

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1042
Judiciary

(Washington County Delegation)

Public Information Act – Police Officers – Unfounded Complaints

This bill specifies that a record of an administrative or criminal investigation of misconduct by a police officer is a protected personnel record for purposes of Maryland’s Public Information Act (PIA) if the result of the investigation determined that the complaint of misconduct was unfounded.

Fiscal Summary

State Effect: Any impact on PIA-related activities is not expected to materially affect State finances.

Local Effect: Any impact on PIA-related activities is not expected to materially affect local government finances.

Small Business Effect: None.

Analysis

Current Law: Maryland’s 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.

Exceptions to Disclosure, Generally

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 specified personal and confidential records and information, including, for example, personnel and student records, hospital records, specified medical and financial information, and shielded criminal and police records. Chapter 62 of 2021, as further discussed later in this Current Law section, specifies that a record relating to an administrative or criminal investigation of misconduct by a police officer is not a protected personnel record under PIA and requires a custodian to allow access to such records by federal and State prosecutors.

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 and information that are eligible for discretionary denials, including documents that would not be available through discovery in a lawsuit.

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.

Personnel Records

As noted above, a custodian generally must deny inspection of a personnel record, including an application, a performance rating, or scholastic achievement information. However, a custodian must allow inspection by the person in interest or an elected or appointed official who supervises the work of the individual. In addition, a custodian must allow specified employee organizations to inspect the portions of a personnel record that contain the individual's home address, home telephone number, and personal cell phone number.

Inspection of Records Relating to Investigations of Police Misconduct

Chapter 62 establishes that, except for a record of a technical infraction, a record relating to an administrative or criminal investigation of misconduct by a law enforcement officer, including an internal affairs investigatory record, a hearing record, and records relating to

a disciplinary decision, is not a protected personnel record for purposes of PIA. Instead, these records are treated as investigatory records subject to discretionary denial of inspection as provided under PIA. A custodian may deny inspection by a person in interest only under specified conditions and must allow inspection of such records by the U.S. Attorney, the Attorney General, the State Prosecutor, or the State's Attorney for the jurisdiction relevant to the record.

When inspection of a record relating to an administrative or criminal investigation of police officer misconduct is granted to anyone other than the U.S. Attorney, the Attorney General, the State Prosecutor, or the State's Attorney for the jurisdiction relevant to the record, a custodian must redact specified information. Specifically, the custodian must redact the record to the extent that the record reflects (1) medical information of the person in interest; (2) personal contact information of the person in interest or a witness; or (3) information relating to the family of the person in interest. A custodian may redact the record to the extent that the record reflects witness information other than personal contact information. When the record is inspected, the custodian must notify the person in interest but may not disclose the identity of the requestor to the person in interest.

Fees and Fee Waivers

An official custodian may charge an applicant the actual cost of the search, preparation, and reproduction of any public record in a *standard* format, including the cost of media and mechanical processing. If an applicant requests a public record in a *customized* format, an official custodian may charge a reasonable fee for the search, preparation, and reproduction of the public record. PIA authorizes fee waivers under specified circumstances.

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.

Public Information Act Compliance Board

The Public Information Act Compliance Board (PIACB), a five-member board appointed by the Governor, receives, reviews, and resolves complaints from applicants alleging that a custodian of a public record charged an unreasonable fee of more than \$350. The board

must issue a written opinion as to whether a violation occurred and, if it finds that a custodian charged an unreasonable fee, order the custodian to reduce the fee and refund the difference, as specified.

Chapter 658 of 2021, effective July 1, 2022, expands the jurisdiction of the board to include receiving, reviewing, and resolving additional types of PIA disputes and institutes an integrated PIA complaint resolution process that includes the Public Access Ombudsman. Under the Act, an applicant, an applicant's designee, or a custodian may file a written complaint with PIACB if (1) the complainant has attempted to resolve the dispute through the Office of the Public Access Ombudsman and (2) the ombudsman has issued a final determination stating that the dispute was not resolved.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; City of College Park; Maryland Municipal League; Office of the Attorney General; Comptroller's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland University System of Maryland; Department of General Services; Maryland Department of Health; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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