

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 221

(Senator Smith)(By Request - Maryland Judicial
Conference)

Judicial Proceedings

Judiciary

Government Officials - Public Disclosure of Personal Information

This bill authorizes a Governor or Lieutenant Governor, State or federal judge or prosecutor, or an “immediate family member” of such individuals, as defined, to obtain the removal and nondisclosure of a publicly posted home address or telephone number. The bill authorizes bringing an action for an injunction and/or damages against disclosure violations. Additionally, the bill requires a custodian of a public record under the Maryland Public Information Act (PIA) to deny inspection of the part of a public record that contains the home address or telephone number of a Governor or Lieutenant Governor or a State or federal judge or prosecutor. The bill is applicable to current and former government officials.

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted resources, as discussed below. Revenues are not affected.

Local Effect: The bill’s requirements can be handled with existing local government resources, as discussed below. Local revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Government official” means a (current or former) Governor or Lieutenant Governor, State or federal judge, or State or federal prosecutor. “Immediate

family member” means a parent, spouse, or child. “Personal information” means a home address or telephone number.

Disclosure of Personal Information – Generally

The bill authorizes a government official or the immediate family member of a government official whose personal information is disclosed on the Internet, or otherwise made publicly available through other means of publication or posting, to request in writing that the person who made the disclosure remove the personal information and refrain from any future disclosure of personal information about the government official or an immediate family member of the government official. A parent or guardian may make such a request on behalf of a minor.

On receipt of a written request, the person who made the disclosure must remove the personal information within 72 hours and may not subsequently disclose personal information about the government official or the government official’s immediate family member. The bill authorizes a government official or an immediate family member to bring an action for an injunction against a person who violates these prohibitions. A government official or an immediate family member who is injured by a violation may bring an action for damages against the violator.

Disclosure of Personal Information – Maryland Public Information Act

The bill modifies PIA to provide that, unless the individual about whom a public record pertains gives permission for the inspection, a custodian must deny inspection of the part of a public record that contains the home address or telephone number of a current or former Governor or Lieutenant Governor, State or federal judge, or State or federal prosecutor.

Current Law/Background: Similar federal legislation intended to protect federal judges and their families was recently enacted (The Daniel Aderl Judicial Security and Privacy Act) following the murder of the son of a U.S. District Court Judge from New Jersey. The assailant was a disgruntled litigant who found the judge’s home address on the Internet.

Internet Privacy

State law does not generally regulate Internet privacy, although businesses are required under the Maryland Personal Information Protection Act to take precautions to secure the personal information of customers and to provide notice of information of breaches.

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. The Act generally must be construed in favor of allowing inspection of a public record, with the least cost and delay to the person or governmental unit requesting the information, unless an unwarranted invasion of privacy would result, as specified.

Required Denials: Under PIA, 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 generally requires denial of inspection of certain records, subject to specified exceptions, including a personnel record; a Motor Vehicle Administration (MVA) record containing personal information (including an address and telephone number); or the part of a public record that contains the home address or telephone number of an employee of a unit or an instrumentality of the State or of a political subdivision. 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 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.

State/Local Fiscal Effect: Any increase in case filings under the bill (either private actions against disclosure violations or appeals of PIA denials) is not anticipated to materially affect the operations or finances of the Judiciary.

State and local agencies can likely meet the bill's PIA requirements with existing budgeted resources. Although no single registry of all government officials included in the bill exists, this estimate assumes that any additional review that may be necessary (*i.e.*, to inquire or

verify whether the requested public record contains the home address or telephone number of a government official) does not materially add to the length or complexity of an agency's overall review process or require additional staff to handle the inquiries. Furthermore, as described above, custodians are already generally prohibited under PIA from disclosing personnel records, MVA records, and records containing the home address or telephone number of State and local government employees. It is assumed that any unit that might possess other records containing the sort of information covered by the bill (and otherwise not subject to an existing exemption requiring denial) can satisfy the bill's requirements within existing resources and current review processes.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 686 of 2021.

Designated Cross File: HB 536 (Delegate Clippinger)(By Request - Maryland Judicial Conference) - Judiciary.

Information Source(s): Baltimore, Frederick, Montgomery, and Somerset counties; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; U.S. Courts; Department of Legislative Services

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