

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1619 (Delegate M. Jackson)
Rules and Executive Nominations

Public Information Act - Denial of Part of a Public Record - Victims and
Witnesses

This bill expands the application of existing provisions governing the denial of inspection of 9-1-1 communications records that depict victims of specified crimes to apply to 9-1-1 communications records that depict *witnesses* of specified crimes and makes conforming changes. In addition, the bill defines “contrary to the public interest” as it applies to discretionary denials under Maryland’s Public Information Act (PIA) to include a situation in which a custodian reasonably believes that inspection of a part of a public record would reveal the identity of a victim or witness, other than an active duty law enforcement officer, of a violation of specified crimes. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: The bill’s changes are generally procedural in nature and can be handled with existing budgeted resources. Revenues are not materially affected.

Local Effect: The bill’s changes can be handled with existing local resources. Local revenues are not materially affected.

Small Business Effect: None.

Analysis

Bill Summary: “Contrary to the public interest,” as it applies to discretionary denials under PIA, includes a situation in which a custodian reasonably believes that inspection of a part of a public record would reveal the identity of a victim or a witness, other than an active duty law enforcement officer, of a violation of specified crimes generally relating to

homicide, abuse/neglect of a child, abuse/neglect of a vulnerable adult, domestic violence, and specified sexual crimes.

Before granting inspection of a 9-1-1 communications record that depicts a witness, a custodian must (1) notify the witness within 30 days of receiving the request, if the custodian has contact information for the witness; (2) allow 10 days for a response from the witness indicating that inspection may be contrary to the public interest; and (3) consider any response received in determining whether to grant or deny the inspection. A custodian may redact relevant portions of a 9-1-1 record to avoid denying the release of the entire record and must allow inspection by the person in interest.

“Witness,” as defined under the bill, means a witness of specified crimes generally relating to homicide, abuse/neglect of a child, abuse/neglect of a vulnerable adult, domestic violence, and specified sexual crimes. “Witness” does not include a law enforcement officer on active duty.

A decision in response to an application to inspect a 9-1-1 communications record that depicts a witness is subject to an existing 50-day time limit for granting or denying an application to inspect a 9-1-1 communications record that depicts a victim.

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. PIA specifies the types of records that are eligible for discretionary denials, including documents that would not be available through discovery in a lawsuit.

9-1-1 Communications Records Depicting a Victim

Chapter 297 of 2019 requires a custodian, before granting inspection under PIA of the part of a 9-1-1 communications record that depicts a victim of specified crimes, to notify the victim or victim’s representative and consider any response received before granting or denying the inspection.

Under the Act, a custodian must (1) notify the victim or victim’s representative within 30 days of receiving the request, if the custodian has contact information for the victim or victim’s representative; (2) allow 10 days for a response from the victim or victim’s representative indicating that inspection may be contrary to the public interest; and (3) consider any response received in determining whether to grant or deny the inspection.

A custodian may redact relevant portions of a 9-1-1 record to avoid denying the release of the entire record and must allow inspection by the person in interest. “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.

The Act further specifies that a custodian must grant or deny an application for inspection of such a record within 50 days after receiving the application (as opposed to within 30 days, as is generally required under PIA).

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.

Background: 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.

Generally, a custodian of a public record must permit inspection of any public record at any reasonable time. A custodian must designate types of public records that are to be made available to any applicant immediately on request and maintain a current list of the types of public records that have been so designated. Each custodian must adopt reasonable rules or regulations that, consistent with PIA, govern timely production and inspection of a public record.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 535 (Senators Kagan and Reilly) - Education, Health, and Environmental Affairs.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of General Services; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Baltimore, Dorchester, Garrett, and Montgomery counties; Maryland Association of Counties; Department of Legislative Services

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