

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 272

(Delegate Carr)

Health and Government Operations

Education, Health, and Environmental Affairs

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Public Information Act - Required Denials - Sociological Information and  
Distribution Lists

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This bill modifies the definition of “distribution list,” as it applies to the denial of inspection of distribution lists under Maryland’s Public Information Act (PIA), to exclude a list of recipients of specified notices from the State Highway Administration (SHA) or Maryland Transit Administration (MTA) relating to environmental and engineering studies on private property under the State’s eminent domain statute. A custodian must allow inspection of such a notice, or a list of recipients of such a notice, only on receipt of a written application and a statement, signed under oath, that the notice or list is not intended to be used for commercial solicitation. The bill further specifies that a definition of “sociological information” adopted under rules or regulations by an official custodian of a public record may not include above-specified notices or recipient lists. Finally, the bill requires a custodian to deny inspection of only *the part of* a distribution list that identifies an individual’s physical address, email address, or telephone number (rather than the full distribution list, as required under current law).

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**Fiscal Summary**

**State Effect:** The bill’s changes can be handled with existing budgeted resources. Revenues are not materially affected.

**Local Effect:** The bill’s changes can be handled with existing local government resources. No effect on revenues.

**Small Business Effect:** None.

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## Analysis

### Current Law:

#### *Notice of Entry by SHA or MTA Employees to Conduct Studies on Private Property*

Under § 12-111 of the Real Property Article, SHA, MTA, and the agents, employees, and consultants of SHA and MTA may enter private property under the State's eminent domain statute to conduct environmental and engineering studies necessary to determine the suitability of the property for use by the administration entering the property. Entry onto private property for such purposes may not be undertaken without prior consent of the property owner. If, after real and *bona fide* effort, the consent of the property owner cannot be secured, the administration seeking entry may apply to a law or equity court for an order directing that entry be permitted. The *bona fide* effort, however, must include either 30 days advance written notice or posting notice on the property at least 30 days in advance.

#### *Maryland's Public Information Act*

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. The Act generally must be construed in favor of allowing inspection of a public record, with the least cost and delay to the person or governmental unit requesting the information, unless an unwarranted invasion of privacy would result, as specified.

#### *Required Denials*

Under PIA, 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.

#### *Distribution Lists*

As required under Chapters 39 and 40 of 2018, a custodian must deny inspection of a distribution list and a request to be added to a distribution list that identifies a physical address, an email address, or a telephone number of an individual that is used by a governmental entity or an elected official for the sole purpose of (1) periodically sending news about the official activities of the governmental entity or official or (2) sending informational notices or emergency alerts. "Governmental entity" means a unit or an instrumentality of the State or of a political subdivision.

### *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.

### *Sociological Information*

If a custodian has adopted rules or regulations that define sociological information for purposes of PIA, a custodian must deny inspection of the part of a public record that contains sociological information in accordance with the rules or regulations.

Under regulations adopted by the Maryland Department of Transportation, “sociological information” means a social security number, personal address, personal phone number, personal email address, date of birth, and driver’s license number.

### *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.

### *Prohibited Acts, Penalties*

A person may not willingly violate any provision of PIA or, by false pretenses, bribery, or theft, gain access to or obtain a copy of a personal record if disclosure of the personal record to the person is prohibited under PIA. A violation is a misdemeanor subject to a fine of up to \$1,000.

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## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; University System of Maryland; Maryland Department of the Environment; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Baltimore and St. Mary's counties; towns of Bel Air and Leonardtown; Baltimore City Public Schools; Prince George's County Public Schools; Department of Legislative Services

**Fiscal Note History:** First Reader - February 8, 2021  
rh/mcr Third Reader - March 31, 2021  
Revised - Amendment(s) - March 31, 2021

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