

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 234

(Senator Lam, *et al.*)

Judicial Proceedings

Rules and Executive Nominations

Personal Information - State and Local Agencies - Restrictions on Access
(Maryland Driver Privacy Act)

This bill modifies Maryland's Public Information Act (PIA) to require an officer, an employee, an agent, or a contractor of the State or a political subdivision to deny inspection of specified records, and deny inspection using facial recognition searches, by any federal agency seeking access for the purpose of enforcing federal immigration law unless provided with a valid warrant. In addition, a person who receives specified personal information under PIA may not disclose the information to a federal agent or federal agency for the purpose of federal immigration enforcement unless presented with a valid warrant. The Motor Vehicle Administration (MVA), the Department of State Police (DSP), and the Department of Public Safety and Correctional Services (DPSCS) must submit a specified annual report to the General Assembly on records requests from federal agencies seeking access for immigration enforcement purposes. Finally, the bill requires State and local law enforcement agencies and other specified entities that operate a specified database to deny access to the database to an individual seeking access for the purpose of enforcing federal immigration law, unless provided with a valid warrant.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary:

Required Denial of Specified Records and Searches under the Public Information Act

Notwithstanding any other provision of PIA, an officer, employee, agent, or contractor of the State or a political subdivision must deny inspection of a part of a public record that contains personal information or a photograph of an individual by any federal agency seeking access for the purpose of enforcing federal immigration law unless provided with a valid warrant.

In addition, an officer, employee, agent, or contractor of the State or a political subdivision must deny inspection using a facial recognition search of a digital photographic image or actual stored data of a digital photographic image by any federal agency seeking access for the purposes of enforcing federal immigration law unless provided with a valid warrant. “Facial recognition,” as defined under the bill, means a biometric software application that identifies or verifies a person by comparing and analyzing patterns based on a person’s facial contours.

Mandatory Reporting on Records and Search Requests

By June 1, 2023, and annually thereafter, MVA, DSP, and DPSCS must submit a report to the General Assembly on PIA requests from federal agencies seeking access to personal information, a photograph of an individual, or a facial recognition search for the purpose of federal immigration enforcement, whether or not the request was initiated through a State or local law enforcement agency. The report must include specified information relating to the number of requests received, the number of facial recognition searches completed, and the number of individuals whose personal information or photograph was provided to a federal agency.

Requirements for Databases Operated by Law Enforcement Agencies

The bill sets forth various requirements for databases operated by State and local law enforcement agencies. “Database,” as defined under the bill, means any database operated by State and local law enforcement agencies, including databases maintained for a law enforcement agency by a private vendor. “Database” does not include a registry operated under Title 11, Subtitle 7 (State Sex Offender Registration) of the Criminal Procedure Article. “Law enforcement agency” is defined as a federal, State, or local agency authorized to enforcement criminal laws. “Law enforcement agency” includes DPSCS.

An entity operating such a database must deny access to the database to any individual who is seeking access for the purpose of enforcing federal immigration law, unless the individual presents a valid warrant issued by a federal court or a court of the State. In addition, the entity must require an individual accessing the database to provide (1) the individual's name and contact information and (2) unless the individual presents a valid warrant, a statement, under penalty of perjury, that the individual is not accessing the database for the purpose of enforcing federal immigration law.

Current Law: Under PIA, a custodian of a public record 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 personal and confidential records, including, for example, hospital and medical records, financial records, certain police and related criminal records, and licensing records.

Motor Vehicle Administration Records

Except under specified circumstances, such as when required to disclose information under federal law, a custodian may not knowingly disclose a public record of the Motor Vehicle Administration that contains personal information. With respect to requests for an individual motor vehicle record, an individual may not disclose personal information without written consent from the person in interest. In addition, a custodian may not disclose personal information for surveys, marketing, and solicitations without written consent from the person in interest. The person in interest may withdraw consent to disclose personal information at any time by notifying the custodian.

However, a custodian must disclose personal information for various purposes, including for use by a federal, state, or local government, including a law enforcement agency, or a court in carrying out its functions. It must also disclose personal information for use in connection with a civil, administrative, arbitral, or criminal proceeding in a federal, state, or local court, as specified.

“Personal information,” means information that identifies an individual, including an individual's name, address, driver's license or other identification number, medical or disability information, photograph or computer-generated image, Social Security number, and telephone number. “Person in interest,” as it applies to PIA, means (1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit; (2) if the person has a legal disability, the parent or legal representative of the person; or (3) as to requests for correction of certificates of death under State law, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased, as specified.

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: The bill specifies various requirements and restrictions that apply to databases operated by State and local law enforcement agencies, including DPSCS. DPSCS can likely make necessary modifications to the criminal justice databases administered by the department with existing budgeted resources. According to DPSCS, individuals currently must register and be issued a user identification in order to access systems hosted by the department; the department collects basic identifying information from individuals when they register. While the department will likely need to make system modifications in order to require users to provide specified statements when accessing databases hosted by the department, as required under the bill, this can likely be accomplished with existing resources.

The bill is not otherwise expected to directly affect State or local finances. It is assumed that State and local agencies can comply with the bill's PIA requirements with existing resources. In addition, DPSCS, DSP, and MVA advise that they can comply with the bill's annual reporting requirement with existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 23 (Delegate Stein) - Judiciary and Environment and Transportation.

Information Source(s): Judiciary (Administrative Office of the Courts); Baltimore City Community College; University System of Maryland; Military Department; Morgan State University; Maryland Department of Health; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Baltimore City; Caroline, Cecil, Howard, Montgomery, and Prince George's counties; City of Bowie; Anne Arundel County Public Schools; Charles County Public Schools; Wicomico County Public Schools; St. Mary's County

Public Schools; Talbot County Public Schools; Maryland Association of Counties;
Maryland Municipal League; Department of Legislative Services

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