

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1051

(Delegate Kaiser, *et al.*)

Health and Government Operations

Education, Energy, and the Environment

**Public Information Act - Decisions of the State Public Information Act
Compliance Board - Appeals**

This bill (1) authorizes an applicant (defined under current law as a person or governmental unit that asks to inspect a public record) to appeal a decision by the State Public Information Act Compliance Board (PIACB) and (2) specifies that for certain complaints involving allegations that an applicant's request or pattern of requests is frivolous, vexatious, or in bad faith, an appeal must be filed in the circuit court for the county where the applicant resides or has a principal place of business. The bill also authorizes a party who is aggrieved by a final judgement of a circuit court in a proceeding for judicial review of a decision issued by PIACB to appeal to the Appellate Court of Maryland, as specified.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

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.

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 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.

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

In General: 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, 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.

Among other responsibilities, PIACB must also (1) receive, review, and resolve complaints from any custodian alleging that an applicant's request or pattern of requests is frivolous, vexatious, or in bad faith; (2) issue a written decision as to whether the applicant's request or pattern of requests is frivolous, vexatious, or in bad faith; and (3) if PIACB finds that the applicant's request is frivolous, vexatious, or in bad faith, based on the totality of circumstances, as specified, issue an order authorizing the custodian to ignore the request

or respond to a less burdensome version of the request within a reasonable timeframe, as determined by PIACB.

Judicial Review: Generally, a complainant or custodian may appeal a decision of PIACB to the circuit court. An appeal must be filed with the circuit court for the county where the complainant resides or has a principal place of business or the public record is located. An appeal automatically stays the board's decision pending the circuit court's decision. A defendant governmental unit is liable to the complainant for statutory damages and actual damages that the court considers appropriate if the court finds that any defendant knowingly and willfully failed to disclose or fully disclose a public record to which the complainant was entitled to inspect or provide a copy, printout, or photograph of a public record that was requested, as specified. Statutory damages may not exceed \$1,000. In limited circumstances, an official custodian may be liable for actual damages and subject to disciplinary action. If the court determines that the complainant has substantially prevailed, the court may assess against a defendant governmental unit reasonable counsel fees and other litigation costs that the complainant reasonably incurred.

Additional Information

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

Designated Cross File: None.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Alcohol and Tobacco Commission; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland Department of the Environment; Maryland Department of Health; Maryland Department of Labor; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2023
km/jkb Third Reader - March 29, 2023
Revised - Amendment(s) - March 29, 2023

Analysis by: Thomas S. Elder

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