

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 167

(Senator Feldman)

Judicial Proceedings

Public Information Act - Suits Filed by Custodians - Prohibition

This bill prohibits a custodian of a public record from filing suit under the Public Information Act (PIA) against the person making the request to inspect a public record.

Fiscal Summary

State Effect: Since it is assumed that this bill applies in a limited number of cases, State finances are not materially affected.

Local Effect: Minimal.

Small Business Effect: None.

Analysis

Current Law: 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 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 must permit inspection of the record at a reasonable time and within 10 working days of receiving a request.

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 personal and confidential records, including, for example, hospital and medical records, financial records, certain police and related criminal records, 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. PIA specifies the types of records that are eligible for discretionary denials, including documents that would not be available through discovery in a lawsuit.

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), including an explanation of why redacting information would not address the reason for the denial; and (4) a notice of the statutory remedies available.

Temporary Denials

Whenever PIA authorizes inspection of a public record but the custodian believes inspection would cause substantial injury to the public interest, the custodian may deny inspection temporarily and petition a circuit court for an order authorizing continued denial of inspection. The petition must be filed within 10 working days after the denial. The bill does not affect a custodian's right to file such a petition with a circuit court.

Additional Information

Prior Introductions: None.

Cross File: HB 387 (Delegate A. Miller, *et al.*) - Health and Government Operations.

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

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