

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 780

(Senator Mautz)

Judicial Proceedings

**Law Enforcement - Police Officer Employee Assistance Programs -
Confidentiality**

This bill prohibits, with specified exceptions, a participant in any service provided by an employee assistance program from disclosing or being compelled to disclose the contents of any written or oral communication made by the participant or another that arises from their participation in the employee assistance program. Confidential information regarding a service provided by an employee assistance program to a police officer is not subject to disclosure under Maryland's Public Information Act (PIA), and a custodian must deny inspection of the part of a public record that contains information relating to a participant in a service provided by an employee assistance program.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary: The bill's prohibition does not apply if:

- the communication contains (1) an explicit threat of suicide, the disclosure of which the participant believes is necessary to avoid a suicide attempt; (2) an explicit threat of imminent and serious bodily harm or death to a clearly identified or identifiable

individual; (3) information relating to the abuse or neglect of a child or vulnerable adult; or (4) the admission of criminal conduct;

- the communication was made by the participant and the disclosure is voluntary; or
- the disclosure is authorized by each party who was a participant in the communication.

Current Law:

Employee Assistance Programs

Each law enforcement agency must provide access to an employee assistance program for all police officers whom the law enforcement agency employs. The employee assistance program must provide police officers access to confidential mental health services, including counseling services, crisis counseling, stress management counseling, resiliency sessions, and peer support services for police officers.

In addition to a confidential and nonpunitive early intervention system to identify police officers who are at risk of engaging in the use of excessive force, and as part of the employee assistance program, before a police officer returns to full duty, a law enforcement agency must provide (1) a voluntary mental health consultation and voluntary counseling services to the police officer if the police officer is involved in an incident involving an accident resulting in a fatality and (2) a mandatory mental health consultation and voluntary counseling services to the police officer if the police officer is involved in an incident involving:

- a serious injury to the police officer;
- an officer-involved shooting; or
- any use of force resulting in a fatality or serious injury.

A mental health consultation and counseling service provided under these provisions must be confidential.

The employee assistance program must include a component designed to protect the mental health of police officers during periods of public demonstrations and unrest. Each law enforcement agency must develop a policy to provide access to the required services at no cost to a police officer.

“Employee assistance program” means a work-based program offered to all police officers that provides access to voluntary and confidential services to address the mental health issues of a police officer stemming from personal and work-related concerns, including

stress, financial issues, legal issues, family problems, office conflicts, and alcohol and substance abuse disorders.

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.

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 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.

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.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore, Carroll, Howard, Queen Anne's, and St. Mary's counties; Baltimore City Community College; Office of the Attorney General; Alcohol and Tobacco Commission; Comptroller's Office; Department of Budget and Management; Department of General Services; Department of Natural Resources; Maryland Department of Health; Maryland Department of Labor; Maryland Department of Transportation; Morgan State University; Department of State Police; Department of Public Safety and Correctional Services; University System of Maryland; Department of Legislative Services.

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km/lgc

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