

**Department of Legislative Services**  
Maryland General Assembly  
2023 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 747

(Senator Folden)

Judicial Proceedings

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**Public Information Act - Personnel Records - Police Officers**

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This bill establishes that 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 a personnel record for purposes of Maryland's Public Information Act (PIA). However, a record relating to an investigation of misconduct involving an allegation that a police officer either used excessive force or exhibited racial bias in policing is not a personnel record under the bill's provisions. The bill also repeals language that established a record of a technical infraction as a personnel record for purposes of PIA.

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**Fiscal Summary**

**State Effect:** The bill likely reduces the number of records subject to inspection under PIA, but any impact on PIA-related activities is not expected to materially affect State finances.

**Local Effect:** The bill is not expected to materially affect local government finances.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** 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.

*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.

*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.

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### **Additional Information**

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

**Designated Cross File:** None.

**Information Source(s):** Prince George's County; City of Annapolis; Office of the Attorney General; Comptroller's Office; University System of Maryland; Morgan State University; Department of General Services; Maryland Department of Health; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2023  
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