

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 753 (Senator Folden)
Education, Energy, and the Environment

**Public Information Act - Personnel Records of Elected Officials and Joint Ethics
Committee Records**

This bill establishes that a record relating to specified investigations of misconduct by an elected official, or a person appointed to fill an elected office is not a personnel record for the purposes of the Maryland Public Information Act (PIA). The bill establishes that specified records of the State Ethics Commission (SEC) and the Joint Committee on Legislative Ethics (JCLE) are available for public inspection under the Public Ethics Law.

Fiscal Summary

State Effect: General fund expenditures increase by \$40,000 in FY 2024 for one-time programming and training changes for SEC. The bill otherwise has no effect on State government finances.

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

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Personnel Records

Under current law and subject to specified exceptions, a custodian must deny inspection of personnel records of an individual, including an application, a performance rating, or

scholastic achievement information. However, a record relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, is not a personnel record.

Under the bill, a record relating to an administrative or criminal investigation of misconduct by an elected official or a person appointed to fill an elected office is not a personnel record.

Confidentiality of State Ethics Committee Activities

Under current law and subject to specified exceptions, after SEC receives a complaint filed against a public official (1) the proceedings, meetings, and activities of SEC and its employees relating to the complaint are confidential and (2) information relating to the complaint, including the identity of the complainant and respondent, may not be disclosed by specified entities. The specified restrictions apply unless the matter is referred for prosecution or SEC finds a violation of the Public Ethics Law.

Under the bill, the specified restrictions do not apply when SEC has closed the complaint or investigation.

Confidentiality of Joint Ethics Committee Records

Under current law and subject to specified exceptions, any matter before JCLE, including information relating to any complaint proceeding, or record of JCLE, must remain confidential. Public access and inspection of an activity or a record of JCLE must be available for, among other disclosures, information relating to a complaint, proceeding, or record of JCLE involving a member of the General Assembly if consent to public access and inspection is granted by (1) the member involved in the matter, or (2) a three-fourths vote of the full membership of JCLE, based on criteria established by rule.

Under the bill, public access and inspection of an activity or record of JCLE must be available for, among other things, the information relating to a complaint, proceeding, or record of JCLE involving a member of the General Assembly if JCLE has closed the complaint or investigation that is the subject of record.

Maryland Public Ethics Law, Generally

The Maryland Public Ethics Law sets out requirements, prohibitions, and procedures that affect officials in the Legislative, Executive, and Judicial branches of government for the purpose of maintaining people's trust in government and protecting against the improper influence and the appearance of improper influence of government. The Ethics Law is

generally administered by SEC; JCLE and the Commission on Judicial Disabilities administer specified provisions of the Ethics Law as they apply to members of the General Assembly and State officials of the Judicial Branch, respectively.

Maryland 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.

Duties of Custodians

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. Chapter 658 of 2021, effective July 1, 2022, requires each official custodian to adopt a policy of proactive disclosure of public records that are available for inspection under PIA, as specified.

Denials

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 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.

State Expenditures: General fund expenditures for SEC increase by \$40,000 in fiscal 2024 only for SEC to update its electronic training programs for State employees, officials, and lobbyists.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1010 (Delegate Valentine) - Rules and Executive Nominations.

Information Source(s): Office of the Attorney General; State Ethics Commission; Department of Legislative Services

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