

OPINIONS OF THE ATTORNEY GENERAL

on the

*MARYLAND PUBLIC INFORMATION ACT**A. Scope of the Public Information Act; Disclosable Records**97 Opinions of the Attorney General 95 (2012)*

No exception protects from disclosure the personal e-mail addresses that government officials collect for purposes of circulating a newsletter; providing guidance on the process of seeking a protective order from the circuit court under what is now GP § 4-358.

93 Opinions of the Attorney General 138 (2008)

Provision of records required by criminal discovery rules is distinct from provision of records under the PIA.

92 Opinions of the Attorney General 137 (2007)

Although the PIA restricts access to certain student information in school system records, the PIA yields to both federal law and provisions in the Education Article of the Maryland Code governing access to student records.

92 Opinions of the Attorney General 12 (2007)

Although a local ordinance ordinarily cannot restrict access to public records in a manner inconsistent with the PIA, a local ethics ordinance restricting access to records regarding pending complaints and identifying information in advisory opinions is valid to the extent that its provisions are consistent with Maryland Public Ethics Law and model ordinance developed by the State Ethics Commission.

90 Opinions of the Attorney General 45 (2005)

While fire dispatch records are ordinarily open to inspection, medical information concerning an identified individual should be redacted.

Note: *These Opinions were based on the statutes in effect when they were issued. Changes to both the PIA and the statute governing the disclosure of information may have made some opinions obsolete.*

86 Opinions of the Attorney General 226 (2001)

Although a statute prohibits disclosure of an inmate's case record to the public, the Division of Correction may reasonably construe prohibition as not extending to projected date of inmate's release on mandatory supervision.

83 Opinions of the Attorney General 192 (1998)

The gross amount of bonuses or performance awards paid to county appointed officials or merit system employees is available to the public under the PIA.

82 Opinions of the Attorney General 111 (1997)

An individual is generally entitled under the PIA to Motor Vehicle Administration records related to a review of the individual's fitness to drive, including records of the MVA's Medical Advisory Board. However, under what is now GP § 4-351(b)(4), the MVA may treat as a confidential source someone who writes to the MVA concerning an individual's fitness to drive if the informant would reasonably expect confidentiality.

81 Opinions of the Attorney General 140 (1996)

"Public record" includes printed version of e-mail as the paper will itself be a "public record," but even if message was never printed, the version of the e-mail retained in the computer's storage would also be a "public record."

80 Opinions of the Attorney General 257 (1995)

The definition of "public record" does not extend to records that are required to be maintained by an applicant for a residential child care facility license but that never come into possession of the State agency.

79 Opinions of the Attorney General 366 (1994)

Although personnel records and other information regarding applicants for employees in Baltimore City Public Schools would otherwise be protected from inspection by the PIA, disclosure was authorized by virtue of a federal district court order.

79 Opinions of the Attorney General 354 (1994)

The criteria for determining eligibility for representation by the Public Defender are open for public inspection unless otherwise provided by law.

76 Opinions of the Attorney General 287 (1991)

Requests from the Legislative Auditor in connection with an audit are not governed by the PIA.

73 Opinions of the Attorney General 12 (1988)

Letters to the Agriculture Department complaining about gypsy moth spraying are generally disclosable.

71 Opinions of the Attorney General 282 (1986)

County ethics ordinance requires disclosure of certain information ordinarily within exceptions to disclosure.

71 Opinions of the Attorney General 288 (1986)

Tape recordings of calls to 911 Emergency Telephone System Centers are public records but portions of the recordings may fall within certain exceptions to disclosure.

71 Opinions of the Attorney General 318 (1986)

Federal and State statutes regarding the confidentiality of tax-related information prohibit disclosure of information concerning the personal and business affairs of identifiable taxpayers. However, (1) non-confidential information about the taxpayer's plans to engage in certain regulated business activities or the taxpayer's authority to collect the retail sales tax and (2) information that cannot be associated with any particular taxpayer must be disclosed to the public upon request.

68 Opinions of the Attorney General 330 (1983)

Individual criminal trial transcripts in the hands of the Public Defender are public records.

Opinion No. 81-034 (unpublished) (1981)

Under the Education Article of the Maryland Code and the Public Information Act, a County Council is entitled, as part of its review of the county school board's annual budget request, to receive supporting budgetary details that include the actual salaries paid to school board employees.

Opinion No. 79-024 (unpublished) (1979)

A managerial audit letter prepared for the Board of Education is a public document and, as such, the County Commissioners and the Director of Finance are entitled by law to a copy of the letter.

Opinion No. 79-032 (unpublished) (1979)

The Retail Sales Tax Division of the Comptroller of the Treasury must provide the State Department of Personnel with a list of the names of accounts that have been audited by the Division.

Opinion No. 78-085 (unpublished) (1978)

Neither the Insurance Commissioner nor Maryland Automobile Insurance Fund may deny the Legislative Auditor access to the report of examination of MAIF's Uninsured Division and the related work papers.

63 Opinions of the Attorney General 502 (1978)

Juvenile records may be released to the Division of Parole and Probation by the various custodians of juvenile records without a court order, but the better practice would be to get a court order. The Division of Parole and Probation may deny disclosure of a particular record if it was compiled for a law enforcement or prosecution purpose.

63 Opinions of the Attorney General 543 (1978)

Arrest logs are public records and the only grounds for denying public access to them would be pursuant to Article 76A, § 3(f).

62 Opinions of the Attorney General 396 (1977)

Any member of the public is entitled to inspect and copy registration records of the Board of Election Supervisors unless there is a "special order of the Board" or a "reasonable regulation" by the Board to the contrary.

62 Opinions of the Attorney General 579 (1977)

Information relating to legal fees paid by Maryland Automobile Insurance Fund to individual defense counsel engaged to represent the agency or its insured must be divulged upon demand.

62 Opinions of the Attorney General 712 (1977)

The Public Information Act requires the property tax assessment appeal boards to permit any person to inspect any of their records with certain exceptions.

Opinion No. 77-013 (unpublished) (1977)

The PIA requires the Department of Licensing and Regulation to honor requests for copies of numerical listings of all licensees, assembled as part of an annual routine of issuing renewal licenses.

Opinion No. 76-30 (unpublished) (1976)

Salary information with respect to employees at Prince George's Community College generally is subject to disclosure under the Public Information Act.

Opinion No. 76-142 (unpublished) (1976)

The author's name on a letter to the Maryland State Board of Ethics is considered a "public record" and does not fall within any of the exceptions to the requirement of disclosure.

61 Opinions of the Attorney General 702 (1976)

The Maryland Public Information Act does not in general authorize clerks of courts to deny public inspection of marriage records, no matter what the intended use.

60 Opinions of the Attorney General 498 (1975)

The nature of mileage forms, the purpose for which they are kept, and the place where they are kept make it clear that they are not personnel records, but are vehicle records only and, as such, they are public records open for inspection.

60 Opinions of the Attorney General 600 (1975)

Disclosure of students' names and addresses to third parties by school officials even without parents' consent is not prohibited by the PIA. However, disclosure may be prohibited by a federal statute, the Family Education Rights & Privacy Act of 1974, "the Buckley Amendment." 20 U.S.C. § 1232g.

59 Opinions of the Attorney General 59 (1974)

A list provided by the Bank Commissioner of a bank's bona fide shareholders or subscribers showing the name, residence, and actual number of shares subscribed to

and paid for are not exempt from the general requirement of disclosure. However, personal financial statements may not be released.

59 Opinions of the Attorney General 586 (1974)

County boards of education are not prohibited by the PIA from releasing the names and addresses of students within their schools. However, disclosure may be prohibited by a federal statute, the Family Educational Rights and Privacy Act of 1974, “the Buckley Amendment,” 20 U.S.C. § 1232g.

Opinion No. 74-239 (unpublished) (1974)

Disclosure of the names of all lawyers, doctors, and independent adjustors used by the Maryland Automobile Insurance Fund is compelled under the Public Information Act.

58 Opinions of the Attorney General 14 (1973)

The State Department of Assessments and Taxation is barred from permitting inspection of a taxpayer’s assessment worksheet by anyone but the taxpayer to whom the property is assessed and officers of the State and subdivision affected.

58 Opinions of the Attorney General 53 (1973)

The Act applies to all members of the general public and does not make exception for any segment thereof.

57 Opinions of the Attorney General 500 (1972)

All materials considered in connection with appointment or promotion in the Police Department are open to inspection but this does not extend to the identity of the applicant’s examiner or examiners.

57 Opinions of the Attorney General 518 (1972)

Criminal records that the court orders expunged need not be physically destroyed, but should be segregated and public and private access can be denied.

B. *Role of the Custodian***93 *Opinions of the Attorney General* 138 (2008)**

The PIA does not provide authority for a State's Attorney to charge a criminal defendant for access to records to which defendant is entitled under Maryland Rules governing discovery; for other records, reasonable charges may be imposed.

68 *Opinions of the Attorney General* 330 (1983)

Public Defender is "official custodian" of trial transcript obtained by the Public Defender's office in the course of its legal representation of an indigent defendant.

65 *Opinions of the Attorney General* 365 (1980)

If a public official uses his or her public office to obtain the personnel file of another person, the public official becomes a de facto "custodian" of that file, subject to the statutory obligation imposed by the Public Information Act on a "custodian" to deny access to the file by unauthorized persons; as "custodian," the public official is subject to criminal penalties applicable to violations of the statute.

64 *Opinions of the Attorney General* 236 (1979)

Determination whether disclosure is contrary to the public interest is within the discretion of the custodian.

63 *Opinions of the Attorney General* 197 (1978)

If the Public Safety Data Center consolidates with the Baltimore Computer Utility, the Secretary of Public Safety and Correctional Services would continue to be the "official custodian" of the criminal history records stored in the shared system and the Maryland State Police would continue to be the "custodians" of such records.

C. *Right of Access***90 *Opinions of the Attorney General* 45 (2005)**

While a parent of a minor ordinarily is a "person in interest" for purposes of accessing records pertaining to the minor, that status is lost if the parents' parental rights have been terminated.

81 *Opinions of the Attorney General* 154 (1996)

Waiver of fee is dependent upon a number of relevant factors and cannot be based solely on the poverty of the requester or the cost to the agency.

71 *Opinions of the Attorney General* 318 (1986)

In complying with any request for disclosable information, the Retail Sales Tax Division may impose a reasonable charge for the costs incurred, including the cost of all computer time actually used.

63 *Opinions of the Attorney General* 453 (1979)

The Legislative Auditor has broad statutory authority to examine records of State agencies, including medical records of the Department of Health & Mental Hygiene, in assessing the performance of the Department.

60 *Opinions of the Attorney General* 563 (1973)

Personnel files may be available to investigators representing the Division of Fiscal Research for purposes connected with the performance of the Division's statutory duties.

58 *Opinions of the Attorney General* 563 (1973)

The Public Information Act speaks only of the "right of inspection" of public records or "access to" such records. It does not compel a custodian to take affirmative action to disclose information absent a request.

56 *Opinions of the Attorney General* 461 (1971)

The Public Information Act does not guarantee the right to the requested information to any specific form. The State Department of Assessments and Taxation is not required to give information in the form of a duplicate data processing tape but may give a printout instead.

D. Exceptions to Disclosure

1. Exceptions Based on Other Sources of Law

87 Opinions of the Attorney General 76 (2002)

Absent court order, State's Attorney's Office may not prematurely provide community association with search warrant information for use in pursuing drug nuisance abatement action.

86 Opinions of the Attorney General 94 (2001)

A local ordinance does not constitute "other law" for purposes of what is now GP § 4-301 and cannot provide independent basis for an exemption from disclosure under the PIA.

82 Opinions of the Attorney General 15 (1997)

While a document is not confidential as a matter of law merely because it is prepared by a county attorney, the attorney-client privilege or other appropriate privileges are available to protect the confidentiality of a document and prevent disclosure under the PIA to the extent the document is encompassed by those privileges.

81 Opinions of the Attorney General 164 (1996)

Agency recipient of a management letter that is partly privileged may decline to disclose those parts of the letter to another government agency, unless other law requires disclosure.

66 Opinions of the Attorney General 98 (1981)

Notwithstanding the General Assembly's broad authority to inquire into the State's fiscal affairs, budget recommendations requested by and submitted to the Governor in confidence by various executive agencies are subject to Executive Privilege and, as such, are privileged from disclosure to the General Assembly.

64 Opinions of the Attorney General 236 (1979)

The common law doctrine of grand jury secrecy makes records obtained by a State's Attorney's office solely for use in a grand jury investigation non-disclosable under § 3(a)(iv), as amended, now codified at GP § 4-301, of the Public Information Act.

63 Opinions of the Attorney General 659 (1978)

The Maryland Public Information Act may not be used to disclose birth and death certificates, or the identifying information contained thereon, since it is confidential by law, but autopsy reports may be obtained from the custodian of such reports under this statute.

61 Opinions of the Attorney General 340 (1976)

The State Public Information Act generally denies access to educational records “unless otherwise provided by law.” It is permissible for a representative of the State Department of Education to examine the academic records of certain students at Morgan State University.

Opinion No. 75-060 (unpublished) (1975)

Release of information that a specific individual is currently a patient in a State mental hospital is contrary to former Article 59, § 19 and, therefore falls within the PIA exception for records protected by other laws.

2. Discretionary Exceptions

92 Opinions of the Attorney General 26 (2007)

Request for mug shots in custody of police department should be analyzed as a request for an investigatory record under the PIA. Thus, a mug shot must be disclosed unless the custodian determines disclosure would be contrary to the public interest.

89 Opinions of the Attorney General 31 (2004)

If, in carrying out its statutory mandate, an agency is in possession of investigatory records obtained from another agency, it may apply the investigatory records exemption to withhold the records if the agency that provided the records would itself deny access under the investigatory record exemption.

86 Opinions of the Attorney General 94 (2001)

In determining whether an investigation is for “law enforcement purposes,” the proper focus is on whether the agency’s investigatory function is part of an overall scheme designed to review specific instances of alleged improper conduct, not the array of possible sanctions that might result from the investigation.

77 Opinions of the Attorney General 183 (1992)

Custodian of investigatory records has discretion whether to disclose name and address of victim of crime.

71 Opinions of the Attorney General 305 (1986)

Agency's citizen response plan log that contains information concerning citizen complaints is not ordinarily an investigatory record exempt from disclosure.

64 Opinions of the Attorney General 236 (1979)

The Police Department must disclose investigative reports, or a severable part of them, unless disclosure would be contrary to the public interest.

Opinion No. 75-202 (unpublished) (1975)

The report of the Maryland Automobile Insurance Fund Advisory Board subcommittee may be withheld from public inspection in the discretion of the executive director and the Board of Trustees of MAIF.

58 Opinions of the Attorney General 53 (1973)

Access may be denied to the report prepared for the Maryland Transportation Authority by an independent engineering consulting firm to assist the Authority in preparing its defense to claims filed against it. Disclosure of the claims, resulting in a potentially significant cost to the public, is clearly contrary to public interest.

58 Opinions of the Attorney General 563 (1973)

The custodian of Police Department records may deny public access to arrest records only upon a determination that disclosure would be contrary to the public interest.

3. Mandatory Exceptions

90 Opinions of the Attorney General 45 (2005)

Medical information recorded by dispatcher during course of 911 call is to be redacted prior to release of fire department "event report" or dispatch.

86 Opinions of the Attorney General 94 (2001)

Personnel records exemption does not preclude municipal agency from sharing personnel records with another municipal agency that is charged with personnel

administration responsibilities to the extent necessary for the latter agency to carry out its responsibilities.

82 Opinions of the Attorney General 65 (1997)

Prohibition against disclosure of “personnel records” does not preclude school officials from disclosing to a student’s parent oral information gained through reported observations concerning employee’s conduct even if information subsequently was memorialized, thus resulting in a “record.” Furthermore, certain information gained through investigation of school system personnel about a student may be disclosed as long as the confidentiality of employee-related information derived from personnel record is preserved.

79 Opinions of the Attorney General 362 (1994)

Performance evaluation reports on judges, lawyers’ responses on judicial performance questionnaires, and the compiled data for each judge are exempt. Members of the public are entitled to the composite data that do not identify particular judges.

78 Opinions of the Attorney General 291 (1993)

Employee-related information stemming from a complaint about discriminatory behavior is a personnel record that may not be disclosed to third parties.

77 Opinions of the Attorney General 188 (1992)

Value or description of abandoned property constitutes personal financial information that may not be disclosed.

71 Opinions of the Attorney General 305 (1986)

Exemption for licensing records applies only to records of licensees who are individuals, and not to those who are business entities.

71 Opinions of the Attorney General 297 (1986)

A tape recording of an involuntary admission hearing may be disclosed only to a patient or authorized representative.

71 Opinions of the Attorney General 368 (1986)

Under certain conditions, information about the handling of a child abuse case by the local Department of Social Services may be disclosed.

69 Opinions of the Attorney General 231 (1984)

Architectural and engineering plans that are submitted to a county as a prerequisite to issuance of a building permit are public records and must be disclosed unless they contain commercial information that would give competitors of the submitter a concrete advantage in obtaining future work on that or a similar project.

68 Opinions of the Attorney General 335 (1983)

A custodian must deny inspection of letters of reference — solicited or unsolicited — that concern a person's fitness for public office or employment.

Opinion No. 83-044 (unpublished) (1983)

While performing evaluations of local directors of social services, local boards have the right to examine internal Department of Human Resources documents that relate to performance but may not use or disseminate the information in contravention of any confidentiality requirements imposed by Article 88A, § 36 or General Provisions Article § 4-315.

63 Opinions of the Attorney General 432 (1978)

Nonprofit health service plans may not release personal medical record information, without the consent of the individuals, to employers who sponsor and maintain group health plans. The only exception would be if the information was released without identifying the subscribers.

63 Opinions of the Attorney General 355 (1978)

The custodian shall determine if data is a "trade secret" or "confidential commercial or financial data." The mere assertion by a vendor that commercial data is confidential is not sufficient. One important indicium of confidentiality or privilege is whether the records are customarily so regarded in the trade or industry.

Opinion No. 77-006 (unpublished) (1977)

Public Information Act does not prohibit the disclosure of a State, county, or municipal job or position description.

Opinion No. 75-071 (unpublished) (1975)

The information contained in the application for State Certification of Conformance for Hospitals and Related Institutions and/or Federal § 1122 Certification for

Reimbursement of Capital Expenditures should be open to the public unless it is confidential.

Opinion No. 73-099 (unpublished) (1973)

The Comptroller may release information relating to taxpayers to the Treasury Department of the United States.

60 Opinions of the Attorney General 559 (1975)

Where an employee of the Department of Health and Mental Hygiene has filed a claim for Workmen's Compensation with the State Accident Fund, its investigators should be provided access to information concerning the claimant, or otherwise pertinent to the claim, contained in the Department's personnel file.

60 Opinions of the Attorney General 600 (1975)

Degree information, including credits earned by teachers in specific school systems, should not be disclosed.

4. Preventing Disclosure Where No Exception Applies

97 Opinions of the Attorney General 95 (2012)

Providing guidance on the process of seeking a protective order from the circuit court under what is now GP § 4-358 when no exception protects from disclosure the personal e-mail addresses that government officials collect for purposes of circulating a newsletter.

Opinion No. 76-142 (unpublished) (1976)

If disclosure would do substantial injury to public interest, a custodian may seek a court order to permit denial or restriction of access.

E. Procedures for Making a Request for Inspection or Copying

81 Opinions of the Attorney General 154 (1996)

Waiver of fee is dependent upon a number of relevant factors and cannot be based solely on the poverty of the requester or the cost to the agency.

61 *Opinions of the Attorney General* 698 (1976)

There is no requirement that an applicant give a reason for the request.

F. Liability of Persons Who Violate the Act

65 *Opinions of the Attorney General* 365 (1980)

If a public official uses his or her public office to obtain the personnel file of another person, the public official becomes a de facto “custodian” of that file, subject to the statutory obligation imposed by the Public Information Act on a “custodian” to deny access to the file by unauthorized persons; as “custodian,” the public official is subject to criminal penalties applicable to violations of the statute.

61 *Opinions of the Attorney General* 698 (1976)

A person who violates the Public Information Act may be subject to criminal and/or civil action.

G. Correction of Records

76 *Opinions of the Attorney General* 276 (1991)

PIA procedures for correction of records do not apply to a death certificate. (Reversed by subsequent legislation. See 1992 Md. Laws, ch. 547.)