

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 677 (Delegate Pena-Melnyk, *et al.*)
Health and Government Operations

Public Information Act - Required Denials - Physical Addresses, E-Mail
Addresses, and Telephone Numbers

This emergency bill requires a custodian to deny, under the Maryland Public Information Act (PIA), any request for inspection of a distribution list and a request to be added to a distribution list, if that list identifies a physical or email address or a telephone number of an individual that is used by a governmental entity or an elected official for the sole purpose of (1) periodically sending news about the official activities of the governmental entity or elected official or (2) sending informational notices or emergency alerts.

Fiscal Summary

State Effect: None. The bill's changes may have a minimal operational effect on some agencies, but any changes can be handled with existing budgeted resources. No effect on revenues.

Local Effect: The bill's changes can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Current Law:

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 personal and confidential records, including, for example, hospital and medical records, financial records, certain police and related criminal records, and licensing records.

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 that are eligible for discretionary denials, including documents that would not be available through discovery in a lawsuit.

A custodian that denies inspection of a public record on this basis must provide (1) a written statement to the applicant giving the reason for denial; (2) the legal authority on which it is based; (3) a brief description of the undisclosed record (without disclosing the protected information), including an explanation of why redacting information would not address the reason for the denial; and (4) a notice of the statutory remedies available.

Maryland Public Information Act, Generally

Maryland's 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 who 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

A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time and within 10 working days of receiving a request.

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 has no power to issue binding decisions or to compel a custodian to disclose records; however, if a

complaint is filed with the office, a custodian must demonstrate that a denial is clearly applicable to the requested public record.

Background: In 2012, the Carroll County Board of Commissioners received a request under PIA for a large email distribution list used by the commissioners to communicate with individuals who sign up for notifications or who actively correspond with the board. After the board disclosed the distribution list, it was posted publicly on the Internet. There was some concern that disclosure of the email addresses and their subsequent publication could potentially expose the individuals on the list to cybertheft or other fraudulent online activity. According to a 2012 Attorney General opinion, PIA does not permit records custodians “to unilaterally withhold an e-mail address solely on the grounds that disclosure would substantially harm the public interest.” However, “official custodians may temporarily withhold or partially redact a personal e-mail address on public interest grounds alone, pending a court’s review.”

In 2014, after a hearing, a circuit court judge ordered the Carroll County Board of Commissioners to comply with a subsequent PIA request for distribution lists, which was originated by several news organizations. The court concluded that the board failed to prove that releasing them “would cause substantial injury to the public interest.”

Additional Information

Prior Introductions: None.

Cross File: SB 477 (Senator Kagan, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; cities of Frederick and Havre de Grace; Comptroller’s Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Maryland Department of the Environment; Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; State Department of Assessments and Taxation; Department of Legislative Services

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