

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 624

(Senator Carter)

Judicial Proceedings

Judiciary

**Task Force to Study Public Information Act Requests Made to Law Enforcement
 – Establishment**

This bill establishes a Task Force to Study Public Information Act Requests Made to Law Enforcement to review and study (1) costs charged by law enforcement agencies in relation to disclosure of records requested under the Maryland Public Information Act (PIA); (2) procedures applied by law enforcement agencies in the disclosure of records requested under PIA; and (3) the status and operations of the Maryland Public Information Act Compliance Board (PIACB). The Office of the Attorney General (OAG) must provide staff for the task force. A member of the task force may not receive compensation as a member of the task force but is entitled to reimbursement for expenses. A member of the task force serves at the pleasure of the person who appointed the member. The task force must submit to the General Assembly an interim report on its findings by December 31, 2024, and a final report by December 31, 2025. **The bill takes effect July 1, 2024, and terminates June 30, 2026.**

Fiscal Summary

State Effect: General fund expenditures by \$61,000 in FY 2025 for contractual staff. Future years reflect termination of the contractual position midway through FY 2026. Revenues are not affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	61,000	34,500	0	0	0
Net Effect	(\$61,000)	(\$34,500)	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Task Force to Study Public Information Act Requests Made to Law Enforcement

Chapter 536 of 2022 established the Task Force to Study Public Information Act Requests Made to Law Enforcement. The Act required the task force to study and make recommendations regarding specified costs under PIA, procedures applied to law enforcement agencies under PIA, and the status and operation of PIACB; provisions identical to those established under the bill. The Act also required OAG to provide staff for the task force, in addition to requiring the task force to submit to the General Assembly an interim report on its findings by December 31, 2022, and a final report by December 31, 2023. OAG advises that the task force never convened, and therefore did not submit any reports.

Maryland Public Information Act – Generally

Maryland’s 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. OAG must post all such contact information on its website and in any *Public Information Act Manual* published by OAG.

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.

“Reasonable fee” means a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit. The staff and attorney review costs included in the calculation of actual costs incurred must be prorated for each individual’s salary and actual time attributable to the search for and preparation of a public record for inspection. The custodian may not charge a fee for the first two hours that are needed to search for a public record and prepare it for inspection.

The official custodian may waive a fee if the applicant asks for a waiver and (1) the applicant is indigent and files an affidavit of indigency or (2) after consideration of the

ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.

Inspection of Records Relating to Investigations of Police Misconduct

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.

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, 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.

State Expenditures: As previously stated above, OAG advises that the task force established under Chapter 536 never convened, and as a result OAG never hired the half-time contractual attorney to staff that task force, as estimated under the Fiscal and Policy Note for SB 777 of 2022. OAG further advises, and the Department of Legislative Services concurs, that it is unable to absorb staffing duties for the task force with existing resources.

Therefore, general fund expenditures increase by \$60,991 in fiscal 2025, which accounts for a 90-day start up delay from the bill’s July 1, 2024 effective date. This estimate reflects the cost of hiring one half-time contractual attorney to staff the task force. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	0.5
Salary and Fringe Benefits	\$54,139
Operating Expenses	<u>6,852</u>
Total FY 2025 State Expenditures	\$60,991

Future year expenditures reflect termination of the contractual position midway through fiscal 2026, following the completion of the task force’s final report.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Any expense reimbursements for task force members are assumed to be minimal and absorbable within existing budgeted resources.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 777 of 2022 (enacted as Chapter 536).

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Department of Legislative Services

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Analysis by: Thomas S. Elder

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