

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE

Third Reader - Revised

Senate Bill 555

(Chair, Education, Energy, and the Environment
Committee)(By Request - Office of the Attorney
General)

Education, Energy, and the Environment

Health and Government Operations

Public Information Act - Denials - Pending Litigation

This bill authorizes, but does not require, a custodian of a public record under the Maryland Public Information Act (PIA) to deny inspection of a record created for the purposes of pending or reasonably anticipated litigation to which (1) the State, a State agency, or a political subdivision of the State is or may be a party or (2) an officer or an employee of the State or a political subdivision of the State, because of that person's office or employment, is or may be a party. The provisions of the bill must not be construed to limit any right or opportunity granted by statute or court rule for a party to litigation to receive discovery. The provisions established under the bill do not apply to a record that is a court record or pertains to litigation that has been finally adjudicated or otherwise settled. The bill defines "reasonably anticipated litigation" as a situation where there is concrete evidence that litigation is expected to occur based on current facts and circumstances.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

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

Small Business Effect: None.

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, 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. Chapters 548 and 549 of 2024 further specify that a record of positive community feedback that was not solicited by the police officer who is the subject of the feedback is not a protected personnel record under PIA.

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.

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, 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 compliant 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

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

Designated Cross File: HB 821 (Chair, Health and Government Operations Committee)(By Request - Office of the Attorney General) - Health and Government Operations.

Information Source(s): Department of Commerce; Baltimore City; Harford, Montgomery, and Talbot counties; Maryland Association of Counties; Maryland Municipal League; Alcohol, Tobacco, and Cannabis Commission; Maryland Cannabis Administration; Office of the Attorney General; Comptroller's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Maryland Department of Agriculture; Maryland Department of the Environment; 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; Department of State Police; Maryland Department of Transportation; Maryland State Board of Elections; State Ethics Commission; Maryland Health Care Alternative Dispute Resolution Office; Maryland Insurance Administration; Maryland State Lottery and Gaming Control Agency; Public Service Commission; Anne Arundel County Public Schools; Frederick County Public Schools; Wicomico County Public Schools; Department of Legislative Services

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