

2021 Legislative Changes to the PIA – Two Part Series

June 7, 2021

The General Assembly considered several PIA-related bills this session, but only two passed both chambers and went on to become law. One, which makes changes to the treatment of records related to investigations into police misconduct, was vetoed by the Governor while the General Assembly was still in session, thus permitting the General Assembly to override the veto. The second bill, which makes changes to the extra-judicial dispute resolution process, passed both chambers unanimously and became law in early June. This blog post provides a summary of the major changes made by the new law regarding investigatory records of police misconduct. A second post explaining the coming changes to the extra-judicial dispute resolution process will follow in a couple of weeks.

[2021 Md. Laws, ch. 62](#) (S.B. 178)

This bill, enacted over the Governor's veto, was part of a package of police reform bills passed this session. Currently, investigative records relating to police misconduct are considered personnel records and thus the PIA mandates that they be withheld from inspection. See Md. Code Ann., Gen. Provisions ("GP") § 4-311; *Maryland Dep't of State Police v. Dashiell*, 443 Md. 435 (2015).

The new law removes these records from the ambit of GP § 4-311 and instead classifies them as investigatory records subject to discretionary withholding under GP § 4-351. This means that a custodian may deny inspection if disclosure would be "contrary to the public interest."

The one exception to this new law is that records of "technical infractions" are still considered personnel records subject to mandatory withholding under GP § 4-311. A "technical infraction" is one that is a "minor rule violation" solely related to enforcement of administrative rules; it does not involve an interaction between the officer and a member of the public, does not relate to investigative, enforcement, training, supervision, or reporting responsibilities, and "is not otherwise a matter of public concern."

2021 Md. Laws, ch. 62 provides certain redaction responsibilities should a custodian determine that disclosure is appropriate. A custodian must redact an investigatory record relating to police misconduct to the extent that the record reflects medical information of the person in interest (i.e., the law enforcement officer), personal contact information of the person in interest or a witness, and/or information relating to the family of the person in interest. A custodian may redact the record to the extent that it reflects witness information other than personal contact information. When the record is inspected, the custodian must notify the person in interest; however, a custodian may not disclose the identity of the requester.

~The new law takes effect on October 1, 2021. Stay tuned for a follow-up blog regarding new PIA enforcement mechanisms that will be implemented in July 2022.