time staff, across multiple State agencies, dedicated solely to handling PIA requests. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- Of the 23 agencies surveyed by OAG in its December 2019 report, 4 reported receiving more than 600 PIA requests in fiscal 2019, 7 reported receiving between 50 and 300 PIA requests, and 12 reported receiving fewer than 50 PIA requests.

- DLS assumes, for purposes of this fiscal and policy note, that agencies that reported higher volumes of PIA requests (more than 600) in fiscal 2019 will need to hire at least six regular, full-time staff dedicated to PIA matters at an average starting salary of approximately \$50,000. In addition, DLS assumes that agencies that reported moderate PIA request volumes (between 50 and 300) in fiscal 2019 will need to hire at least one regular, full-time staff at an average starting salary of approximately \$50,000. Finally, DLS assumes that no additional staff are needed for agencies with low PIA request volumes (fewer than 50).

Future year personnel-related expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

This estimate only reflects personnel-related expenditures for the 23 agencies for which PIA request volumes are reported in OAG's December 2019 report. To the extent that agencies not included in the survey require additional resources to comply with the bill's changes, State expenditures increase further. However, it is assumed that State agencies subject to PIA that were not included in OAG's survey generally receive a relatively minimal number of PIA requests annually.

In addition, this estimate does not reflect costs related to upgrading or procuring information technology (IT) systems needed to process PIA requests in the short timeframes established under the bill. OAG's report noted that many State agencies lack available technology for the electronic retention, maintenance, and retrieval of records that could expedite PIA responses. Additional expenditures may be necessary for systems that electronically track the disposition of PIA requests. For some agencies, such costs may be significant. For example, the Maryland Department of Health advises that IT-related expenditures increase by an estimated \$75,000 annually under the bill for PIA tracking software, and the Maryland Department of Labor anticipates expenditure increases of approximately \$97,000 in fiscal 2021 and \$45,000 annually thereafter to procure and maintain a PIA tracking system.

To the extent that State agencies are unable to obtain additional resources to assist in meeting the bill's requirements, agencies likely experience significant operational impacts as existing staff are diverted from day-to-day responsibilities to assist in responding to PIA requests.

Local Revenues: Local revenues increase to the extent that local governments seek to recuperate costs related to handling PIA requests under the bill's compressed timeline through fees charged in accordance with PIA.

Local Expenditures: Local government expenditures increase, significantly in some cases, for local governments to hire additional staff dedicated to handling PIA requests

and/or to obtain additional IT resources. To the extent that local governments are unable to obtain additional resources to assist in meeting the bill's requirements, local agencies likely experience significant operational impacts as existing staff are diverted from day-to-day responsibilities to assist in responding to PIA requests.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 42 (Delegate Guyton) - Health and Government Operations.

Information Source(s): Department of Commerce; Comptroller's Office; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of General Services; Maryland Department of the Environment; Maryland Department of Health; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; State Department of Assessments and Taxation; Maryland Insurance Administration; University System of Maryland; Anne Arundel, Howard, and Montgomery counties; cities of Annapolis and Bowie; Department of Legislative Services

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mr/mcr

Analysis by: Elizabeth J. Allison

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