

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 228 (Delegate Ivey)  
Health and Government Operations

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University of Maryland Medical System - Applicability of the Public Information Act and Open Meetings Act

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This bill applies the requirements of Maryland’s Public Information Act (PIA) and Open Meetings Act (OMA) to the University of Maryland Medical System Corporation (UMMSC).

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Fiscal Summary

**State Effect:** None. The change is procedural in nature and does not directly affect governmental finances.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** UMMSC is organized under State law for charitable, scientific, and educational purposes and is governed by a board of directors. Statute further specifies that UMMSC is not a State agency, political subdivision, public body, public corporation, or municipal corporation and is not subject to any provisions of law affecting only governmental or public entities. As of the date of transfer from State control (in 1984), UMMSC owns, leases, manages, and operates the University of Maryland Medical System, including any components or health services determined by the board.

In 2011, the Court of Appeals held that while UMMSC is an instrumentality of the State, it is exempt from PIA because of its enacting statute, which expressly provides that it is

not subject to laws affecting only governmental or public entities. *Napata v. University of Maryland Medical System Corporation* 417 Md. 724, 12 A.3d 144 (2011).

### *Maryland's 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. 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.

*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.

*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.

*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.

### *Open Meetings Act*

Under OMA, with limited exceptions, a public body must (1) meet in open session in places reasonably accessible to potential attendees and (2) provide reasonable advance notice of the time and location of meetings, including, when appropriate, whether any portion of a meeting will be in closed session. A “public body” is any entity that (1) consists of at least two individuals and (2) is created by the Maryland Constitution; a State statute; a county or municipal charter; a memorandum of understanding or a master agreement to which a majority of the county boards of education and the Maryland State Department of Education are signatories; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or of the chief executive authority of a political subdivision. Exclusions from the definition of “public body” include juries, the Governor’s cabinet and Executive Council, judicial nominating commissions, and single-member entities, among others.

Guidance provided by OAG indicates that when the meeting “place” is a conference call, the public can be provided access through a call-in number or by access to a meeting room with a speakerphone.

*Agendas:* Generally, a public body must make an agenda available to the public prior to meeting in an open session. The agenda must include known items of business or topics to be discussed at the meeting and indicate whether the public body expects to close any portion of the meeting in accordance with State law. The public body is not required to include in the agenda information pertaining to a closed portion of the meeting. If a public body is unable to comply with specified deadlines for the release of a meeting agenda because the meeting is scheduled in response to an emergency, a natural disaster, or any other unanticipated situation, the public body must make available, on request, an agenda of the meeting within a reasonable time after the meeting occurs.

*Minutes:* As soon as practicable after an open session, a public body must prepare minutes of the meeting. The minutes must reflect each item that the public body considered, the action it took on each item, and each vote that was recorded. If a public body meets in closed session, the minutes for a public body’s next open session must include a summary that includes specified information about the proceedings of the closed meeting. A public body need not prepare written minutes of an open session if (1) live and archived video or audio streaming of the open session is available or (2) if the public body votes on legislation

and the individual votes taken by each participating member of the public body are promptly posted on the Internet.

With limited exceptions, minutes of a public body must be available for public inspection during normal business hours. A public body must retain a copy of the minutes of each session and any specified recording for at least five years and, to the extent practicable, post them online.

*Training:* The board, in conjunction with OAG and other interested organizations or persons, must develop and conduct educational programs and distribute educational materials outlining the requirements of OMA to public bodies, the Maryland Municipal League, the Maryland Association of Counties, and the Maryland Association of Boards of Education. A public body must designate at least one employee, officer, or member to receive training on the requirements of the open meetings law.

*Closed Sessions:* OMA specifies circumstances under which a public body may meet in closed session, such as to discuss specified personnel matters or consult with counsel to obtain legal advice. A public body may not meet in closed session unless at least one member of the body has been designated to receive training on the requirements of the open meetings law. If a designated individual cannot be present at an open meeting at which the public body votes to hold a closed session, the body must complete a specified compliance checklist developed by OAG and include the checklist in the meeting minutes.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** University of Maryland Medical System; Department of Legislative Services

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