

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 383

(Delegate Moon, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Public Information Act - Denials of Inspection - Explanation Regarding
Redaction

This bill requires a custodian of a public record who denies an application for inspection of a public record under the Maryland Public Information Act (PIA), to include in the written statement that explains the reasons for the denial an explanation of why redacting information would not address the reasons for the denial.

Fiscal Summary

State Effect: The bill does not directly affect governmental finances but may have an operational effect on State agencies due to the extended processing times for preparing written statements for PIA requests.

Local Effect: The bill does not directly affect local governmental finances but may have an operational effect due to the extended processing times for preparing written statements for PIA requests.

Small Business Effect: None.

Analysis

Current Law: 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.

Duties of Custodians

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 who approves a PIA request must produce the public record immediately or within a reasonable period of time but not more than 30 days after receipt of the application. A custodian must notify an applicant in writing or via email within 10 working days of receiving a request if the estimated time to produce responsive records exceeds more than 10 working days.

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. Denial of inspection is also mandatory for public records relating to adoption, welfare records, hospital 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.

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. 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.

A custodian that denies inspection of a public record on this basis must provide (1) a written statement to the applicant giving the reason for denial; (2) the legal authority on which it

is based; (3) a brief description of the undisclosed record (without disclosing the protected information); and (4) a notice of the statutory remedies available.

State Fiscal Effect: Some State agencies have identified potential operational impacts from the bill's requirement for a custodian to provide a written statement explaining the effect of a redaction in a public record. For example, the Judiciary advises that if a statement requires more than two hours of work and/or additional research, it could affect operations depending on the frequency of such denials. The Maryland Department of the Environment advises that it processes more than 5,000 PIA requests annually and that the bill's requirement for an additional statement may increase turnaround times and affect its ability to respond within a timely manner.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2017
mm/mcr Third Reader - February 28, 2017

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