

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 380 (Delegate R. Lewis)
Health and Government Operations

**Public Information Act - Denial of Part of a Public Record - Investigations by
Inspectors General**

This bill authorizes the custodian of a public record to deny inspection of records of investigations conducted by or an investigatory file compiled by an inspector general whose office is created by State law or the laws of a political subdivision of the State.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill does not materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law: 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, as provided under Maryland's Public Information Act (PIA). PIA specifies the types of records that are eligible for discretionary denials.

Records Pertaining to Investigations, Intelligence Information, or Security Procedures

A custodian may, subject to specified conditions, deny inspection of:

- records of investigations conducted by the Attorney General, a State's Attorney, a municipal or county attorney, a police department, or a sheriff;
- an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or
- records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a municipal or county attorney, a police department, a State or local correctional facility, or a sheriff.

A custodian may deny inspection of such records by a person in interest only to the extent that the inspection would (1) interfere with a valid and proper law enforcement proceeding; (2) deprive another person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source; (5) disclose an investigative technique or procedure; (6) prejudice an investigation; or (7) endanger the life or physical safety of an individual. These conditions apply to the discretionary denial of an inspector general's records allowed by the bill.

"Person in interest" 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.

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.

PIA, Generally

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. 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.

Background: The bill is similar to a provision of Chapter 771 of 2019, which established a Maryland Office of the Inspector General for Education, but has broader application than the provision in Chapter 771. The Act specifies that information provided to, prepared for, or obtained by the Inspector General for Education in connection with an investigation are confidential and not subject to disclosure under PIA. Unlike Chapter 771, this bill includes investigatory records of local inspectors general.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 193 (Senator Kagan) - Education, Health, and Environmental Affairs.

Information Source(s): Office of the Attorney General; Maryland State Department of Education; Maryland Department of Health; Department of Public Safety and Correctional Services; Baltimore City; Caroline, Howard, Montgomery, and Prince George's counties; Maryland Association of Counties; cities of Annapolis and Bowie; Town of Elkton; Maryland Municipal League; Department of Legislative Services

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