

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 664
Judiciary

(Delegate Clippinger, *et al.*)

Judicial Proceedings

Court Personnel - Protection of Personal Information (Judge Andrew F. Wilkinson Judicial Security Act)

This bill establishes the Office of Information Privacy (OIP) in the Administrative Office of the Courts (AOC). A “protected individual,” or OIP (on behalf of a protected individual), is authorized to make a request for a person or governmental entity to not publish “personal information” of the protected individual (or to remove such information from an existing publication), as specified. The bill establishes related requirements and procedures, as well as remedies for noncompliance. In addition, OIP must establish and administer a Judicial Address Confidentiality Program for the general purpose of safeguarding the actual address of a program participant in relation to public records or inspection, including the shielding of real property records, as specified. Finally, the bill creates the Task Force to Ensure the Safety of Judicial Facilities, staffed by AOC; the task force must report its findings and recommendations to the Chief Justice of the Supreme Court of Maryland and the General Assembly by January 1, 2025. **The bill’s provisions related to the task force take effect June 1, 2024, and terminate June 30, 2026.**

Fiscal Summary

State Effect: The Judiciary can use existing budgeted resources to handle the bill’s requirements. The bill is otherwise not anticipated to materially affect State operations or finances, as discussed below.

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

Small Business Effect: Minimal.

Analysis

Bill Summary:

Selected Definitions

“Personal information” means a home address, home telephone number, mobile telephone number, personal email address, Social Security number, driver’s license number, federal tax identification number, bank account number, credit or debit card number, license plate number or unique identifier of a vehicle, birth or marital record, child’s name, school or daycare, place of worship, or, for specified protected individuals, a place of employment.

“Personal information” does not include information that (1) has been publicly disclosed with the consent of the protected individual or (2) is relevant to and displayed as part of a news story, commentary, editorial, or other speech on matters of public concern.

“Protected Individual” means a:

- current or retired justice or judge of a court established under Article IV of the Maryland Constitution;
- current or retired justice or judge of a federal court, including a U.S. Bankruptcy Court, domiciled in the State;
- current or retired magistrate appointed by a circuit court of the State;
- current or retired United States magistrate judge domiciled in the State;
- current or retired Commissioner of the District Court of Maryland; or
- spouse, child, or dependent who resides in the same household as an individual described above.

“Publish” means to post or otherwise make available to the general public on the Internet, social media, or social networks.

Personal Information of Protected Individuals – Request to Not Publish or Remove from Publication

Governmental Entities: A protected individual or OIP (on behalf of a protected individual) may request, as specified, that a governmental entity not publish the protected individual’s personal information (or to remove information from any existing publication). A request must be in writing; be sent by certified mail or email; include sufficient information to confirm the requester’s identity as a protected individual; and adequately identify the document, posting, or other publication containing the personal information. A request

made by OIP, however, certifies that a requester is a protected individual and no further confirming information may be required.

A governmental entity must promptly acknowledge receipt of the request, as specified, and (1) take steps reasonably necessary to ensure that the personal information is not published or (2) if already published, provide for the removal of the personal information within 72 hours after receipt of the request.

Other Persons: Similarly, a protected individual or OIP (on behalf of a protected individual) may request, as specified, that a person who has published the protected individual's personal information remove the information from publication. The request is subject to the same requirements as those specified above.

The person to whom the request is made must (1) provide for the removal of the personal information within 72 hours after receipt of the request and (2) notify the protected individual or OIP by certified mail or email of the removal.

Enforcement Provisions

Civil Remedies: A protected individual or OIP may bring a civil action against a governmental entity or a person for violating the aforementioned provisions that seeks declaratory relief, injunctive relief, or reasonable attorney's fees. An action *against a person* may also seek damages incurred as a result of a violation; in addition, punitive damages may be awarded if the court finds that a person willfully refused to provide for the removal of personal information of a protected individual, as specified.

Criminal Penalty: An individual may not knowingly publish the personal information of a protected individual if (1) the individual knows or reasonably should know that publishing the personal information poses an imminent and serious threat to the protected individual and (2) the publishing results in an assault in any degree, harassment, trespass, or malicious destruction of property. A violator is guilty of a misdemeanor and subject to a maximum penalty of 18 months' imprisonment and/or a \$5,000 fine.

Judicial Address Confidentiality Program

Generally: OIP must establish and administer a Judicial Address Confidentiality Program for protected individuals. The purpose of the program is to:

- enable State and local agencies to respond to requests for public records without disclosing the actual address of a program participant;
- encourage interagency cooperation in providing address confidentiality for program participants;

- allow governmental entities and persons to accept a program participant's use of an address designated by OIP as a substitute address; and
- provide a program participant with protections in addition to those otherwise provided by the bill (as discussed above).

Protected individuals may apply to OIP to participate in the program in the manner required by OIP. On receipt of an application, OIP must determine whether the applicant qualifies as a program participant.

Requests from the Office of Information Privacy and Protection of Records: OIP may request that:

- a person or governmental entity use a substitute address designated by OIP as the program participant's address;
- a program participant's actual address be shielded from public inspection in a record maintained by a governmental entity; and
- real property records be shielded on behalf of a program participant who has an ownership interest in real property, in accordance with Title 3, Subtitle 1, Part II of the Real Property Article (which governs recordation procedures for participants of the Address Confidentiality Program as administered by the Secretary of State – the bill makes some conforming changes to extend applicability to the participants in the Judicial Address Confidentiality Program).

A person or governmental entity must promptly acknowledge receipt of the request, as specified, and take steps reasonably necessary to comply. A request by OIP certifies that a requester is a program participant.

Although OIP may request that a governmental entity shield a program participant's actual address from public inspection in a record, a custodian of record may:

- maintain a copy of a record containing a program participant's actual address in a separate secure area to which persons who do not have a legitimate reason for access are denied access;
- permit public inspection of a record with the consent of the program participant;
- permit public inspection of a record with the actual address redacted from the record; or
- after notification to the program participant, permit public inspection of a record if the inspection will further a substantial public interest or a legitimate business need.

A record of a program participant's actual address and telephone number maintained by OIP or a governmental entity is not a public record under the Maryland Public Information Act (PIA).

Enforcement Provision: A protected individual or OIP may bring a civil action for declaratory relief, injunctive relief, or reasonable attorney's fees against a person who knowingly discloses a program participant's actual address.

Task Force to Ensure the Safety of Judicial Facilities

The bill establishes the Task Force to Ensure the Safety of Judicial Facilities, staffed by AOC. Task force members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations. Task force members serve at the pleasure of the person who appointed the member. At the task force's first meeting, the task force must vote to adopt a code of conduct for task force members.

The task force must:

- identify minimum requirements for courthouse safety, including the minimum number of security officers to be present in each type of judicial proceeding in a circuit court or in the District Court; minimum qualifications for security officers; minimum standards for secure entry and exit of judicial officers from court facilities, as specified; and minimum standards for safe public areas of courthouses, as specified;
- develop a legislative proposal to ensure that the minimum standards identified above are met; and
- identify physical security deficiencies that currently exist in courthouses and develop a plan to address these deficiencies.

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.

Under PIA, "public record" means the original (or any copy) of any documentary material that (1) is made by a unit or an instrumentality of the State or of a political subdivision or

received by the unit or instrumentality in connection with the transaction of public business and (2) is in any form, as further specified.

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. In general, PIA requires denial of inspection for the part of a public record that contains the home address, personal telephone number, or personal email address of an employee of a unit of an instrumentality of the State or of a political subdivision unless (1) the employee gives permission for the inspection or (2) the unit or instrumentality that employs the individual determines that inspection is needed to protect the public interest.

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.

Recordation of Instruments for Address Confidentiality Program Participants

As referenced above, the existing Address Confidentiality Program (unchanged by the bill) is administered by the Secretary of State. Generally, a program participant (survivors of threatened, attempted, or actual domestic violence, sexual assault, stalking, harassment, or human trafficking) who acquires an ownership interest in real property while participating in the program may request the shielding of real property records concerning the property.

In general, to shield the real property records, a program participant must submit specified information to the clerk of the circuit court and the appropriate county finance office, including the deed or other instrument to be recorded and specified notice of program participation that includes, among other items, a substitute address designated by the Secretary of State to be used as the program participant's address. The clerk of the circuit court must provide a copy of the notice to the State Department of Assessments and Taxation and the State Archives. The notice is not a public record under PIA and, subject to limited exceptions, a clerk and any State or local agency that receives notice may not disclose the program participant's identity information in conjunction with the property identified in the notice.

The clerks of the circuit courts and AOC must establish uniform statewide procedures for recording deeds and other instruments under the Address Confidentiality Program. The procedures must, at a minimum, include provisions for (1) shielding recorded instruments that contain a participant's actual address or identity information and (2) providing notice to the public of the existence of a shielded instrument and instructions for requesting access to the shielded instrument in accordance with statutory provisions that govern authorized disclosures for purposes of a *bona fide* title examination. All State and local agencies must similarly establish uniform procedures for maintaining related records, including tax, utility, and zoning records.

Miscellaneous

Under § 1-114 of the General Provisions Article, a "person" includes an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, corporation, partnership, business trust, statutory trust, limited liability company, firm, association, or other nongovernmental entity.

Background: The National Center for State Courts reports that the murder of Judge Andrew F. Wilkinson, a Maryland circuit court judge for Washington County, on October 19, 2023, was the third targeted shooting of a state court judge in the last three years. After presiding over and issuing a ruling in a divorce and custody case that involved extensive testimony of abuse inflicted on one of the litigants and her children, Judge Wilkinson was shot and killed in the driveway of his personal residence by the

abusive litigant over whose case he had just presided. The preamble notes that protecting the safety and security of judicial officers throughout the State and the country has become an issue of critical importance due to threats, assaults, and murders of judicial officers and their family members. Similar federal legislation intended to protect federal judges and their families was recently enacted (The Daniel Anderl 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.

State Fiscal Effect: The Judiciary can establish and operate OIP and staff the task force using existing budgeted resources. Any expense reimbursements for task force members are assumed to be minimal and absorbable within existing budgeted resources. The bill's penalty provision is not anticipated to materially impact fine revenues or incarceration costs. As it is assumed that the Secretary of State has no administrative duties under the bill with respect to the Judicial Address Confidentiality Program, the bill is otherwise not anticipated to materially affect State operations or finances.

Additional Information

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

Designated Cross File: SB 575 (Senator Corderman, *et al.*) (By Request - Maryland Judicial Conference) - Judicial Proceedings.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; State Department of Assessments and Taxation; National Center for State Courts; Secretary of State; Department of Legislative Services

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