

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 860  
Judiciary

(Delegate Cox)

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**Public Information Act - Police Officers - Procedures and Limitations**

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This bill requires a custodian to deny inspection of a public record relating to a police officer unless the written application contains specified information, including the person's contact information, the name and address of the person's employer, if applicable, and the name of any organization on behalf of which the person is submitting the written application. If a person submits a written application containing the required information, the custodian must (1) notify any police officer identified in the request, as well as the law enforcement agency that employs the officer, and (2) post the written application on the publicly accessible website of the unit or instrumentality of the State or political subdivision that made the record. The bill also requires a custodian to deny inspection of specified examination information and personal information relating to a police officer unless the requestor is the person in interest or the police officer, as specified.

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**Fiscal Summary**

**State Effect:** Some agencies may incur minimal information technology (IT) costs in order to post specified applications online. Otherwise, the bill's changes can likely be accommodated with existing budgeted resources. Revenues are not materially affected.

**Local Effect:** Some local governments may incur minimal IT costs in order to post specified applications online. Otherwise, the bill's changes can likely be accommodated with existing budgeted resources. Revenues are not materially affected.

**Small Business Effect:** None.

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## Analysis

### Bill Summary:

#### *Required Contents of Written Application*

If a person submits a written application to a custodian to inspect a public record relating to a police officer, the custodian must deny inspection of the record unless the written application contains:

- the name and address of the person;
- the name and address of the person's employer, or a statement that the person is not employed;
- a phone number and valid email address for the person; and
- the name of any organization on behalf of which the person is submitting the written application, or a statement that the individual is not submitting the written application on behalf of any organization.

The required notice provided by the custodian to any police officer identified in the request and the law enforcement agency that employs the officer must include the above-listed information.

#### *Denial of Specified Examination Records and Higher Education Records*

The bill requires a custodian to deny inspection of test questions, scoring keys, and other examination information that relates to the administration of academic matters where (1) the public record relates to a police officer and (2) the request is not made by the person in interest. (*Under current law*, requests to inspect specified examination records are subject to discretionary denial. "Person in interest," as defined under PIA, 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.)

Further, the bill requires a custodian of a record kept by a public institution of higher education that contains personal information relating to a student, a former student, or an applicant to deny inspection of the part of the record containing the personal information if (1) the information is the personal information of a police officer and (2) the request is not made by the police officer.

**Current Law:** 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. Chapter 658 of 2021, effective July 1, 2022, requires each official custodian to adopt a policy of proactive disclosure of public records that are available for inspection under PIA, as specified.

### *Application to Inspect a Public Record*

In general, a person or governmental unit that wishes to inspect a public record must submit a written application to the custodian. A person or governmental unit need not submit a written application if the person or governmental unit seeks to inspect a public record designated by the official custodian as available to any applicant immediately on request or if the custodian waives the requirement for a written application.

### *Exceptions to Disclosure, Generally*

**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 specified personal and confidential records and information, including, for example, personnel and student records, hospital records, specified medical and financial information, and shielded criminal and police records. Chapter 62 of 2021, as further discussed later in this Current Law section, specifies that a record relating to an administrative or criminal investigation of misconduct by a police officer is not a protected personnel record under PIA and requires a custodian to allow access to such records by federal and State prosecutors.

**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 and information 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.

#### *Inspection of Records Relating to Investigations of Police Misconduct*

As noted above, Chapter 62 of 2021 establishes that, except for a record of a technical infraction, a record relating to an administrative or criminal investigation of misconduct by a law enforcement officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, is not a protected personnel record for purposes of PIA. Instead, these records are treated as investigatory records subject to discretionary denial of inspection as provided under PIA. A custodian may deny inspection by a person in interest only under specified conditions and must allow inspection of such records by the U.S. Attorney, the Attorney General, the State Prosecutor, or the State's Attorney for the jurisdiction relevant to the record.

When inspection of a record relating to an administrative or criminal investigation of police officer misconduct is granted to anyone other than the U.S. Attorney, the Attorney General, the State Prosecutor, or the State's Attorney for the jurisdiction relevant to the record, a custodian must redact specified information. Specifically, the custodian must redact the record to the extent that the record reflects (1) medical information of the person in interest; (2) personal contact information of the person in interest or a witness; or (3) information relating to the family of the person in interest. A custodian may redact the record to the extent that the record reflects witness information other than personal contact information. When the record is inspected, the custodian must notify the person in interest but may not disclose the identity of the requestor to the person in interest.

#### *Denial of Examination Information*

A custodian may deny inspection of test questions, scoring keys, and other examination information that relates to the administration of licenses, employment, or academic matters. After a written promotional examination has been given and graded, a custodian must allow a person in interest to inspect the examination and results of the examination but may not allow the person in interest to copy or otherwise reproduce the examination.

### *Denial of Records of Public Higher Education Institutions*

A custodian of a record kept by a public institution of higher education that contains personal information relating to a student, former student, or applicant may (1) require that a request to inspect a record containing personal information be made in writing and sent by first-class mail and (2) deny inspection of the part of the record containing the personal information, if the information is requested for commercial purposes. “Personal information,” as it applies to these provisions, means an address, a telephone number, an email address, or directory information, as defined under 20 USC § 1232g. (Under 20 USC § 1232g, “directory information” relating to a student includes the student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institutional attended by the student.)

### *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 (PIACB), 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.

Chapter 658 of 2021, effective July 1, 2022, expands the jurisdiction of the board to include receiving, reviewing, and resolving additional types of PIA disputes and institutes an integrated PIA compliant resolution process that includes the Public Access Ombudsman. Under the Act, an applicant, an applicant's designee, or a custodian may file a written complaint with PIACB if (1) the complainant has attempted to resolve the dispute through the Office of the Public Access Ombudsman and (2) the ombudsman has issued a final determination stating that the dispute was not resolved.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Baltimore County; Maryland Association of Counties; City of Laurel; Maryland Municipal League; Office of the Attorney General; Comptroller's Office; Judiciary (Administrative Office of the Courts); Baltimore City Community College; University System of Maryland; Morgan State University; Department of General Services; Maryland Department of Health; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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