

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 402 (Delegate Barron, *et al.*)
Health and Government Operations

Public Information Act - Personnel and Investigatory Records - Formal
Complaints Against Public Employees

The bill includes an individual that has made a formal complaint against a governmental unit or an employee of a governmental unit (a complainant) in the definition of “person in interest,” thus allowing the individual to review the record of the individual’s formal complaint against a governmental unit or employee of a governmental unit, under specified circumstances. It also specifies that a record related to a formal complaint of job-related misconduct made against a public employee, including an investigation record, a hearing record, or disciplinary decision, is not a personnel record for purposes of denial of inspection under the Maryland Public Information Act (MPIA).

Fiscal Summary

State Effect: The bill has a direct operational effect on multiple State agencies, and may have a meaningful fiscal effect to the extent that additional personnel are required to handle the volume of requests for investigation records under MPIA. However, a reliable estimate of the need for additional personnel cannot be made at this time, as explained below. No effect on revenues.

Local Effect: The bill also has a direct operational effect on local governments, and may have a meaningful fiscal effect to the extent that they require additional human resource personnel to respond to requests under MPIA.

Small Business Effect: None.

Analysis

Current Law: A “person in interest” is defined in the MPIA as (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 State law, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased at the time of the deceased’s death.

With specific regard to personnel records, custodians must allow inspections only by:

- the person in interest; or
- an elected or appointed official who supervises the work of the custodian.

Each governmental unit that maintains public records must identify a representative who 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.

A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time.

A custodian has to 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. Denial of inspection is also mandatory for public records relating to adoption, welfare records, letters of reference, specified information about an individual maintained by a library, retirement records, certain police records, criminal charging documents, arrest warrants, *personnel records*, certain hospital and school records, records of certain State agencies, certain recorded and surveillance images, and captured plate data collected by automatic license plate reader systems. Denial of inspection is required for information in a public record relating to certain medical, psychological, sociological, and financial information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

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. Permissible denials include

information relating to documents that would not be available through discovery in a lawsuit, certain information about publicly administered tests, research projects conducted by an institution of the State or a political subdivision, real estate appraisals of property to be acquired by the State prior to its acquisition, certain information on inventions owned by State public higher educational institutions, and trade secrets or confidential information owned by the Maryland Technology Development Corporation.

The Office of the Public Access Ombudsman reviews and resolves disputes between applicants and custodians over requests for public records, including disputes over (1) the custodian's application of an exemption; (2) redactions of information in the public record; (3) the custodian's failure to timely produce a public record or to disclose all records relevant to the request; (4) overly broad requests for public records; (5) the amount of time a custodian needs, given available staff and resources, to produce public records; (6) requests for or denials of fee waivers; and (7) repetitive or redundant applicant requests.

Background: In *Maryland Department of State Police v. Dashiell*, 105 A.3d 489 (2014), the Court of Appeals ruled that records pertaining to an internal police investigation of an officer initiated by the plaintiff in this case, were "personnel records," and thus not required to be disclosed to a third party under MPIA. Since the disposition of this case, there has been some concern about the ability of a person who is affected by the misconduct of a public employee to be apprised of the outcome of any investigation or disciplinary action taken as a result of his/her formal complaint.

State Fiscal Effect: State agencies that employ significant numbers of law enforcement and administrative enforcement personnel (including but not limited to the Department of Public Safety and Correctional Services; the Department of Labor, Licensing, and Regulation; the Department of Health and Mental Hygiene; the Department of State Police; and the Comptroller's Office) likely experience an increase in the number of requests for information under MPIA. Individuals who file complaints against enforcement officers for misconduct have the right, under the bill, to request and inspect internal investigation reports related to their complaints under specified circumstances. Whereas those requests can be summarily dismissed under current law because they pertain to confidential personnel records, agencies must make a determination under the bill as to whether the records can be released.

In the absence of a reliable estimate of the number of such requests that each agency receives under the bill, the bill's fiscal effect cannot be determined. To the extent that specific agencies experience a substantial number of additional requests requiring a determination, they likely require additional human resource and legal personnel to review the personnel records and make a determination as to whether they can be reviewed by the complainant under MPIA criteria.

Local Fiscal Effect: Local governments experience the same potential increase in MPIA requests as State agencies, and may require additional human resource and legal personnel to review case files and make determinations regarding whether they can be inspected by complainants.

Additional Information

Prior Introductions: None.

Cross File: SB 671 (Senator Muse, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Commerce; Maryland Department of Aging; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State Department of Education; Maryland Higher Education Commission; Maryland Department of Agriculture; Department of Budget and Management; Department of Disabilities; Maryland Department of the Environment; Department of General Services; Department of Health and Mental Hygiene; Department of Housing and Community Development; Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Maryland Department of Planning; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; Maryland Department of Transportation; Maryland Insurance Administration; Department of Veterans Affairs; State's Attorneys' Association; Department of Legislative Services

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