

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 395 (Delegate Stewart, *et al.*)
Health and Government Operations

Public Records - Retention and Inspection - Communications (Transparency in
Public Records Act of 2022)

This bill modifies the definition of “public record” as it applies to Maryland’s Public Information Act (PIA) to include any written, electronic, or recorded audio or video communication made in connection with the transaction of public business (1) made or received by an employee of the State or a political subdivision or (2) made or received by a public official. The bill also defines “record,” as it applies to records management provisions of the State Government Article, to include any written, electronic, or recorded audio or video communication made in connection with the transaction of public business (1) made or received by an employee of the State or (2) made or received by a public official of the State. Finally, the bill defines “unit,” as it applies to records management provisions, to include the Office of the Governor; thus, the Office of the Governor is subject to records management requirements that apply to units of State government and must establish a specified records management program. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: The Office of the Governor can establish a records management program with existing budgeted resources. Otherwise, any change in PIA-related and records management activities is not expected to materially affect State finances, as the bill is largely clarifying in nature.

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

Small Business Effect: None.

Analysis

Current Law:

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. 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.

“Public record,” as defined under PIA, means the original or any copy of any documentary material that (1) is made by a unit or an instrumentality of the State or of a political subdivision, or received by the unit or instrumentality in connection with the transaction of public business, and (2) is in any form, including a card; a computerized record; correspondence; a drawing; a film or microfilm; a form; a map; a photograph or photostat; a recording; or a tape. The term includes a document that lists the salary of an employee of a unit or an instrumentality of the State or of a political subdivision; it does not include a digital photographic image or signature of an individual, or the actual stored data of the image or signature, recorded by the Motor Vehicle Administration.

Records Management

Title 10, Subtitle 6, Part II of the State Government Article (“Records Management”), requires each unit of State government to have a program for the continual, economic, and efficient management of the records of the unit. “Record” is not specifically defined within Part II. However, “record,” as it applies to Title 10, Subtitle 6, Part III of the State Government Article (“Disposition of Records and Other Materials”) is defined as any documentary material in any form created or received by any agency in connection with the transaction of public business.

Records Management Program: The required records management program must include procedures for (1) the security of the records; (2) the establishment and revision of record retention and disposal schedules to ensure the prompt and orderly disposition of records, including electronic records, that the unit no longer needs for its operation; (3) the maintenance of inventories of records series that are accurate and complete; and (4) the transfer of permanent records to the custody of the Maryland State Archives (MSA). Each head of a unit of State government must designate a records officer from its executive staff to develop and oversee the records management program and serve as liaison to the Records Management Division of the Department of General Services (DGS) and MSA.

Regulations: The Records Management Division of DGS and the State Archivist are jointly responsible for adopting regulations to (1) define the character of records of archival quality; (2) determine the quantity of those records; (3) set standards for the development of record retention and disposal schedules; and (4) provide for the periodic transfer to the State Archivist or disposal of records, in accordance with the schedules.

Responsibilities of the Records Management Division: The Records Management Division of DGS is responsible for (1) inspecting the records of the units of State government; (2) studying the records management practices of units of State government; (3) reviewing a proposal to buy or rent equipment, storage space, or services for records, and making recommendations about the proposal to the Department of Budget and Management or the Board of Public Works; (4) reporting, for each specified five-year period, a series analysis of the character and quantity of records that a unit of State government holds and that an official of the State government or the head of a unit is required or permitted to offer to MSA; and (5) otherwise furthering the records management programs of each unit of State government.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 307 (Senator Lam) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Information Technology; Department of Commerce; Charles, Frederick, Montgomery, and Somerset counties; City of Havre de Grace; Comptroller's Office; Governor's Office; Secretary of State; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Baltimore City Community College; University System of Maryland; Morgan State University; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Department of Juvenile Services; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; State Department of Assessments and Taxation; Department of Legislative Services

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