

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 878

(Delegate Bartlett, *et al.*)

Health and Government Operations

Judicial Proceedings

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Public Officials - Public Disclosure of Personal Information

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This bill establishes a process by which a “public official” (or an immediate family member) may request the removal of “personal information” that has been posted publicly on the Internet or made publicly available through any other means. On receipt of such a request, the person who made the disclosure must remove the personal information, as specified. A public official (or an immediate family member) who is injured by a violation of these provisions may bring an action for damages against the person who committed the violation.

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Fiscal Summary

**State Effect:** Though most State entities can comply with the bill’s requirements using existing resources, the State Ethics Commission (SEC) may experience significant operational impacts, as discussed below. State revenues are not affected.

**Local Effect:** The bill is not anticipated to materially affect local government operations or finances.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:** “Constitutional officer” means the current or a former (1) Governor or Lieutenant Governor; (2) Attorney General; (3) Comptroller; or (4) State Treasurer. “Disclosed” means posted publicly on the Internet or made publicly available through any other means of publication or posting. “Immediate family member” means a parent, spouse, or child. “Public official” means (1) a constitutional officer; (2) a member of the Senate of

Maryland; or (3) a member of the House of Delegates. “Personal information” means a home address or personal telephone number. “Personal information” does not include (1) information that has been publicly disclosed with the consent of the person that is subject to the information or (2) information that is relevant to and displayed as part of a news story, commentary, editorial, or any other speech on matters of public concern.

A public official or an immediate family member of a public official whose personal information has been disclosed may request in writing that the person who disclosed the personal information (1) remove the personal information from the forum on which it was disclosed and (2) refrain from any future disclosure of personal information of the public official or immediate family member of the public official. The request must (1) be in writing; (2) be sent by specified forms of communication; (3) provide sufficient information to confirm that the requestor is a public official or immediate family member of a public official; and (4) specifically identify the document, posting, or other publication containing the personal information. The request may be made on behalf of a minor by a parent or guardian of the minor.

On receipt of a request, the person who made the disclosure (1) must remove the personal information within 72 hours of receiving the request and (2) may not disclose the personal information of the public official or the immediate family member of the public official by any other means.

The bill also requires a custodian under the Maryland Public Information Act (PIA) to deny inspection of the part of a public record that contains the home address or personal telephone number of a “public official” unless the public official consents to the inspection.

### **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.

Under PIA, “public record” 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, as further specified.

## *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. In general, PIA requires denial of inspection for the part of a public record that contains the home address, personal telephone number, or personal email address of an employee of a unit of an instrumentality of the State or of a political subdivision unless (1) the employee gives permission for the inspection or (2) the unit or instrumentality that employs the individual determines that inspection is needed to protect the public interest.

*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.

## *Miscellaneous*

Under § 1-114 of the General Provisions Article, a “person” includes an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind,

corporation, partnership, business trust, statutory trust, limited liability company, firm, association, or other nongovernmental entity.

**State Fiscal Effect:** It is expected that most State entities can comply with the bill's requirements using existing resources. However, SEC advises that it may experience a significant operational impact. Specifically, SEC notes that financial disclosure statements filed prior to January 1, 2019, do not include designations indicating if a listed address for which a filer holds a property interest is a primary or secondary residence. Without this designation, SEC will not know if the provided address for those filings falls under the scope of the bill's prohibition on disclosing personal information for affected public officials. As a result, some public officials will likely need to submit updated information to SEC in order for it to identify (and prohibit from inspection) *portions* of disclosure documents that may include home addresses, while still providing for the public inspection of those disclosure documents as required under current law. Any resulting operational impact, however, is not anticipated to materially affect State finances.

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### **Additional Information**

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

**Designated Cross File:** SB 899 (Senator Waldstreicher) - Judicial Proceedings.

**Information Source(s):** Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Comptroller's Office; Governor's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; State Ethics Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2024  
rh/jkb Third Reader - April 5, 2024  
Revised - Amendment(s) - April 5, 2024  
Revised - Updated Information - April 5, 2024

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