



STATE OF MARYLAND
OFFICE OF THE
PUBLIC ACCESS OMBUDSMAN



STATE OF MARYLAND
PUBLIC INFORMATION ACT
COMPLIANCE BOARD

Public Information Act Updates 2021 Legislative Session

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Criminal and administrative investigative records of police misconduct

Removes many investigative records pertaining to police misconduct from the ambit of 4-311, the mandatory exemption for personnel records, and instead makes clear that such records may be withheld, if at all, only under the discretionary exemption provided by 4-351 for investigative records.

<p>Current law: Exempt under Gen. Provisions § 4-311</p> <p><u>Mandatory exemption</u></p> <p><u>Personnel records</u> – “a custodian <u>shall</u> deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information.”</p> <p><i>Maryland Dep’t of State Police v. Dashiell</i>, 443 Md. 435 (2015) – MSP records re: an internal investigation of a police officer in response to a complaint relate to discipline of the officer and are therefore personnel records</p>	<p>Change in law effective 10/1/2021: 2021 Md. Laws, ch. 62 (S.B. 178) Amends Gen. Provisions §§ 4-311, 4-351</p> <p>Now a <u>discretionary exemption</u></p> <p>Records “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” are <u>not personnel records</u>. Except, records of a “<u>technical infraction</u>” are still considered personnel records.</p> <p>Gen. Provisions § 4-101(I) defines <u>technical infraction</u> – a “minor rule violation” solely related to enforcement of administrative rules.</p> <ul style="list-style-type: none">• Does not involve interaction between individual and member of the public.• Does not relate to investigative, enforcement, training, supervision, or reporting responsibilities.• “Is not otherwise a matter of public concern”. <p>Gen. Provisions §§ 4-343, 4-351</p> <p><u>Investigatory records</u> – custodian <u>may</u> deny inspection of . . . records relating to administrative or criminal investigation of misconduct by a police officer if disclosure would be “contrary to the public interest”.</p> <p>Must allow inspection by the U.S. Attorney, the Attorney General, the State Prosecutor, or the State’s Attorney for the jurisdiction relevant to the record.</p> <p><u>Must redact</u> record to extent record reflects:</p> <ul style="list-style-type: none">• Medical information of person in interest,• Personal contact information of person in interest or witness, and/or• Information relating to family of person in interest. <p><u>May redact</u> record to extent record reflects witness information other than personal contact information.</p> <p>Custodian <u>must notify</u> person in interest when record is inspected but may not disclose the identity of requester.</p> <p>Applies prospectively to requests made on or after effective date.</p>
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PIA Enforcement/Extra- Judicial Enforcement Options

Expands the role of the current PIA Compliance Board (Gen. Provisions § 4-1A-01 et seq.) to allow it to decide a greater range of issues including denials of PIA requests, failures to respond timely or completely, and to provide relief from vexatious requests, but only after mediation through the Office of the Public Access Ombudsman (Gen. Provisions § 4-1B-01 et seq.) is attempted and fails to resolve the issue.

<p>Current law: See generally Gen. Provisions §§ 4-1A-01 et seq. (PIA Compliance Board), 4-1B-01 et seq. (Public Access Ombudsman)</p> <p>Compliance Board only has jurisdiction to review and decide disputes involving fees higher than \$350.</p> <p>Reviews for reasonableness – i.e., whether tied to actual costs of production of responsive records.</p> <p>Ombudsman is charged with making reasonable attempts to resolve wide range of PIA disputes, including denials of inspection.</p> <p>Mediation is purely voluntary and Ombudsman has no enforcement authority.</p> <p>Collaborative Effort. Compliance Board and Ombudsman generally work independently of one another; Board consideration of complaints is occasionally deferred where complainant has other issues in mediation and both parties agree to attempt to resolve all disputes via mediation.</p>	<p>Change in law effective 7/1/2022: <u>H.B. 183</u> (pending Governor’s action)</p> <p>Creates an integrated extra-judicial dispute resolution scheme with Compliance Board decisional authority. Requester or custodian must go to Ombudsman to try to mediate the dispute first.</p> <ul style="list-style-type: none"> • Ombudsman must issue final determination that dispute has been resolved or not resolved within <u>90 days</u> (unless extension is mutually agreed upon). • If dispute is not resolved, Ombudsman must inform parties of availability of Board review. <p>Compliance board has expanded jurisdiction to review and decide wider range of PIA disputes:</p> <ul style="list-style-type: none"> • Denials of inspection, • Unreasonable fees over \$350, • Failures to respond at all or within time limits, and/or • Requests that are alleged “frivolous, vexatious, or in bad faith.” <p>Note that Compliance Board cannot review and decide denials of requests for fee waivers</p> <p>Complaint to Compliance Board must be filed within <u>30 days</u> of receiving final determination from Ombudsman.</p> <ul style="list-style-type: none"> • Response must be filed within <u>30 days</u> after receipt of complaint. • Compliance Board may inspect and review records withheld by custodian as exempt (except when withheld under Gen. Provisions § 4-301(a)(2)(ii), where inspection would be contrary to federal statute or regulation). • Compliance Board may hold informal conference to hear from parties. • Compliance Board must issue decision within <u>30 days</u> of receiving written response and all additional information requested (e.g., privilege log or records in dispute) or within <u>30 days</u> of informal conference. • Compliance Board may issue written statement of delay; decision still must issue within <u>120 days</u> of filing of complaint. • Compliance Board decision may state that it is unable to resolve the dispute (such decision is not appealable).
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	<p>Change in law effective 7/1/2022: H.B. 183 (pending Governor’s action) <i>cont.</i></p> <p>Depending on nature of dispute, Compliance Board may order that:</p> <ul style="list-style-type: none">• Records withheld by custodian be produced for inspection,• Custodian promptly respond to a PIA request,• Custodian waive all or part of a fee that the custodian is otherwise entitled to charge (only in cases where custodian failed to respond to PIA request within time limits and only if decision includes reasons for ordering waiver), and/or• Custodian may ignore a request found frivolous, vexatious, or in bad faith, or may respond to less burdensome version of request within reasonable timeframe. <p>Parties may appeal a Compliance Board decision to circuit court in accordance with Gen. Provisions § 4-362; appeal automatically stays decision of Compliance Board pending circuit court’s decision.</p> <p>Bill also contains proactive disclosure provision – custodian “shall adopt a policy of proactive disclosure of public records that are available for inspection.”</p> <ul style="list-style-type: none">• Policy may “vary as appropriate” to type of record and to reflect staff and budgetary resources.• Policy may include publication of records on website or publication of prior responses to PIA requests.
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Additional Legislation of note:

H.B. 23 (pending Governor’s action) – amends Gen. Provisions § 4-320 (exemptions for MVA records) and adds § 4-320.1 (related to requests by federal agencies seeking access for purpose of enforcing federal immigration law).

- Requires officer, employee, agent, or contractor of State or political subdivision to deny inspection of MVA records containing certain personal information and deny inspection using facial recognition unless federal agency has a valid warrant.
- A person who receives this information under the PIA may not disclose it to federal agency for purposes of immigration enforcement absent valid warrant.
- MVA, Maryland State Police, and Department of Public Safety and Correctional Services must submit annual report to General Assembly re: record requests from federal agencies seeking access for federal immigration enforcement.